# MILITARY COMPENSATION
# BACKGROUND PAPERS

**SIXTH EDITION**

**MAY 2005**

**DEPARTMENT OF DEFENSE**

**UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS**

# Table of Contents

## Introduction to the Sixth Edition

In the eight years since the publication of the Fifth Edition of the *Military Compensation Background Papers*, the country has undergone a number of significant changes that have affected the military services. The nation has been adjusting to the demise of the Soviet Union and end of the Cold War. In fact, many of the Warsaw Pact countries, which had allied themselves with the Soviet Union, have become NATO members. Since the threat from the Soviet Union and the Warsaw Pact countries has evaporated, the United States has been seeking a new global positioning based upon its new relationships with Europe and Asia. The terrorist attacks of September 11, 2001, and the Global War on Terrorism have given rise to a new enemy and underscored the need for transformation.

This new enemy has forced defense strategy to focus on an enemy, which, unlike adversaries of the past, has no specific location, government sponsor or targets. In this environment transformation has meant that our forces have had to become light and mobile while continuing to be lethal. Both the wars in Afghanistan and Iraq were prosecuted successfully, using this new alignment. The Global War on Terrorism, Operation Enduring Freedom and Operation Iraqi Freedom placed new demands on our Reserve Forces that resulted in an increased need for civil affairs, linguists and security forces. Increased utilization of these forces led to changes in the way its members were paid. In addition, increased tempo, that is, more frequent and longer deployments, resulted in new pays as well as changes in existing pays in order for military manpower to accommodate an increased level of utilization.

Also, in the interval between editions of the *Military Compensation Background Papers*, are major changes to the two principal allowances that all military members receive – housing and food. Not only has the administration of these pays changed, but also their philosophical underpinnings. For example, the housing allowance is no longer based upon a member's actual housing expenditure; it is instead calculated as the amount needed to rent adequate housing. Changes in the Basic Allowance for Subsistence are now tied to changes in food prices rather than changes to basic pay. There are also a substantial number of new pays, allowances and bonuses, including assignment incentive pay, high deployment allowance and career status bonus. The legislative changes for these new elements of compensation are detailed in the ensuing chapters.

Dr. Glenn Curtis of the Federal Research Division of the Library of Congress prepared this edition of the *Military Compensation Background Papers*. Drafts of the component chapters were circulated to the staffs of the Office of the Secretary of Defense and the military services for their review and comment. In addition, chapters of this volume were sent to individuals in the Department of Labor and Veterans' Affairs. This office recognizes their input and greatly appreciates their contribution. Mr. Don Musselman, a retired attorney from the Office of General Counsel, Department of Defense, was a consultant on this project and also reviewed the draft chapters. I would also like to recognize the contribution of Peter Ogloblin, the force behind the first five editions of the *Military Compensation Background Papers*. Even though he is now retired, his contribution can be found on every page of this edition.

The *Military Compensation Background Papers* continues to be the only legislative history of military compensation and, as such, is an important research tool for

anyone who wants to understand the military compensation system. Although the fifth edition is now eight years old, I continue to get requests for copies of it, as well as questions as to when the new volume will be released. I can now point them to the sixth edition.

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# PAYS AND ALLOWANCES SUMMARY

| Title | Compensation Range | Initial Date | Last Change |
|---|---|---|---|
| Acceleration subject duty pay | $150 per month | 1955 | 1998 |
| Air weapons controller flight pay (AWACS flight pay) | $150 to $350 per month | 1981 | 1998 |
| Aviation career incentive pay | $125 to $840 per month | 1974 | 1999 |
| Aviation officer continuation pay | Up to $25,000 per year if officer agrees to remain on active duty to complete 14 years of commissioned service | 1980 | 1999 |
| Basic allowance for housing (BAH) | formula provided in 37 USC §403(b) | 1878 | 2001 |
| Basic allowance for subsistence | formulas provided in 37 USC §402 | 1808 | 1998, 2001[1] |
| Basic pay | $1,193.40 to $14,634.20 per month | 1790 | 2004 |
| Career sea pay | maximum $750 per month | 1835 | 2001 |
| Chemical munitions exposure pay | $150 per month | 1981 | 1998 |
| Clothing basic replacement allowance | $216 to $478.80 per year | 1949 | 2004 |
| Combat pay (also known as hostile fire pay or imminent danger pay) | $225 per month | 1952 | 2004 |
| CONUS COLA | varies with duty station and location of dependents | 1996 | 2004 |
| Crew member flight pay | $110 to $250 per month | 1913 | 1985 |
| Critical nursing specialties pay | Up to $50,000 per year | 1990 | 2001 |
| Dangerous organisms exposure pay | $150 per month | 1981 | 1998 |
| Death gratuity | $12,000 | 1908 | 2004 |
| Deceleration subject duty pay | $150 per month | 1955 | 1998 |
| Demolition duty pay | $150 per month | 1949 | 1998 |
| Dental officers special pays | | 1967 | 1997 |
| • Variable special pay | $3,000 to $7,000 per year | | |
| • Additional special pay | $4,000 to $10,000 per year | | |
| • Board certification pay | $2,500 to $6,000 per year | | |
| Dependency and indemnity compensation | $935 to $2,317 per month | 1957 | 2001 |
| Disability retired pay | Up to 75% of basic pay at time of retirement for disability | 1861 | 1985 |
| Dislocation allowance | 2 ½ months' BAH | 1955 | 1997 |
| Diving duty pay | Up to $240 (officers) and $340 (enlisted members) per month | 1886 | 2000 |
| Engineering and scientific career continuation pay | Up to $3,000 per year for each year of an extension agreement | 1981 | 1981 |
| Enlistment bonus | Up to $20,000 | 1791 | 2001 |
| Family separation allowance | FSA I: 1 month's BAH (without dependents rate) | 1963 | 1981 |
| | FSA II: $100 per month | 1963 | 1998 |
| Flight deck duty pay | $150 per month | 1965 | 1998 |
| Flight pay (air weapons controllers or AWACS flight pay) | $150 to $350 per month | 1981 | 1998 |
| Flight pay (aviation career incentive pay) | $125 to $840 per month | 1974 | 1999 |

[1] The formula for officers was established in 1998, that for enlisted members in 2001.

| | | | |
|---|---|---|---|
| Flight pay (aviation officer continuation pay) | Up to $25,000 per year if officer agrees to remain on active duty to complete 14 years of commissioned service | 1980 | 1999 |
| Flight pay (crew member) | $110 to $250 per month | 1913 | 1985 |
| Flight pay (non-crew member) | $150 per month | 1934 | 1998 |
| Foreign language proficiency pay | Up to $300 per month | 1986 | 2000 |
| Glider duty pay | Authority terminated 1984 | 1944 | 1984 |
| HALO parachute duty pay | $225 per month | 1885 | 1998 |
| High pressure chamber duty pay | $150 per month | 1983 | 1998 |
| Hardship duty location pay | maximum $300 per month | 1900 | 1998 |
| Hostile fire pay (also known as combat pay or imminent danger pay) | $225 per month | 1952 | 2002 |
| Inactive duty training pay | 1/30th of a month's basic pay per unit training | 1916 | 1996 |
| Leprosy duty pay | Authority terminated 1984 | 1949 | 1984 |
| Low pressure chamber duty pay | $150 per month | 1955 | 1998 |
| Medical officers special pays | | 1947 | 1989 |
| • Variable special pay | $1,200 to $10,000 per year | 1947 | 1989 |
| • Additional special pay | $15,000 per year | 1947 | 1989 |
| • Board certification pay | $2,500 to $6,000 per year | 1947 | 1989 |
| • Incentive special pay | Up to $50,000 per year | 1947 | 2003 |
| Nonphysician health care providers special pay | Up to $5,000 per year | 1990 | 1990 |
| Nuclear career accession Bonus | Up to $20,000 | 1976 | 2000 |
| Nuclear career annual incentive bonus | Up to $22,000 per year for each nuclear service year | 1976 | 2000 |
| Nuclear qualified officers continuation pay | $25,000 per year for each year of an extension agreement up to $60,000 | 1969 | 2000 |
| Nuclear trained and qualified enlisted members | Up to $15,000 for a reenlistment | 1972 | 1972 |
| Nurse anesthetists special pay | Up to $50,000 per year | 1989 | 2003 |
| Operational submersible duty pay | $75 to $595 per month | 1960 | 1987 |
| Optometrists special pay | | | |
| • Regular special pay | $100 per month | 1971 | 1971 |
| • Retention special pay | Up to $15,000 per year | 1990 | 2003 |
| Overseas station cost of living allowance | Up to $6,732 per month | 1942 | 2004 |
| Parachute duty pay | $150 per month ($225 HALO) | 1941 | 1998 |
| Personal exposure pay (toxic pesticides, *etc.)* | $150 per month | 1981 | 1998 |
| Personal money allowance | $41.67 to $333.33 per month | 1922 | 1949 |
| Premium career sea pay | $350 per month | 1980 | 2001 |
| Psychologists special pay | Up to $5,000 per year | 1987 | 1987 |
| Reenlistment bonus (SRB) | Up to $60,000 | 1791 | 2000 |
| Registered nurses accession bonus | One time payment of up to $30,000 | 1989 | 2003 |
| Responsibility pay | $50 to $150 per month | 1958 | 1958 |
| Retired and retainer pay | Currently 50% to 75% of basic pay or monthly retired pay base | 1861 | 1996 |
| Selective reenlistment bonus (SRB) | Up to $60,000 | 1791 | 2000 |
| Separation pay (nondisability) | 120% of product of years of service and monthly basic pay | 1800 | 1996 |
| Servicemen's Group Life Life Insurance (SGLI) | Up to $200,000 for survivors | 1917 | 1996 |

| | | | |
|---|---|---|---|
| Severance pay (disability) | Up to 2 years basic pay at time of separation | 1949 | 1996 |
| SGLI (Servicemen's Group Life Insurance) | Up to $200,000 for survivors | 1917 | 1996 |
| Special duty assignment pay (formerly, proficiency pay) | Up to $1,500 | 1958 | 2003 |
| Submarine duty incentive pay | $75 to $595 per month | 1901 | 1987 |
| Survivor Benefit Plan (SBP) | Up to 55% of retired or retainer pay | 1953 | 1989 |
| Thermal experiment subject pay | $150 per month | 1957 | 1998 |
| Toxic fuels and propellants exposure pay | $150 per month | 1981 | 1998 |
| Toxic pesticides exposure pay | $150 per month | 1981 | 1998 |
| Veterinarians special pay | $100 per month | 1953 | 1953 |

## Preface to Analytical Table of Contents

A Note on the Organization of the Third and Subsequent Editions

The organization of the third and subsequent editions of *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items—Their Purposes and Legislative Backgrounds* has been changed from that of the first two editions in that pays that are functionally similar or that have a common legislative heritage are physically grouped together.[1] This regrouping has had the incidental effect of emphasizing the common concepts and principles, as articulated in Chapter I of this edition, that underlie the various compensation elements and manpower cost items that have been grouped together.

In thus regrouping and reorganizing the third and subsequent editions of *Military Compensation Background Papers,* the various compensation elements and manpower cost items that make up the military compensation system considered as a whole have been subsumed under four major headings identified by Roman numerals II through V, respectively. Thus, Roman numeral II covers all forms of "pay" for active and inactive duty military service; Roman numeral III covers all forms of post-service compensation, including separation payments as well as retired and retainer pay and other benefits; Roman numeral IV covers benefits supporting the active and inactive duty forces; and Roman numeral V covers the category of miscellaneous payments to active and inactive duty forces that are, for present purposes, referred to as "manpower-related cost items." Roman numeral I provides an over-view of the military compensation system as a whole, emphasizing the principles and concepts that underlie and inform the system and give it substance and cohesion.

Each of the major categories covered by Roman numerals II through V is in turn broken down into further groupings and sub-groupings of compensation elements and man-power cost items. Thus, for example, section B of Roman numeral II covers the four elements of military compensation that are subsumed under the heading of "regular

[1] In most cases, the grouping of one element of compensation with another can be easily and persuasively defended. In some cases, however, the grouping of one element with another has been more arbitrary, resulting from a felt need to impose structure and coherence on a subject that is not always well-structured or coherent. The reader's indulgence is solicited in those cases where the grouping chosen offends the reader's sensibilities.

military compensation." These four elements—namely, basic pay, basic allowance for housing, basic allowance for subsistence, and federal income tax advantage—are, in turn, each covered by a separate chapter. Each of these chapters is designated by a number that reflects its grouping under section B of Roman numeral II. Thus, Chapter II.B.1. is entitled "Basic Pay;" Chapter II.B.2., "Basic Allowance for Housing;" Chapter II.B.3., "Basic Allowance for Subsistence;" and Chapter II.B.4., "Federal Income Tax Advantage." In a similar vein, section C of Roman numeral II covers compensation for non-regular service; section D covers special and incentive pays; and section E covers attraction and retention pays. As was true of section B, sections C, D, and E of Roman numeral II also are broken down into finer groupings. Subsection 1 under section D, for example, covers combat and hazardous duty incentive pays; subsection 2, aviation-related pays; subsection 3, submarine and naval pays; and subsection 4, medical hazardous duty pays. Subsection 1 of section D under Roman numeral II is itself further broken down into two paragraphs—paragraphs a and b, which cover, respectively, general combat and hazardous duty incentive pays, on the one hand, and aviation pays, on the other hand. In keeping with the organizational principles previously set out, Chapter II.D.1.a.(1) is titled "Hostile Fire Pay;" Chapter II.D.1.a.(2), "Demolition Duty Pay;" and so forth.[2] This organizational principle is maintained throughout the third and 'subsequent editions of *Military Compensation Background Papers.*

In addition to regrouping the various chapters—at least to some extent—the third and subsequent editions of *Military Compensation Background Papers* differ in one other respect from prior editions in that a number of short overview chapters have been added to provide summary information with respect to the different elements of military compensation that have been grouped under a particular heading. Thus, for instance, an overview chapter (Chapter II.B.) has been added to introduce the various elements of military compensation grouped under the general heading of "regular military compensation." In the case of this particular overview chapter, a short history of the derivation of the concept of "regular military compensation" is set out together with statistical data covering all of the elements of military compensation subsumed under the "regular military compensation" heading. Similar overview chapters are provided for compensation for non-regular service (Chapter II.C.1.); for the special and incentive

pays and the attraction and retention pays (Chapter II.D.); for the so-called "military estate program," consisting of retired and retainer pays, separation pays, and post-service benefits (Chapter III.A.); for supporting benefits (Chapter W.A.); and for manpower-related cost items (Chapter V.A.).

Several appendices have been added to the third and subsequent editions of *Military Compensation Background Papers* to deal with a number of issues that, although not directly concerned with any one particular element of military compensation, have an impact, in one form or another, on military compensation generally. Thus, an appendix has been added detailing the background of the Department of Defense Military Retirement Fund and its relationship to active and inactive duty military compensation. Similar appendices have been added dealing with the background and impact of the Uniformed Services Former Spouses' Protection Act on military compensation; on the overall structures of the income tax systems of the various States and their impacts on military compensation; and so forth. The reader's attention is directed to the Analytical Table of Contents, which immediately follows this Preface, for more details on these appendices and what they cover.

Beginning with the sixth edition of *Military Compensation Papers*, the costs of the various types of military compensation, including pay, benefits, and bonuses, are listed in a separate volume, together with the numbers of Armed Forces personnel who have received such compensation. Normally, the beginning date of such listings is 1972, unless the compensation program began at a later date. When applicable, each of the chapters whose arrangement is discussed above contains a reference to the table or tables relevant to the contents of the chapter.

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## Military Compensation Elements and Related Manpower Cost Items

Appendices

## Chapter I

### Overview of Military Compensation: Theory, Concepts, and Principles of Military Compensation

The first and second editions of this volume, *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items--Their Purposes and Legislative Backgrounds*, demonstrated that the legislative history, annual cost, numbers of recipients and various quantitative trends are generally well documented for essentially every item of military compensation. Neither those editions nor other substantive studies gave comparable analytic thought to the underlying principles and concepts that cause the whole structure of military compensation to cohere in a logical and self-reinforcing fashion. It was in part to remedy this deficiency that the President's memorandum to the Secretary of Defense of August 17, 1982, authorizing the *Fifth Quadrennial Review of Military Compensation* (QRMC), sought "[a] coherent and logical statement of the principles and concepts of military compensation in relation to national security objectives...."

In fact, the President's memorandum focused attention on the basic Congressional mandate contained in 37 U.S.C. §1008(b) that each QRMC conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" (emphasis added).[1] Since 37 U.S.C. §1008(a) already provides for annual Presidential review of the short-term "adequacy" of military compensation, the need for a periodic review of the long-term underlying principles and concepts is self-evident--particularly in an era typified by rapid technological developments and changing battlefield tactics. But before one can review "principles and concepts," those principles and concepts must be articulated and explicitly stated. Hence this "overview." It restates

[1] Title 37, United States Code, “Pay and Allowances of the Uniformed Services,” is the main source of statutory authority for active- and inactive-duty compensation for members of the uniformed services. For the purposes of Title 37, United States Code, the term "uniformed services" refers not only to the traditional Armed Forces, *i.e.*, the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard, see 37

the principles and concepts developed by Peter K. Ogloblin and later elaborated by the Fifth QRMC.[2]

## A. CONCEPTS

Any military compensation system should be based on certain underlying principles that, in the aggregate, comprise its theory. That theory necessarily must be consistent with and reflect the fundamental concepts and principles of our nation's form of government. Compensation should be designed to foster and maintain the concept of the profession of arms as a dignified, respected, sought after, and honorable career. The emotional and spiritual satisfactions gained from the dedicated performance of uniformed service should be coupled with compensation sufficient for an individual member to maintain a standard of living commensurate with the carrying out of responsibilities that directly affect the security of the nation. Without basic patriotism on the part of its members, however, there could be no Armed Forces. At the same time, in peacetime, patriotism by itself is not an adequate motivation for a service career.

Lawyers, comptrollers, statisticians, and military compensation specialists have performed considerable research on individual military compensation items by. As a result, the Congressional purpose, legislative history, annual cost, numbers of recipients, and various quantitative trends of compensation are well documented. What has not received comparable research attention and thought are the underlying concepts and principles that cause the structure of military compensation to cohere in a logical and self-reinforcing fashion. In short, the relationships between the individual components of compensation and their systemic interrelationships as a coherent structure remain largely

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U.S.C. §101(4), but to the National Oceanic and Atmospheric Administration and the Public Health Service as well:

The term "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service. 37 U.S.C. §101(3).

[2] We have not followed totally the statement of principles and concepts elaborated by the Fifth QRMC because, since the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Public Law 99-433, 100 Stat. 992 (1986), the service-specific emphasis is not germane. See, e.g., Goldwater-Nichols Department of Defense Reorganization Act of 1986, Public Law 99-433, id., §3, 100 Stat. at 993-994. Instead, the statement of principles and concepts contained in the Report of the Fifth QRMC has been modified according to the changes mandated by that Act.

implicit rather than explicit. Virtually every aspect of military activity has explicit doctrines, principles, and practices embodied in field manuals, technical manuals, and various joint publications. Military compensation is noteworthy in its lack of such an explicit intellectual foundation.

It is prudent to clarify a number of points when dealing with principles. First, principles are value judgments stating what ought to be done and what course of procedure ought to be followed. Second, principles refer to the most basic propositions of a system and, as such, are to be distinguished from the specific policies used to apply them in specific situations. Policies, whether statutory or administrative, are contingent on the vagaries of time, place, and national mood. Third, the prescriptive nature of principles can often lead to a category of "sub-principles," more enduring than policies but less basic than principles. The various structural propositions deriving from basic principles are of this nature. An example is that basic military compensation levels should be comparable to those of the American economy, while special and incentive pays should be competitive, both internally and externally, with manning supply and demand in specific duties. Fourth, an important by-product of explicit principles is the stability of the system affected and the capability of coherent long-term planning.

It is basic to individual morale as well. Secretary Robert A. Lovett recognized this in 1952 when he wrote to the Strauss Commission concerning compensation.

> Only a carefully considered answer will enhance or ensure the possibility of a permanent solution, and too much emphasis cannot be placed on permanency of solution because of its importance and impact on service morale. As you know, the effect on morale is most adverse when individuals who have entered service with expectancy of a permanent rate of compensation are constantly exposed to unfavorable ex post facto adjustments.

Fifth, a statement of principles has an educational by-product, making the whole system more understandable both to the Defense leadership and to the forces under their command. It ties together various disparate elements into a consistent, logical structure. It is not necessary that the system as a whole be simple, only that its logical exposition be understandable and credible. No system as large and complex as military compensation

will ever be simple, any more than that of any other large organization. With these matters in mind, the following basic principles and sub-principles have been developed.

## B. PRINCIPLES

**1. MANPOWER/COMPENSATION INTERRELATIONSHIP**. The first principle underlying the basic philosophy of the military compensation system is that the system must be an integral part of the overall system by which military manpower is managed. Compensation, by the very nature of its basic purpose, must support defense manpower policies that, in turn, support the military, strategic and operational plans of this nation. If they do not, then manpower imbalances, deteriorating unit cohesion and integrity, poor morale, and a general degradation of discipline and motivation, are likely to ensue. This in turn can frustrate the successful accomplishment of strategic and operational plans in the field, and thus negate our foreign policy objectives. Compensation for members of the Armed Forces, therefore, must be synchronized with the rest of the military manpower system and not be treated as an isolated part of the national labor market. This basic principle of compensation was implied in the Presidential memorandum establishing the Fifth QRMC in which it was understood that military compensation is and should remain an integral part of military activities. The importance of this principle can be appreciated when reviewing the suggestions of various critics of military compensation. These critics view military compensation as an autonomous system, unrelated to other military operations, and thus a logical candidate for the supply-and-demand labor market analysis often applied to the private sector by the same critics.

**2. COMPATIBILITY WITH TECHNOLOGY AND TACTICS**. Military compensation should reflect the realities of the high level technology employed by the Armed Forces and the combat tactics of today's battlefield environment. This refers to the inevitable time-lag between the realities of the battlefield and the systems, such as compensation, designed to support the combat forces. The effect of changing combat tactics (often resulting from the characteristics of new weapons) is most noticeable in

certain special and incentive pays (*e.g.*, aviation pays) but permeate the military compensation systems. The introduction of newer, high-performance weapons and their effects on combat tactics was the reason why long-term reviews of military compensation were instituted in the first place. The importance of keeping military compensation in synchronization with changing combat tactics is a cardinal precept that cannot be overstressed.

**3. EQUITY**. The third principle is that of equity, in the sense of "fairness". Few things are more important for morale than that service members believe that they are being treated as fairly as possible and, conversely, few things undermine morale more than a sense of unfair treatment. This principle requires that all service members be allowed to compete equally for pay and promotion according to their own abilities. This principle applies equally to the regular, reserve, and retired forces whose combined strength constitutes the backbone of our national security. This principle also deals with the concept of equal pay for substantially equal work under the same general working conditions. This aspect of the equity principle establishes the basis for the two important sub-principles of pay: comparability and competitiveness.

**a. Comparability**. The basis for determining the appropriate pay levels for the service-specific aspects of the compensation of the uniformed services should be comparability with the American economy. This addresses the question: "How much should service members be paid?" by answering, "About the same as their approximate counterparts (in terms of function and responsibility) are paid in the American economy." The specific items referred to here are basic pay, basic-pay-related items, the allowances, and benefits. This also responds to the main reason articulated in international law pertaining to why service members wear distinguishing uniforms, which is to differentiate between armed combatants and noncombatants. This distinction implies that the major difference is that members of the Armed Forces are legally liable to armed combat. This is their distinguishing characteristic, and whatever specialization for specific duties a member of an armed force may have is secondary to the primary

function of armed combat. Hence, the fact that basic pay rates are the same for each grade and longevity step recognizes this basic function.

Much of the controversy over the comparability principle has arisen because of the different meanings attached to the word and to the perception that comparability means "sameness" or "exactness". Many consider that comparability implies that military duties are exactly the same as civilian jobs and that civilians use and intend the word to mean equal or identical pay. Including the word "substantially" in the definition "equal pay for substantially equal work" recognizes that there are different conditions of employment between any two organizations, and that it would be fruitless to attempt to locate exactly equal work for comparison with federal civilian workers. The British recognize that an exact comparison between military and civilian jobs is unnecessary as a condition for using that comparison in setting pay levels for their service members. Quoting from a report on their pay system:

> There is obviously no basis for comparing civilian jobs with jobs like infantryman and gunner, for which there are no civilian counterparts; or even with pilots, seamen, policemen, nurses, cooks and others with similarly denominated civilian jobs, but which are frequently very different jobs in civilian life. However, all jobs, whether service or civilian, possess certain common demands for which any employer is willing to pay wages. These demands can be assessed and given values as proportions of a whole job. The important ones like knowledge, mental or physical skills and demand, or responsibility, are obvious, and there are many others, some of which are of little consequence in differentiating between the sizes of jobs. What is intended is that members of the armed forces should be paid generally what they might fairly expect were they to apply the knowledge, skill, and responsibility of their Service jobs to jobs required to be done in the civilian life.

**b. Competitiveness**. Compensation competitiveness is needed to ensure the adequate manning of certain military specialties. This sub-principle applies to special and incentive pays, particularly in peacetime. "Competitiveness" refers to both external (*i.e.*, private market pressures) and internal competition (*i.e.*, those military duties requiring volunteer manning because of their hazardous, arduous, uncomfortable, long training lead-time, and/or high training investment characteristics). Competitiveness includes those bonuses and special pays that can and will be discontinued during major

mobilization and wartime. This is possible because the competitiveness for attraction would likely be negated by a draft, and competitiveness for retention is nullified through "stop-loss" and retirement denial policies. During peacetime, such special and incentive pays are needed for specific duties that are in high demand in the economy, that are inherently more dangerous than most peacetime duties, or that are just uncomfortable and unattractive.

**4. EFFECTIVENESS IN PEACE AND WAR**. The fourth guiding principle for the military compensation system is that it must operate effectively in both peace and war. This principle suggests that one military compensation system is required because there will be no time to switch systems in wartime (even if that course were theoretically desirable). Further, any system must be flexible enough to permit the entry and departure in both peace and war situations of reservists and retirees in a way that will not confuse their promotion patterns, retirement credit, and various related compensation elements. This has significant implications for any proposal to adopt a salary system, for example. Any military compensation system must be designed to allow for rapid and smooth expansions and contractions of the force. Military personnel should be allowed to concentrate on their duties without having to adapt to changes in a system that is supposed to support them, not hinder them.

In line with this latter principle, the military compensation system should accommodate mobilization planning, promotion patterns, force levels and training lead-times of the Department of Defense. Many proposals for the "reform" of the compensation system ignore mobilization plans; and, indeed, the existing structure does so to some degree by requiring Congressional action to terminate or install certain items in the event of mobilization or war. Such times are the least propitious moments to effect the needed changes in a thoughtful manner. It would be far preferable to enact provisions that allow the necessary steps to be taken administratively.

**5. FLEXIBILITY**. The fifth principle underlying the overall compensation system is that it ought to be designed in a way to adjust quickly to changing conditions of

combat tactics, technology, and manpower supply and demand. Here again, there are several sub-principles involved. An effective system cannot be designed without a reasonable specification of the force size and manpower profile that the system is to support; *i.e.*, a definitive statement of manpower requirements is needed which has as its foundation reasonable standards.

**a. Efficiency**. The sub-principle of efficiency deals with the concept of economic efficiency. The amount or level of military compensation should be no higher or lower than necessary to fulfill the basic objective of attracting, retaining, and motivating the kinds and numbers of Service personnel needed for the active and Reserve forces of the United States.

**b. Supply and Demand**. Differing manpower supply conditions (skill and experience profiles) and demand conditions (desired force profiles) among the uniformed services, for both the regular and the reserve forces, require a system with flexibility and a broad pricing base to satisfy the varying needs of different military situations. Special and incentive pays, which are the basic compensation tools employed to satisfy this principle are, if nonfunctional, inconsistent with efficient compensation practices.

**c. Linkage of Elements ("Drag-Alongs").** When a rigid linkage of compensation elements exists (as whenever one element, such as basic pay, changes, it automatically causes a similar change in a half-dozen or more other compensation elements), it generally creates inefficiencies because of differing needs served by each element. Such linkages (often called "drag-alongs") should not be a part of the basic compensation system design, unless the respective elements are clearly driven by the same criterion.

**d. Rapid and Equitable Adjustments**. The compensation system should have a rapid and equitable adjustment mechanism to reflect changes in the national economy. Servicemembers must receive sufficient compensation to enable them to establish standards of living that will allow the simultaneous discharge of their responsibilities to their country and to their families. The compensation system of the uniformed services

should, therefore, be related to the state of the national economy so that its members may participate in the gradual rise in the standard of living.

**6. MOTIVATIONAL ASPECTS**. The sixth, and last, principle relates to the need to incorporate into the system a relationship between compensation and the effort, or contribution, required of the individual. The basic system, as well as any special or supplemental aspects, should be designed to encourage meritorious performance and advancement to higher responsibilities. There are several associated sub-principles:

**a. Institutional Benefits.** The overall institutional benefits component of the military compensation system should be awarded according to the military value of the member to the Service. This sub-principle provides a guide to the recipients in regard to approximate levels of benefits. Many benefits, however, are (and should be) automatic in their entitlement, such as Dependency and Indemnity Compensation, Death Gratuity, and the group insurance programs. Nonetheless, the criterion of military value, including the possibility of mobilization or recall to active duty in times of national emergency, should govern the eligibility for and level of benefits to the various categories of beneficiaries.

**b. Distinctiveness**. The overall compensation system must reflect the distinctive characteristics of serving in the Armed Forces. The very essence of this distinctiveness is that members of the Armed Forces must be able to engage in mortal combat and put their lives in jeopardy. The services can scarcely be manned with members possessing the alertness and vitality needed to be able to provide the leadership necessary to win wars unless service members are compelled to leave active service at reasonable ages or sooner if no longer sufficiently competitive. This requires a system of severance and retirement compensation that is designed to meet the many problems of superannuation. The theory underlying the solution to this problem, which is not only one of age but of other factors affecting ability and competence, must make sense to the intelligent citizen who finally pays the cost. This aspect of the compensation system should be viewed by most rational people as being "good business" despite the associated cost. The compensation sub-principles that underlie the military retirement system are as follows:

(1) the system should be structured to meet legitimate defense requirements, such as recall to active duty of some or all retired members, in support of our national security objectives;

(2) the system should support and complement force management requirements (*e.g.*, youth, vigor, and career development opportunities) of the active and Reserve components of the Armed Forces; and (3) the system should be integrated into the military compensation system and be structured to meet an income replacement function as well as an income maintenance function acceptable to the nation.

These are the six principles of uniformed services compensation. Together, they form the logical basis that should set the standards for assessing the effectiveness of the military compensation system.

## Chapter II.A.

### Overview of Compensation for Military Service: Active and Inactive-Duty Compensation

For its defense manpower requirements, the United States relies on three major categories of military personnel--active duty personnel, inactive-duty personnel, and retired personnel. Roughly speaking, active duty personnel include all those members of the Army, Navy, Air Force, Marine Corps, and Coast Guard who are on active duty[1] every day and are at all times subject to the Uniform Code of Military Justice.[2] For present purposes, inactive-duty personnel include all those members of the reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, as well as all members of the Army National Guard and Air National Guard, who are not on full-time "active duty" or "full-time National Guard duty" as those terms are defined at 10 U.S.C. §101(d)(1) and (d)(5), respectively.[3] [4] Retired personnel include all former active and inactive-duty personnel who have an entitlement to retired or retainer pay under Title 10, United States Code.[5] The active and inactive-duty forces of the United States provide

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[1] The term "active duty" is defined at 10 U.S.C. §101(d)(1) to mean:
... full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

[2] The Uniform Code of Military Justice is codified as Chapter 47 of Title 10, United States Code, 10 U.S.C. §§801-946.

[3] See footnote 1, above, for a definition of the term "active duty" as set out at 10 U.S.C. §101(d)(1). The term "full-time National Guard duty" is defined at 10 U.S.C. §101(d)(5) as follows:
... training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 [United States Code] for which the member is authorized pay from the United States or for which the member has waived pay from the United States.

[4] Although the term "inactive duty" is not formally defined in Title 10, United States Code, the term "inactive-duty training" is defined at 10 U.S.C. §101(d)(7). This definition is quoted in full at footnote 1 to Chapter II.C.1., "Overview of Compensation for Non-Regular Service: Reserve Components Pay," below.

[5] As used here, the term "entitlement" does not necessarily imply that a person is actually receiving retired or retainer pay. Former members of the inactive duty forces may, for instance, be authorized retired pay for their service in the reserve components of the Armed Forces, although they may not actually receive such pay until they reach 60 years of age. See, *e.g.*, Chapter III.B.2., "Retired Pay for Non-Regular (Reserve) Service," below.

services to the Federal and State Governments and are, by virtue of providing such services, authorized "compensation" under Titles 10 and 37 of the United States Code. The compensation entitlements of active duty personnel are collectively referred to in *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items--Their Purposes and Legislative Backgrounds* as "active duty compensation," whereas the compensation entitlements of inactive-duty personnel are collectively referred to as "inactive-duty compensation."

> All personnel authorized active duty compensation receive the three main elements of military compensation subsumed under the heading "regular military compensation" (RMC)--namely, basic pay, basic allowance for quarters (or quarters in kind), and basic allowance for subsistence (or subsistence in kind). Such personnel may also receive other elements of military compensation--whether pays or allowances of one sort or another--depending on the nature of their duty assignment, their military specialty, where they are stationed, their conditions of service, and so forth. They may, for instance, be authorized increased housing allowances if they are stationed in a high-housing-cost area of the United States and are not assigned to government quarters. In a similar vein, they may be authorized one or more forms of pay subsumed under the heading of "special and incentive pays" or "attraction and retention pays." Typically, entitlement to these pays turns on having special educational or training qualifications or on being assigned to military duty for which such special or incentive pays are otherwise authorized.

Inactive duty personnel, on the other hand, are authorized inactive-duty compensation for the performance of inactive-duty training. They may also, under some conditions, be authorized special and incentive pays or attraction and retention pays for the performance of inactive-duty training. When on annual training duty, they are authorized active duty compensation.

This Section II of *Military Compensation Background Papers* sets out the active and inactive-duty compensation entitlements of active and inactive-duty personnel. The basic compensation entitlements of active duty personnel are covered in Subsection B of Section II, whereas the basic compensation entitlements of inactive-duty personnel are covered in Subsection C. Special and incentive pays and attraction and retention pays for

both active and inactive-duty personnel are covered in Subsections D and E of this Section II, respectively. Retired and retainer pay entitlements of (former) active and inactive-duty personnel are covered in Section III of *Military Compensation Background Papers*, below.

The total costs[6] of basic compensation entitlements of active-duty and inactive-duty military personnel over the period 1972 to 2004 are set out in Table II-1 of Volume II, *Military Compensation Statistics Tables*.

[6] Includes regular military compensation for active-duty personnel (cash elements only) and compensation for inactive-duty training for Reserve forces personnel. See Chapter II.B., "Regular Military Compensation/Basic Military Compensation," and Chapter II.C.2., "Compensation for Inactive-Duty Training."

**Chapter II.B.**

## Regular Military Compensation and Basic Military Compensation

The military compensation system consists of a wide variety of pays, allowances, and benefits. Based on the enumeration of pays, allowances, and benefits covered by this edition of *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items--Their Purposes and Legislative Backgrounds*, there are over seventy separate pays, allowances, or benefits of one sort or another that go to make up the military compensation system considered as a whole. Discounting the benefits component of the military compensation system, there are over forty separate pays and allowances. While the military compensation system considered as a whole thus consists of many separate pays and allowances, it is the rare member of the uniformed services who in practice ever becomes entitled to receive as many as seven or eight pays and allowances--even over the course of a full career. Even though no one member ever becomes entitled to receive very many separate pays and allowances, every member of the uniformed services, by virtue of being a member, automatically becomes entitled to receive three basic elements of military compensation--namely, basic pay, basic allowance for housing (or quarters in kind), and basic allowance for subsistence (or subsistence in kind).

The observation that every member of the uniformed services is entitled to receive these three basic elements of military compensation led the Gorham Commission in 1962 to develop the construct of "regular military compensation" as a rough yardstick to be used in comparing the compensation of members of the uniformed services to the used in comparing the compensation of members of the uniformed services to the compensation of civilian-sector employees.[1] When initially developed as a comparison tool, "regular military compensation"--sometimes also referred to as "RMC"--consisted of basic pay, basic allowance for quarters, and basic allowance for subsistence. Later, during the course of the First Quadrennial Review of Military Compensation, it was

[1] See discussion of the Gorham Commission in Appendix III, below

pointed out that members of the uniformed services did not have to pay income tax on any amounts they received--whether in cash or in kind--on account of quarters or subsistence, and it was concluded that, for the purpose of comparing military and civilian compensation, it would be appropriate to include in "regular military compensation" some additional amount to account for the non-taxability of the allowances for quarters and subsistence.[2] This additional amount came to be referred to as "Federal income tax advantage." Conceptually, an individual service member's "tax advantage" is the added amount of taxable income he would have to receive in cash if his quarters and subsistence allowances were suddenly to become taxable in order for him to be as well off in after-tax income as he currently is under the existing system of taxable pay and non-taxable allowances.[3] Congress first gave formal recognition to the "regular military compensation" construct in 1974 when, in the Act of September 19, 1974, Public Law 93-419, §1, 88 Stat. 1152 (1974), it added paragraph (25) to Section 101 of Title 37, United States Code. From the time Title 37, United States Code, was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), 37 U.S.C. §101 contained definitions of general applicability to Title 37. As added by the Act of September 19, 1974, Public Law 93-419, id., paragraph (25) of 37 U.S.C. §101 originally provided:

> "[R]egular compensation" or "regular military compensation (RMC)" means the total of the following elements that a member of a uniformed service accrues or receives, directly or indirectly, in cash or in kind every payday: basic pay, basic allowance for housing, basic allowance for subsistence; and Federal tax advantage accruing to the aforementioned allowances because they are not subject to Federal income tax.

In 1980, the statutory definition of "regular military compensation" was broadened to include the variable housing allowance and overseas housing allowance.[4] The basic

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[2] For a discussion of the reasons underlying the tax-free status of the basic allowances for housing and subsistence--as well as various other allowances--see Chapter II.B.4., "Federal Income Tax Advantage," below.

[3] For a discussion of the assumptions necessary to quantify this "added" or "additional amount" for an individual member of the uniformed services, see Chapter II.B.4., "Federal Income Tax Advantage," below.

[4] This amendment to the definition of "regular military compensation" was effected by the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §11, 94 Stat. 3359, 3368-3369 (1980). As explained

allowance for housing replaced the basic allowance for quarters and variable housing allowance in 1998. As thus amended, the "regular military compensation" construct is incorporated in current Section 101(25) of Title 37, United States Code, 37 U.S.C. §101(25):

> "[R]egular compensation" or "regular military compensation (RMC)" means the total of the following elements that a member of a uniformed service accrues or receives, directly or indirectly, in cash or in kind every payday: basic pay, basic allowance for housing , basic allowance for subsistence; and Federal tax advantage accruing to the aforementioned allowances because they are not subject to Federal income tax.

As previously indicated, the "regular military compensation" construct developed by the Gorham Commission was originally intended to provide a crude yardstick by which military compensation could be compared to civilian compensation. It soon grew, however, to have operational significance. From 1967 to 1973, the "regular military compensation" construct was used to set and adjust military basic pay rates. Increases in the average salary levels of federal general schedule (Civil Service) employees were applied to "regular military compensation" to determine the percentage increase in basic pay rates necessary to make the two equal. The resulting percentage increase was applied to the basic pay rates of all military personnel. This adjustment mechanism was abandoned in 1974, and the "regular military compensation" construct is now used for the purpose for which it was originally intended--namely, to provide a rough basis for comparing military and civilian compensation rates.

After Congress's insertion of variable housing allowance and overseas housing allowance into the definition of "regular military compensation" in 1980, the RMC construct came to include certain pay elements not received by all members of the armed

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in the relevant Congressional report, this change in the definition of RMC was made to "insure that these [variable and station housing] allowances are included in the information on Regular Military Compensation presented to the Congress each year." Senate Report No. 96-1051 (Committee on Armed Services), p. 8, accompanying H.R. 7626, 96th Congress, 2d Session (1980). The Senate Report noted, however, that the change in the definition "will not affect the pay received by any Service member." *id*. For further discussion of the reasons underlying this change in the definition of "regular military compensation," see Chapter II.B.3., "Basic Allowance for Housing ," below.

forces--namely, variable housing allowance (VHA) and overseas or "station" housing allowance (SHA), the receipt of which hinged upon being assigned to "high housing cost areas," either in the United States (VHA) or overseas (SHA). With the inclusion of pay elements not received by all members of the armed forces, it soon became apparent that RMC no longer could serve its original purpose as a rough yardstick for the comparison of military and civilian compensation levels. Accordingly, a new term, "basic military compensation," was adopted to characterize all those elements of military compensation received by every member of the armed forces. "Basic military compensation," or BMC, thus was the same as the pre-1980 definition of "regular military compensation"--namely, it included all the elements of "regular military compensation" except for variable housing allowance and overseas housing allowance.

Although Congress formally defined the term "regular military compensation" for the purposes of Title 37, United States Code, “Pay and Allowances of the Uniformed Services, at §101(25), the term "basic military compensation” has not been similarly defined. Accordingly, although "basic military compensation" is used as a rough measure of an individual service member's military compensation for comparison purposes, it has no statutory imprimatur.

The housing reform provisions of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85) consolidated the overseas housing allowance into a single payment, eliminating the distinction between the separate housing allowance received by members stationed overseas and the basic allowance for quarters that all members received. Despite this change, in 2004 “basic military compensation” remained in use as a basis of quantifying and comparing the basic pay and allowances of members.

As indicated in the quoted material, "regular military compensation" as currently defined at 37 U.S.C. §101(25) includes the following elements:

Basic Pay;
Basic Allowance for Housing or Overseas Housing Allowance, depending on duty location;
Basic Allowance for Subsistence;
and
Federal Income Tax Advantage.

These elements of military compensation are dealt with respectively in Chapter II.B.1, "Basic Pay," Chapter II.B.2., "Basic Allowance for Housing," Chapter II.B.3., "Basic Allowance for Subsistence," and Chapter II.B.4., "Federal Income Tax Advantage," below.

With respect to the concepts and principles of military compensation set out in Chapter I, above, "regular military compensation" exemplifies the principles of equity, insofar as that principle incorporates comparability of basic pay, effectiveness, and the support of the manpower/compensation interrelationship.

**Chapter II.B.1.**

## Basic Pay

**Legislative Authority**: 37 U.S.C. §§203, 204, and 1009. See 37 U.S.C. §907.

**Purpose**: Basic pay is the primary means of compensating members of the Armed Forces for their service to the country. Except during periods of unauthorized absence, excess leave, and confinement after an enlistment has expired, every member is entitled to basic pay while on active duty. Basic pay is paid to individual members on a regular basis; the amount of basic pay to which a particular member is entitled depends on the member's pay grade and length of service.

**Background**: All active-duty members of the Armed Forces are entitled to one primary, or principal, form of pay as recompense or compensation for the military service they render to their country. This primary, or principal, form of pay--currently known as "basic pay"[1]--is in practice, at least for the vast majority of members of the Armed Forces, supplemented by a number of additional pays and allowances that are intended to address various specialized needs and requirements of the Armed Forces or to offset certain costs that members have to bear as a result of conditions of service.

The practice by which members of the Armed Forces have come to be entitled to one primary form of compensation that is supplemented by a number of additional pays and allowances that are either based on conditions of service or are paid to meet particular needs or serve particular purposes can be traced to resolutions of the Continental Congress and, shortly thereafter, to the earliest enactments of the Federal Congress. Thus, the Act of April 30, 1790, ch. 10, §§5-10, 1 Stat. 119, 120-121 (1790), for instance, provided funds for "pay" of the "troops"; additional pay for adjutants, quartermasters, and paymasters; "rations" for commissioned officers, non-commissioned officers, privates, and musicians; money in lieu of "forage" for specified commissioned

[1] As indicated below, the one primary, or principal, form of pay to which all members of the armed forces are entitled has been known by a number of different names over the years. See footnote 6 and associated text, below.

officers; and "uniform clothing" for "every non-commissioned officer, private and musician."[2] In this same connection, see also, *e.g.*, Act of March 3, 1791, ch. 28, §3, 1 Stat. 222 (1791) (raising additional troops for the United States and providing that they "shall receive the same pay and allowances ... as stipulated for the troops of the United States" in the Act of April 30, 1790, ch. 10, 1 Stat. 119 (1790) (emphasis added)); Act of March 5, 1792, ch. 9, §§7-10, 1 Stat. 241, 242 (1792) (establishing new, and higher, rates of pay but adopting the same allowances as theretofore in effect); Act of May 2, 1792, ch. 28, §4, 1 Stat. 264 (1792) (adopting the "same pay and allowances" for "militia employed in the service of the United States" as were payable to "the troops of the United States"); Act of March 27, 1794, ch. 12, §§6-8, 1 Stat. 350, 351 (1794) (establishing a "naval force" for the United States and providing for "pay and subsistence"--the "subsistence" consisting of a number of "rations," depending on grade--for commissioned and warrant officers and "pay" and "rations" for "petty officers, midshipmen, seamen, ordinary seamen and marines"); Act of May 9, 1794, ch. 24, §4, 1 Stat. 366 (1794) (raising and organizing a corps of "artillerists and engineers" and providing for their "pay and allowances"); Act of March 3, 1795, ch. 44, §§7-12, 1 Stat. 430, 430-431 (1795); Act of May 30, 1796, ch. 39, §§8-14, 1 Stat. 83, 484-485 (1796); and Act of March 2, 1799, ch. 27, §6, 1 Stat. 721, 722 (1799) (establishing medical departments of the Army and Navy and providing for "compensations" for members of those departments and additional "compensation for forage, rations, and ... expenses").

Although the components of this system--that is, the system of pay plus allowances--together with applicable rates--have changed from time to time, the system itself has been remarkably enduring. It has been the exclusive method by which enlisted personnel of the Armed Forces have been compensated since the earliest days of the republic; and with the exception of the period from July 1, 1870, through June 30, 1922,

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[2] *Cf., e.g.*, Act of September 29, 1789, ch. 25, §2, Stat. 95, 96 (1789), providing "[t]hat the *pay and allowances* of the ….troops be the same as have been established by the United States in [Continental] Congress assembled, by their resolution of the twelfth of April, one thousand seven hundred eighty-five" (emphasis added). The Act of September 29, 1789, thus incorporated the first usage of the term "pay and allowances" as applied to the compensation of the armed forces of the United States after the convention of the First Congress following adoption of the Constitution.

when a "salary" system was in effect for officers, it has also been the method by which officers have been compensated.

Although the original military compensation structure was quite straightforward, it soon became complicated, with a proliferation of special allowances, especially for officers. To clear up some of the complexity and confusion surrounding officers' compensation, the Army and Navy Appropriation Acts for 1871 (Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, §24, 16 Stat. 315, 320 (1870), and Act of July 15, 1870 (Navy Appropriation Act of 1871), ch. 295, §§3-4, 16 Stat. 321, 330-333 (1870)) prescribed annual "pay" rates for officers of the Army and Navy, respectively, which rates, in the case of Army officers, were provided to be "in full of all commutation of quarters, fuel, forage, servants' wages and clothing, longevity rations, and all allowances of every name and nature whatsoever," Army Appropriation Act of 1871, ch. 294, *id*., §24, 16 Stat. at 320, and, in the case of Navy officers, were provided to be their "full and entire compensation" with "no additional allowance" being permitted "on any account whatever," Navy Appropriation Act of 1871, ch. 295, *id*., §4, 16 Stat. at 332.[3] [4] The Army and Navy Appropriations Acts of 1871 did not include a mechanism for review, or adjustment, of the salary rates thus established, and but one major change was made to them (in 1908) in the 52 years of their existence. As a consequence, and in order both to respond to increased living costs and other changed circumstances and to remove the disparity in treatment as between officers who were, and those who were not, furnished "free" quarters, heat, and, later, electricity in kind, the absolute bar against allowances of "every name and nature," Army Appropriation Act of 1871, ch. 294, *id*.,

[3] Despite the provision that the "pay" thus established was to be the "full and entire compensation" of affected officers and thus in lieu of all commutations of items normally furnished in kind, so that no commutation was to be made for such items when not in fact furnished in kind, the Appropriations Acts were not interpreted to prohibit the provision in kind of quarters, fuel, and forage, and these items continued to be furnished in kind to officers without charge. Indeed, the Army Appropriation Act of 1871 specifically provided that, notwithstanding the prohibition on commutation payments, "fuel, quarters, and forage in kind may be furnished to officers," Act of July 15, 1870, ch. 294, §24, 16 Stat. 315, 320 (1870), and the Navy Appropriation Act of 1871 provided for "allowing rations ... to officers" as well as commutation of rations when not provided in kind, Act of July 15, 1870, ch. 295, §4, 16 Stat. 320, 332-333 (1870).

[4] See also Revised Statutes §§1261,1269, 1270, 1271, and 1272 (1878) concerning Army officers and Revised Statutes §§1556, 1558, 1578, and 1585 (1878) concerning Navy officers.

§24, 16 Stat. at 320, was soon eased, and cash commutation of those items was authorized. By 1922, when separate pay and allowances were once again statutorily prescribed, the officers' salary system had, in practical effect, already reverted to a pay and allowances system.

Before 1922, separate pay legislation had been enacted--although pay rates were generally equivalent--for the Army and Navy.[5] Coast Guard pay was normally tied to that of the Navy, while Marine Corps pay was at times linked to that of the Navy and at other times to that of the Army. The Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], 42 Stat. 625 (1922), was the first pay legislation that dealt with compensation for all the armed services. In addition to increasing rates of pay for members of the armed services, principally in response to higher living costs, the 1922 Act created a system under which officers of general or flag rank were entitled to "base pay" determined by rank, plus rental and subsistence allowances, whereas officers below general or flag rank were entitled to "base pay" at rates determined by "pay periods," plus rental and subsistence allowances.[6]

"Pay periods" for this latter group of officers were, in turn, determined by a combination of rank and length of service. The "pay periods" construct was adopted to relieve the adverse financial impact of the post-World War I promotion slowdowns. Under this construct, it was not necessary for an officer to be promoted to advance to the next higher "period"; conversely, a promotion to the next higher rank did not necessarily entail an increase in pay and allowances. Enlisted members, on the other hand, were entitled to base pay determined by rank, and cash allowances in lieu of quarters and subsistence were authorized when those items were not furnished in kind. Officers were

[5] For a good portion of the 19th century and the early years of the 20th century, Navy officers not assigned to sea duty received a lower rate of pay than officers assigned to sea duty, on the theory that the former were performing less than full duty and thus were entitled to only a part of the pay otherwise appropriate to their grades. See Chapter II.D.3.d., "Special Pay for Career Sea Duty," below.

[6] "Base pay" was the term used from 1922 to 1949 to denote the primary pay element in the compensation of military personnel. Before 1922, this primary pay was known variously as "pay proper," "pay of the troops," or simply "pay." The current term, "basic pay," was adopted in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §§201 and 202, 63 Stat. 802, 805-809 (1949).

entitled to additive longevity pay equal to 5 percent of their base pay for each three years of service, up to a maximum of 30 years. Enlisted personnel received longevity credit by "permanent additions" to base pay. Navy and Coast Guard enlisted members were authorized a "permanent addition" equal to 10 percent of base pay after four years' service and to 5 percent for each additional four years, up to a maximum of 16 years; Army and Marine Corps enlisted members were entitled to a "permanent addition" equal to 5 percent of base pay for each four years of service, up to 20 years. The Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], 56 Stat. 359 (1942), made the method of computing enlisted longevity pay for enlisted personnel the same as that for officers, that is, 5 percent of base pay for each three years of service, up to a maximum of 30 years.[7]

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), revamped the military compensation structure to provide a pay and allowances system that was intended to be both equitable to military personnel as well as responsive to the needs of the United States in terms of attracting and retaining the numbers and types of personnel needed during the period following World War II. To that end, it replaced the "base pay" provisions of the Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], 42 Stat. 625 (1922), including the "pay periods" overlay, with the present system of basic pay and allowances. Under the "Career Compensation" system adopted in the Career Compensation Act of 1949, ch. 681, *id.*, the "basic pay" to which a member is entitled is determined by the member's pay grade and length of service. Special and incentive pays, allowances, and reimbursements, if any, are then added to the member's basic pay to arrive at the total "pay" the member is to receive.[8] Thus, the Career Compensation Act

[7] Compare Section 1 of the Pay Readjustment Act of 1942, ch. 413, *id.*, 56 Stat. at 359, with Section 9 of the Act, id., 56 Stat. at 363.

[8] As used here, the term "pay" is intended to refer to the actual amount of money--gross, before deductions for taxes, etc.—a member receives each month on account of military service. It is not used in the sense in which "pay" is defined in 37 U.S.C. §101(21) as "includ[ing] basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but ... not ... allowances."

retained the underlying principle of a primary pay broadly supplemented by other pays and allowances--the two most important being quarters and subsistence allowances. In addition to denominating the primary pay element "basic pay," the act denominated the quarters allowance "basic allowance for quarters" and the subsistence allowance "basic allowance for subsistence."[9] Commissioned officers (other than commissioned warrant officers) were assigned to pay grades O-1 through O-8; warrant officers, to pay grades W-1 through W-4; and enlisted personnel, to pay grades E-1 through E-7. Rates of basic pay within each pay grade included incremental "longevity steps" to reflect length of service. Such "steps" ranged from a top step--that is, the "longevity step" for a particular pay grade after which additional increments in longevity did not result in additional increments to basic pay--of "Over 4" years of service for pay grade E-1 to a top step of "Over 30" years for pay grades W-2, W-3, W-4, O-6, O-7, and O-8.

The Act of May 20, 1958 (Uniformed Services Pay Act of 1958), Public Law 85-422, §1(1), 72 Stat. 122, 122-123 (1958), increased basic pay rates to make them more competitive and added pay grades O-9 and O-10 to the officer pay structure and pay grades E-8 and E-9 to the enlisted structure. The new officer pay grades recognized, for both active-duty and retired pay purposes, a grade distinction that had long existed in fact--namely, three- and four-star general and flag officers.[10] In addition to recognizing pay grades O-9 and O-10 as new pay grades, the Uniformed Services Pay Act of 1958,

[9] Career Compensation Act of 1949, ch. 681 [Public Law 381, 81st Congress], §301 (Basic Allowance for Subsistence) and §302 (Basic Allowance for Quarters), 63 Stat. 802, 812-813 (1949).

[10] The Career Incentive Act of 1955, Public Law 84-20, §2(3), 69 Stat. 18, 19 (1955), had amended Section 201 of the Career Compensation Act of 1949, Public Law 81-351, §201, 63 Stat. 802, 806-807 (1949), to provide that an officer serving on active duty in the grade of Lieutenant General or Vice Admiral was entitled to receive an additional $100 per month in basic pay, in addition to the pay and allowances to which otherwise entitled under the Career Compensation Act, id., while so serving, and an officer serving in the grade of General or Admiral was entitled to receive an additional $200 per month, although the amendment specifically provided that neither of these additions to basic pay could be taken into account in the computation of retired pay entitlements. Under Section 201 of the Career Compensation Act of 1949, id., prior to amendment by the Career Incentive Act of 1955 as set out in the preceding sentence, officers serving in the grade of Lieutenant General, Vice Admiral, General, and Admiral were merely entitled to the basic pay of an officer serving in pay grade O-8. The special increases effected by the Career Incentive Act of 1955 for officers serving in the grades of Lieutenant General, Vice Admiral, General, and Admiral were adopted in recognition of the "high ... leadership responsibilities" of the persons serving in these "key positions". Senate Report No. 84-125 (Committee on Armed Services), p. 11, accompanying H.R. 4720, 84th Congress, 1st Session (1955).

*id*., §1(1), 72 Stat. at 123, also provided that persons in pay grade O-10 serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, and Commandant of the Marine Corps would be entitled to a special rate of basic pay independent of years of service while serving in any of the named positions.[11] While being higher than the rate of basic pay for other officers serving in pay grade O-10 whose entitlement depended on years of service, the special rate of basic pay applicable to the specified positions also applied to the computation of retired pay. See, *e.g.*, Uniformed Services Pay Act of 1958, *id*., §6, 72 Stat. at 129-130. The new enlisted pay grades were designed to provide additional incentives to encourage enlisted personnel and potential enlistees to undertake career enlisted service. The act also changed the longevity step configuration by precluding increases beyond the length-of-service point in each pay grade at which individuals were normally promoted, so as to maintain a closer relationship between performance and higher pay. As revised, the top longevity steps ranged from "Over 2" years of service for pay grade E-1 to "Over 26" years for pay grades W-3, O-6, O-7, O-8, O-9 and O-10 and "Over 30" for pay grade W-4.[12] To prevent members appointed to a commissioned grade after long enlisted service from having to accept a reduction in basic pay, and hence to prevent any disincentive to the acceptance of commissioned service, the act established a special category of basic pay for personnel in pay grades O-1 through O-3 who had more than four years of prior active enlisted service. This special category of pay differed from

[11] Entitlement to the same special rate of basic pay was extended to the Vice Chairman of the Joint Chiefs of Staff by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §1314(d)(3), 101 Stat. 1019, 1176 (1987). The reason for the extension of this special rate of basic pay to the Vice Chairman of the Joint Chiefs of Staff is not completely clear from the legislative history, although it probably derives from the amendments to Title 10, United States Code, made by the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Public Law 99-433, §201, 100 Stat. 992, 1009 (1986), establishing a new 10 U.S.C. §154, which provided, inter alia, that the Vice Chairman of the Joint Chiefs of Staff holds the rank of General or Admiral, as the case may be, and outranks all other officers of the armed forces except the Chairman of the Joint Chiefs of Staff. See 10 U.S.C. §154(f). Thus, the 1988/1989 National Defense Authorization Act had the effect of entitling the Vice Chairman of the Joint Chiefs of Staff to the same rate of basic pay as applicable to the Chiefs of Staff of the Army and Air Force, the Chief of Naval Operations, and the Commandant of the Marine Corps, all of whom the Vice Chairman outranked.

[12] After enactment of the Uniformed Services Pay Act of 1958, Public Law 85-422, id., pay grade W-4 became the only pay grade with a top longevity step of "Over 30" years of service. That state of affairs lasted, however, only until the pay raise adopted pursuant to Section 2 of the Uniformed Services Pay Act of 1963, Public Law 88-132, §2, 77 Stat. 210, 210-211 (1963), when Congress provided that the top longevity step for warrant officers in pay grade W-4 would be the same "Over 26" category applicable to all other military personnel.

the normal pay progression for pay grades O-1, O-2, and O-3 in essence by extending the top longevity step for each of these pay grades beyond normal promotion points for officers without extensive prior enlisted service. The special category thus reflected the additional service time personnel in these special pay grades would be expected to have as a result of prior enlisted service before becoming eligible for promotion from one officer grade to the next.[13]

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[13] The general structure of the basic pay table--that is, with pay grades ranging from O-10 to O-1, O-3E to O-1E, W-4 to W-1, and E-9 to E-1, and longevity steps ranging from under 2 years of service to more than 26--resulting from the Act of May 20, 1958 (Uniformed Services Pay Act of 1958), Public Law 85-422, 72 Stat. 122 (1958), has changed little since 1958. Of the three changes to the basic pay table since that time, two have involved creation of new pay grades that apply to very few personnel and the third added a longevity step that also affects relatively few personnel.

The Act of December 16, 1967, Public Law 90-207, §1(1), 81 Stat. 649, 649-650 (1967), effectively adopted a new enlisted pay grade by providing a special rate of basic pay for the senior enlisted member of each of the military services--namely, the "Sergeant Major of the Army," the "Senior Enlisted Member of the Navy" (subsequently retitled the "Master Chief Petty Officer of the Navy"), the "Chief Master Sergeant of the Air Force," and the "Sergeant Major of the Marine Corps." The rate of basic pay adopted for the senior enlisted member of each of the services in the 1967 Act was a single rate of basic pay that exceeded the highest rate of basic pay for a member in pay grade E-9 and was independent of years of service. The pay rate originally adopted was $150 higher than the rate of basic pay for a member in pay grade E-9 with over 26 years of service, but with subsequent pay raises the differential has increased. The reason underlying adoption of this special rate of basic pay was explained by the Senate Armed Services Committee as follows: At the present time [1967] in the Army, Navy, Air Force, and Marine Corps there is one enlisted man who has been designated as the senior noncommissioned officer in each of the services. This noncommissioned officer is the principal enlisted adviser to the Chiefs of Staff of the Army and Air Force, Chief of Naval Operations, and the Commandant of the Marine Corps. For many years the Marine Corps has designated such a position. It is relatively new, however, in the other services.

Under the existing arrangement, each senior noncommissioned officer receives the basic pay of an E-9 with his years of service together with proficiency pay of $150 per month.

Under the bill a special rate is proposed of $844.20 per month. This enlisted person will receive this pay while serving in this position regardless of his years of service for pay purposes. The proficiency pay of $150 per month which has been received as an interim measure will be rescinded. As a result, the bill will not cause any increase in the total active duty compensation for the senior noncommissioned officer.

In addition, there are other provisions of the bill which will entitle the senior noncommissioned officer to compute his retired pay in accordance with the basic pay of his position even though he may not be in receipt of this particular rate of pay at the time of his retirement. Such a provision is similar to that now in effect with respect to the Chiefs of Staff of the Army and Air Force, the Chief of Naval Operations, and the Commandant of the Marine Corps. Senate Report No. 90-808 (Committee on Armed Services), p. 8, accompanying H.R. 13510, 90th Congress, 1st Session (1967); cf. House Report No. 90-787 (Committee on Armed Services), p. 8, accompanying H.R. 13510, 90th Congress, 1st Session (1967) ("This special rate is designed to recognize and reward appropriately the additional responsibilities of these new and important positions."). As the new rate of basic pay did not increase the amount of active-duty pay persons occupying the four specified positions were entitled to, the main effect of the provision was to allow affected personnel to have their retired or retainer pay entitlements computed on the new and higher pay base. (The Master Chief Petty Officer of the Coast Guard was authorized to receive this special rate of pay and the

Apart from periodic but irregular increases, little of note happened to the basic structure of military compensation between 1958 and 1967. In the Act of December 16, 1967, Public Law 90-207, 81 Stat. 649 (1967), Congress adopted a new mechanism for adjusting basic pay rates. Section 8 of the 1967 Act, *id*., 81 Stat. at 654-655, required that, whenever the general schedule of compensation for federal classified employees--*i.e*., Civil Service employees--was increased, a "comparable increase" was to be made to the basic pay of members of the uniformed services. The 1967 act was adopted contemporaneously with, and against the backdrop of, the Federal Salary Act of 1967, enacted as Title II of the Postal Revenue and Federal Salary Act of 1967, Public Law 90-

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attendant retirement benefits by the Act of October 2, 1972, Public Law 92-455, §3 (basic pay) and §2 (retired pay), 86 Stat. 761 (1972).)

The National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §1111(a), 105 Stat. 1290, 1491-1492 (1991), established a new warrant officer pay grade, "Chief Warrant Officer, W-5". In addition to authorizing the new pay grade, the 1992/1993 Defense Authorization Act provided special rates of basic pay and basic allowance for quarters, §1111(c), 105 Stat. at 1491, and special and incentive pays, §1111(d), 105 Stat. at 1492, for members appointed to the new pay grade "in order to provide an incentive for warrant officers to continue to serve their country and to recognize the highly complex and technical skills these individuals possess." House Report No. 102-311 (Committee of Conference), p. 614, accompanying H.R. 2100, 102d Congress, 1st Session (1991); see also House Report No. 102-60 (Committee on Armed Services), p. 241, accompanying H.R. 2100, 102d Congress, 1st Session (1991) ("... establish the permanent grade of chief warrant officer, W-5, as an added promotion incentive to entice selected service members to remain on active duty as warrant officers.").

The National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4402, 106 Stat. 2315, 2701-2702 (1992), effectively established a new longevity step of "Over 24" years of service for members of the armed services in pay grades O-6, W-5, W-4, E-9, E-8, and E-7. As originally adopted by the 1993 Defense Authorization Act, this new longevity step for members in the identified pay grades was to be effective from January 1, 1993, through October 1, 1995. The National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §602, 107 Stat. 1547, 1678 (1993), however, provided for the "continuation" of the new longevity step indefinitely. As explained by the Senate Armed Services Committee, the interim provision was originally adopted to "provide a temporary incentive for military personnel to voluntarily retire in lieu of facing involuntary selection for early retirement" under the expected defense drawdown following the end of the Cold War. Senate Report No. 102-352 (Committee on Armed Services), p. 208, accompanying S. 3114, 102d Congress, 2d Session (1992); cf., House Report No. 102-966 (Committee of Conference), p. 886, accompanying H.R. 5006, 102d Congress, 2d Session (1992). (Under the basic pay table in existence before enactment of the 1993 Defense Authorization Act, members in the affected pay grades received a longevity increase upon completion of 22 years of service and another longevity increase upon completion of 26 years of service. Under the new basic pay table, they are entitled to longevity increases upon completion of 22, 24, and 26 years of service. With the new longevity pay step, therefore, affected members completing 22 years of service need not make mental commitments to complete 26 years of service before receiving their last longevity pay increase to boost their retired or retainer pay entitlements. Presumably the problem leading to adoption of this new longevity pay increase will gradually ease after the year 2006, when the retired or retainer pay entitlements of service members come more and more to be based on a "high three average". See, *e.g*., Chapter III.B.1 hereof, below, "Nondisability Retired and Retainer Pay".)

206, Title II, §§201-225, 81 Stat. 613, 624-645 (1967), which required increases in general schedule--so-called civil service--salaries in 1968 and 1969 to close the then-perceived gap between federal civilian and private sector pays. For the uniformed services, the two acts in concert insured an increase in basic pay rates in 1968 and 1969 without further Congressional action, even if no Presidential recommendations stemming from the 1967 Quadrennial Review of Military Compensation--the so-called *First Quadrennial Review of Military Compensation,*[14] which was then in process at the Department of Defense--were forthcoming, or if such recommendations, even though forwarded to Congress, were not adopted. In fact, no revision to the military compensation structure ever resulted from the *First Quadrennial Review of Military Compensation,* and the Act of December 16, 1967, Public Law 90-207, *id*., in conjunction with the Postal Revenue and Federal Salary Act of 1967, Public Law 90-206, *id*., resulted in a military-civilian pay adjustment linkage that remained in effect until fairly recently.[15]

The Act of December 16, 1967, Public Law 90-207, §8, 81 Stat. 649, 654-655 (1967), required that the "comparable increase" between civilian and military pay raises be determined by equating regular military compensation (RMC) to general schedule salaries. RMC was, in turn, defined as basic pay, quarters and subsistence allowances (either in cash or in kind), and the "tax advantage" deriving from the non-

[14] The Act of August 21, 1965, Public Law 89-132, §2, 79 Stat. 545, 546-547 (1965), adopted a special provision, codified at 37 U.S.C. §1008, requiring the President to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system. Pursuant to Section 2(a) of the Act, id., as codified at 37 U.S.C. §1008(b), the first such review was to be undertaken "[w]henever the President considers it appropriate, but in no event later than January 1, 1967." In the House and Senate Reports on the bill, H.R. 9075, 89th Congress, 1st Session (1965), the required Presidential review was referred to as a "quadrennial review ... of military compensation," House Report No. 89-549 (Committee on Armed Services), pp. 1 and 50, and Senate Report No. 89-544 (Committee on Armed Services), p. 1, accompanying H.R. 9075, 89th Congress, 1st Session (1965); and the seven reviews of military compensation that have been completed under the direction of 37 U.S.C. §1008(b) have been referred to, successively, as the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Quadrennial Review of Military Compensation, respectively. The First Quadrennial Review was convened in 1966, and the most recent to have been completed, the Seventh, in 1990. The Eighth Quadrennial Review of Military Compensation was convened, pursuant to Presidential directive, in the fall of 1994.

[15] For a summary overview of the achievements of the First through the Eighth Quadrennial Reviews of Military Compensation, see Appendix III hereof, below.

taxable status of the allowances.[16] [17] The whole of the military increase so determined had to be implanted in basic pay, which at the time made up only about 75 percent of RMC. Thus, the percentage increase in basic pay needed to be greater than the percentage increase in civilian salaries to enable the RMC and general schedule raises to be equivalent. For example, general schedule rates were increased 4.5 percent effective October 1, 1967. To achieve a comparable percentage increase in RMC, it was necessary to increase basic pay by 5.6 percent.

The use of basic pay, quarters allowance, subsistence allowance, and tax advantage--the original RMC--as the base for determining the increase needed in military pay rates to maintain comparability with general schedule pay rates had the effect of

[16] See 37 U.S.C. §101(25) as in existence before passage of the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, 94 Stat. 3368 (1980), concerning the original statutory definition of "Regular Military Compensation." (The original statutory definition of "regular military compensation" was incorporated as new paragraph (25) of 37 U.S.C. §101 by the Act of September 19, 1974, Public Law 93-419, §1, 88 Stat. 1152 (1974). The text of 37 U.S.C. §101(25) as added by the Act of September 19, 1974, Public Law 93-419, id., is set out in full in the text preceding footnote 4 to Chapter II.B., "Regular Military Compensation/Basic Military Compensation," above. 37 U.S.C. §101 (25) was subsequently amended by the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §11, 94 Stat. 3359, 3368-3369 (1980), to include variable and station housing allowances in the "regular military compensation" construct. For the reasons underlying this amendment, and its effects on the military compensation system and the pay adjustment mechanism, see Chapter II.B., "Regular Military Compensation/Basic Military Compensation," above, as well as Chapter II.B.4., "Federal Income Tax Advantage," below; see, especially, footnote 4 and accompanying text to Chapter II.B., above, and footnote 25 to Chapter II.B.4., below.)

[17] "Tax advantage," so-called, is a construct peculiar to military compensation. Under the rationale of Jones v. United States, 60 Ct.Cl. 552 (1925), a tax case decided by the United States Court of Claims in 1925, and statutory provisions subsequently adopted by Congress in the Tax Reform Act of 1986, Public Law 99-514, §1168(a), 100 Stat. 2085, 2512 (1986), as Section 134 of the Internal Revenue Code of 1986, 26 U.S.C. §134, the allowances for quarters and subsistence are not subject to taxation under the Federal Internal Revenue Code. (More accurately, the allowances for quarters and subsistence--along with various other allowances and reimbursements not here in issue--are specifically excluded from the definition of "gross income" under Section 134 of the Internal Revenue Code of 1986, 26 U.S.C. §134, on the grounds that they are "qualified military benefits." With respect to the question how basic allowance for quarters and basic allowance for subsistence fall within the definition of Section 134 "qualified military benefits," see footnote 16 to Chapter II.B.4., "Federal Income Tax Advantage," below.) Conceptually, the "tax advantage" accruing to the benefit of any particular member of the armed forces may be measured by the additional taxable income the member would have to receive if his quarters and subsistence allowances were suddenly to become subject to Federal taxation in order to leave him with the same after-tax income he enjoys under the present system of taxable basic pay and nontaxable allowances for quarters and subsistence. For a discussion of Jones v. United States, Section 134 of the Internal Revenue Code of 1986, and the so-called "tax advantage" attributed to members of the armed services as a result of the nontaxability of these allowances, including various simplifying assumptions underlying the calculation of the "tax advantage" to be imputed to particular classes of individuals in the uniformed services, see Chapter II.B.4., "Federal Income Tax Advantage," below.

imputing an increase in all four of these elements of military compensation each time a comparable general schedule increase occurred. However, concentrating the entire increase into basic pay caused the increase in the elements other than the so-called tax advantage to be implicit only.[18] As indicated in the preceding paragraph, it also required that the basic pay increase be inflated by the percentage necessary to absorb the implicit increase in the other RMC elements.

The Federal Pay Comparability Act of 1970, Public Law 91-656, 84 Stat. 1946 (1971), required that general schedule rates be measured annually against rates of pay for the same levels of work in private enterprise and that federal compensation be adjusted by executive order as of October 1 each year (unless the President submitted an alternate plan to Congress by August 31 and neither house of Congress disapproved) by the percentage necessary to maintain comparability between the federal and private enterprise rates. These "automatic" adjustment provisions, together with the coupling of general schedule and basic pay increases under the Act of December 16, 1967, Public Law 90-207, 81 Stat. 649 (1967), resulted in a systematic procedure for increasing basic pay rates which theretofore (with the exception of the raises of 1968 and 1969) had been solely dependent on Congressional discretion.[19]

In the exercise of this discretion, Congress excluded enlisted members with less than two years of service from the general raises in basic pay awarded in 1955, 1958,

[18] While the "value" of the tax advantage accruing to any particular member increases whenever an increase in basic pay rates causes the member's RMC to increase enough to move the member into a higher RMC tax bracket, the entire amount of the tax advantage imputed to the member is implicit, inasmuch as the member never receives any part of this "advantage" as an express addition to take-home or pre-tax pay.

[19] In Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 103 S. Ct. 2764 (1983), the Supreme Court declared the so-called one-house veto unconstitutional. Under later applications of the Chadha doctrine, it would appear that the one-house-veto provisions of the Federal Pay and Comparability Act, codified at 5 U.S.C. §5305(c)(2), are similarly unconstitutional. American Federation of Government Employees, AFL-CIO, v. Reagan, 806 F.2d 1034 (Fed. Cir. 1986), cert. denied sub nom. National Treasury Employees Union v. Reagan, 481 U.S. 1068, 107 S.Ct. 2460 (1987); see also, e.g., Process Gas Consumers Group v. Consumer Energy Council of America, 463 U.S. 1216, 103 S. Ct. 3556, rehearing denied, 463 U.S. 1250 (1983), summarily affirming 673 F.2d 425 (D.C. Cir. 1982) and 691 F.2d 575 (D.C. Cir. 1982). (For Congressional comment on the likely effect of Chadha on the civil service pay adjustment mechanism, see Senate Report No. 98-174 (Committee on Armed Services), pp. 215-216, accompanying S. 675, 98th Congress, 1st Session (1983).)

1963, and 1964; officers with less than two years of service were similarly, but less severely, treated during those same years. Starting in 1966, however, both groups began to receive across-the-board basic pay increases in the same percentage as other personnel, thereby enabling them to maintain their then-existing position relative to the previously more favorably treated personnel. To eliminate the lag created by the earlier years of exclusion, and to make entry pay rates more competitive in an all-volunteer force setting, the Act of September 28, 1971, Public Law 92-129, 85 Stat. 348 (1971), provided a substantial increase in basic pay rates for members with less than two years of service. A slight increase was also made in some pay grades for personnel with more than two years of service, so as to prevent the large increase in the "under two" rates from causing an undue compression between pay grades.

Experience proved that the military pay raise adjustment mechanism adopted under the Act of December 16, 1967, Public Law 90-207, §8, 81 Stat. 649, 654-655 (1967), was undesirable in some respects. Inflating basic pay rates to absorb the entire RMC increase resulted in a corresponding inflation in items linked to basic pay, such as various bonuses, drill pay, separation pay, and, particularly, retired and retainer pays. Moreover, raising quarters and subsistence allowances in an implicit rather than explicit way tended to obscure their relationship to the expenses they had originally been intended to defray, as well as, especially in the case of the quarters allowance, distorting the relationship between the value of government quarters to members assigned to such quarters and the amount of the quarters allowance they had to give up as a result of such assignment. Finally, increasing basic pay rates by a higher percentage than general schedule rates created an inaccurate impression that military personnel were getting a bigger increase than their civilian counterparts in the federal government. Offsetting these disadvantages from the point of view of the government--at least in part--was the fact that, since all of any increase in regular military compensation was concentrated in the basic pay element, the whole of the pay increase immediately became subject to federal income tax.

While retaining the principle of military pay raises linked to civil service increases, the Act of September 19, 1974, Public Law 93-419, §4, 88 Stat. 1152, 1152-

1153 (1974), adopted a new pay adjustment mechanism, codified at 37 U.S.C. §1009, under which the entire increase in military compensation was no longer incorporated solely in basic pay. Instead, raises were to be distributed to all three cash elements of RMC--basic pay, basic allowance for quarters, and basic allowance for subsistence--each of which was to be increased by the same percentage as general schedule salaries.[20] Because the act required that the three cash elements of RMC be increased by the same percentage as general schedule salaries, the "tax advantage" was effectively cut out of the base used to calculate increases in basic pay and allowances. Although the tax advantage was thus effectively removed from the equation that determined pay increases, individual members in fact accrued an added tax advantage over and above that of the preceding adjustment mechanism, but now not only because the increase in basic pay rates resulted in military personnel being moved into higher tax brackets but also because part of the raise would go into nontaxable allowances. Before enactment of the Act of September 19, 1974, Public Law 93-419, *id.*, the law required that enlisted commuted and leave ration rates be periodically adjusted by the secretary of defense to approximate the raw food cost of the daily ration; with enactment, all subsistence allowance rates were brought directly under the comparability adjustment formula, and commuted and leave ration allowances no longer reflected a direct relationship to government food costs.

The Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, §303(b), 90 Stat. 923, 925 (1976), amending 37 U.S.C. §1009 as added by the Act of September 19, 1974, Public Law 93-419, *id.*, permitted a further change in the method for distributing military pay increases by authorizing the President to allocate future overall increases among the three main cash elements of RMC--namely, basic pay, basic allowance for quarters, and basic allowance for subsistence[21]--on other than an

[20] See, *e.g.*, Senate Report No. 93-1132 (Committee on Armed Services), p. 2, accompanying H.R. 15406, 93d Congress, 2d Session (1974): [The bill] H.R. 15406 [93d Congress, 2d Session (1974)] will retain the principle that military pay raises are to be linked to federal civilian pay increases but will change the method of allocating pay raises. Instead of putting all of each pay raise solely into basic pay, future increases will be allocated to the three cash elements of RMC--basic pay, Basic Allowance for Quarters and Basic Allowance for Subsistence.

[21] See footnote 16 and accompanying text to this chapter, above.

equal percentage basis whenever he determined such action to be "in the best interest of the Government." The act provided, however, that the amount allocated to basic pay could not be less than 75 percent of the amount that would otherwise have been so allocated on an equal percentage allocation basis. The purpose of providing for a "reallocation" of compensation increases among the three cash elements of RMC was to enable progressive adjustments to be made to the two basic allowance elements so that those allowances would, after time, more nearly cover the costs they had originally been intended to defray, as well as to provide for more adequate quarters and subsistence allowances in general.[22] Under the amendments to 37 U.S.C. §1009 made by the 1977 Appropriation Authorization Act, the President was required to advise Congress regarding any planned reallocation at the earliest practicable time before the effective date of a military pay increase. Furthermore, all allocations of increases among the different elements of RMC were to be assessed in conjunction with the quadrennial reviews of military compensation required by 37 U.S.C. §1008(b),[23] and a full report was to be made to Congress summarizing the objectives and results of any non-proportional allocations the President chose to prescribe under the authority given him in the 1977 Appropriation Authorization Act.

The 1977 Appropriation Authorization Act, Public Law 94-361, *id*., §303(b), 90 Stat. at 925, also allowed, but did not require, the President to provide for the payment of "partial BAQ" to members without dependents not entitled to cash BAQ. See 37 U.S.C. §1009(c)(2). The act stipulated that any partial BAQ payment made under this authority should be an amount equal to the difference between (1) the amount by which BAQ was increased on the basis of reallocation and to which affected members would be entitled were they not on sea or field duty or living in government quarters and (2) the amount by which BAQ would have been increased had the pay raise been distributed among the

[22] To the extent this reallocation authority is used to redirect increases that would otherwise have taken effect in basic pay to either the quarters or subsistence allowance, or both, reallocation has the incidental effect of lowering certain bonuses, separation payments, retired and retainer pays, drill pay, and any other pays the level or amount of which is, or has at one time or another been, linked to basic pay.

[23] See footnote 14 to this chapter, above.

three cash elements of RMC on an equal percentage basis. See Chapter II.B.2., "Housing Allowances," below.

The Department of Defense Authorization Act, 1981, Public Law 96-342, 94 Stat. 1077 (1980), effected several additional changes to the theretofore existing mechanism for adjusting basic pay and allowance rates. First, because of a general feeling that military pay had lagged behind civilian wages and that the comparability basis under which federal general schedule civilian wages were adjusted may have limited applicability to military pay,[24] the general schedule linkage adjustment mechanism incorporated in present 37 U.S.C. §1009(b)(3) was suspended for fiscal year 1981 in favor of an 11.7 percent overall increase--subject to reallocation by the President as more fully described below--in the three cash elements of RMC,[25] and the President was directed to make recommendations to Congress by April of 1981 on an appropriate measure of comparability for military pay and an appropriate mechanism for determining the amount of future increases in such pay.[26]

Second, in order to give the President greater flexibility in adjusting military compensation under the adjustment mechanism set out in the then-current 37 U.S.C. §1009,[27] and in particular to allow the President at his discretion to grant disproportionately greater increases in pay to so-called "career" members, the 1981 Authorization Act, Public Law 96-342, *id*., gave the President authority to reallocate whatever amount of any overall increase in military compensation was allocated to basic

[24] See, *e.g*., Senate Report No. 96-826 (Committee of Conference), p. 121, and House Report No. 96-1222 (Committee of Conference), p. 95, accompanying H.R. 6974, 96th Congress, 2d Session (1980). Also see, *e.g*., 126 CONG. REC. 1643-1645 (1980) (daily ed., 126 *Cong. Rec*. S828-S830, February 4, 1980) (remarks of Senator Matsunaga in debate on H.R. 5168, subsequently adopted, with amendments, as the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, 94 Stat. 1123 (1980), on the same day as the Department of Defense Authorization Act, 1981, Public Law 96-342, 94 Stat. 1077 (1980)).

[25] Department of Defense Authorization Act, 1981, Public Law 96-342, id., §801, 94 Stat. at 1090-1091.

[26] Department of Defense Authorization Act, 1981, Public Law 96-342, *id*., §802, 94 Stat. at 1091.

[27] See, *e.g.*, Senate Report No. 96-826 (Committee of Conference), p. 122, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

pay among pay-grade and years-of-service categories after application of the authority to reallocate among the three cash elements of RMC.[28] In using this new reallocation authority, however, the President was prohibited from reallocating more than 25 percent of the increase in basic pay that would otherwise have gone to any specific pay-grade/years-of-service category. In addition, the President also was prohibited from using the new reallocation authority to increase the basic pay of personnel with less than four years of service by a greater percentage than federal general schedule civilian wages were increased, thus underlining the intended purpose of allowing the President to grant disproportionately greater increases to "career" personnel. With respect to the 11.7 percent increase in military compensation mandated by the 1981 Authorization Act, the President was explicitly given reallocation authority as regards both the distribution of the overall increase between the three cash elements of RMC and the distribution of the resulting increase in basic pay among pay grades and years-of-service groupings.[29]

Contemporaneous with enactment of the Department of Defense Authorization Act, 1981, Public Law 96-342, 94 Stat. 1077 (1980), the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §6(b), 94 Stat. 1123, 1127 (1980), effected a technical amendment to the preexisting basic pay structure by adding a new "saved pay" provision. The provision insured that enlisted personnel appointed as officers (either commissioned officers or warrant officers) and warrant officers appointed as commissioned officers would not have to suffer any reduction in pay as a result of such appointments, thus removing any disincentives to the acceptance of such appointments.[30] See 37 U.S.C. §907. In addition, the Compensation Amendments

[28] Department of Defense Authorization Act, 1981, Public Law 96-342, id., §801(b)(2), 94 Stat. at 1091.

[29] Before the 11.7 percent overall pay increase became effective on October 1, 1980, the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §7, 94 Stat. 1123, 1128 (1980), adopted the same day as the Department of Defense Authorization Act, 1981, Public Law 96-342, 94 Stat. 1077 (1980), further sidestepped the pay adjustment mechanism of 37 U.S.C. §1009 by granting a 10 percent increase in basic allowance for subsistence rates. Under the Military Personnel and Compensation Amendments Act, Public Law 96-343, id., the subsistence allowance was increased by 10 percent effective September 1, 1980, only to be increased further under the 1981 Authorization Act, Public Law 96-342, id., on October 1, 1980. See Chapter II.B.3., "Basic Allowance for Subsistence", below.

[30] House Report No. 96-1233 (Committee of Conference), p. 14, accompanying H.R. 5168, 96th Congress, 2d Session (1980).

provided that, to the extent the "saved pay" provisions were inapplicable, commissioned officers in pay grades O-1, O-2, and O-3 who were credited with more than four years of active service as warrant officers were to receive basic pay computed in the same way as the basic pay of commissioned officers credited with more than four years of active enlisted service. See 37 U.S.C. §203(d) as in effect after adoption of the Military Personnel and Compensation Amendments of 1980.[31]

The pay adjustment mechanism incorporated in 37 U.S.C. §1009 was suspended again the following year--this time in its entirety--by the Uniformed Services Pay Act of 1981, Public Law 97-60, 95 Stat. 989 (1981). Under that act, congressionally mandated increases in basic pay, basic allowance for subsistence, and basic allowance for quarters--in short, for all three of the main cash components of RMC--were adopted as of October 1, 1981, effectively preempting the President's reallocation authority. In adopting these new pay rates, under which quarters and subsistence allowances were increased by 14.3 percent across the board and basic pay was increased from 10 to 17 percent, depending on pay grade, Congress made it clear that it was trying to "restore, in current dollars, the relative relationship of military compensation to pay in the private sector that existed in 1972" when Congress adopted the "all-volunteer force" construct as the manning principle for the armed services.[32] [33] While noting that some improvement in retention

[31] See 37 U.S.C. §203 note (under heading "1983 Amendment") for the text of 37 U.S.C. §203(d) as in effect after adoption of the Military Personnel and Compensation Amendments of 1980 and before amendment by the Department of Defense Authorization Act, 1984, Public Law 98-94, §902(a), 97 Stat. 614, 635 (1983).

[32] See, *e.g.*, House Report No. 97-109 (Part I) (Committee on Armed Services), pp. 1 and 4, accompanying H.R. 3380, and Senate Report No. 97-146 (Committee on Armed Services), pp. 2 and 3, accompanying S. 1181, 97th Congress, 1st Session (1981). Also see 127 *Cong. Rec*. 20288-20290 (1981) (daily ed., 127 *Cong. Rec*. S9452, September 11, 1981) (remarks of Senator Hatfield).

[33] In debate, Congress noted that military compensation had fallen behind civilian comparability levels because of a number of pay caps imposed as part of the government's efforts to fight inflation. See, *e.g.*, 127 *Cong. Rec*. 20620 (1981) (daily ed., 127 CONG. REC. H6217, September 15, 1981) (remarks of Representative Nichols). (The same point had been made the preceding year, also in Congressional debate, in connection with the Senate's consideration of H.R. 5168, subsequently adopted, with amendments, as the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, 94 Stat. 1123 (1980). See, *e.g.*, 126 *Cong. Rec*. 1643-1645 (1980) (daily ed., 126 CONG. REC. S828-S830, February 4, 1980) (remarks of Senator Matsunaga in debate on H.R. 5168, subsequently adopted, with amendments, as the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, 94 Stat. 1123 (1980)).)

and manning levels had occurred after the 11.7 percent pay increase adopted in the 1981 Authorization Act, Congress went on to state that "additional actions are required"[34] and "further substantial improvements [in pay rates] are necessary in fiscal year 1982 to provide necessary incentives for a career of military service"[35] and adopted the 1981 Pay Act raises as the method for achieving the needed improvements in manning and retention levels. In addition, Congress, especially the Senate, noted that it was convinced that the existing comparability indices used in determining the annual increase in military pay under the linkage mechanism of 37 U.S.C. §1009(b)(3) were defective and that a new adjustment mechanism should be developed.[36] As a result, the pay rates established under the 1981 Pay Act were more or less provisional in nature, awaiting the development of a more refined adjustment mechanism "appropriately weighted to reflect the military skill mix."[37] In particular, Congress specifically noted that "the Administration [had under the 1981 Authorization Act been] directed to provide recommendations by April 1, 1981, concerning the appropriate mechanism for making annual adjustments to military pay ... [but that] final recommendations have not yet been provided"[38] and that the pay tables adopted under the Act were in the nature of a stopgap pending the development of Administration recommendations for a new pay adjustment mechanism. The Senate Armed Services Committee expressly noted that it "strongly believes [such a] mechanism must be developed within the next year."[39]

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[34] House Report No. 97-109 (Part I) (Committee on Armed Services), p. 1, accompanying H.R. 3380, 97th Congress, 1st Session (1981).

[35] Senate Report No. 97-146 (Committee on Armed Services), p. 2, accompanying S. 1181, 97th Congress, 1st Session (1981).

[36] Senate Report No. 97-146 (Committee on Armed Services), p. 7, accompanying S. 1181, 97th Congress, 1st Session (1981).

[37] Senate Report No. 97-146 (Committee on Armed Services), p. 7, accompanying S. 1181, 97th Congress, 1st Session (1981).

[38] Senate Report No. 97-146 (Committee on Armed Services), p. 7, accompanying S. 1181, 97th Congress, 1st Session (1981).

[39] Senate Report No. 97-146 (Committee on Armed Services), p. 7, accompanying S. 1181, 97th Congress, 1st Session (1981).

No such mechanism was developed, however, and in 1982 basic pay rates for members of the uniformed services were increased by four percent. The 4 percent figure derived from a 4 percent "cap" placed on civil service pay increases for fiscal year 1983; this 4 percent "cap" was translated into the uniformed services arena through the pay adjustment mechanism of 37 U.S.C. §1009. See Executive Order 12387, 47 Fed. Reg. 44981 (October 8, 1982).

In 1983, Congress again expressed its dissatisfaction with the pay adjustment mechanism of 37 U.S.C. §1009. The Senate in particular recommended that the link between "military pay" and civil service wages be "severed" and that an appropriate "index" for "military pay" be developed.[40] As stated in the Senate report:

> To date, no military pay adjustment standard has been adopted for the specific purpose of establishing appropriate pay comparisons between the military and the private sectors. The current General Schedule/PATC [Professional, Administrative, Technical and Clerical Survey] linkage measures select white collar private sector occupation [sic] which closely match the composition of the Federal civilian work force. The PATC survey was not intended to mirror the predominantly blue collar military force.[41]

As reflected in the Senate report, the basic concern was that the pay adjustment linkage between civil service wages and uniformed services pay resulted in inordinately large increases for uniformed services personnel, and that what was wanted was an index that would "provide assurance to the country that military members are receiving no more than what the average private sector worker is receiving in annual pay raises."[42] The Senate then went on to note that its preferred index had increased "8.1% in contrast to PATC growth of 9.5%" over the period March 1981 - March 1982.[43]

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[40] Senate Report No. 98-174 (Committee on Armed Services), p. 215, accompanying S. 675, 98th Congress, 1st Session (1983).

[41] Senate Report No. 98-174 (Committee on Armed Services), p. 215, accompanying S. 675, 98th Congress, 1st Session (1983).

[42] Senate Report No. 98-174 (Committee on Armed Services), p. 215, accompanying S. 675, 98th Congress, 1st Session (1983).

[43] Senate Report No. 98-174 (Committee on Armed Services), p. 215, accompanying S. 675, 98th Congress, 1st Session (1983). But see House Report No. 98-107 (Committee on Armed Services), pp. 208-209,

Compromising their respective concerns, the House and Senate agreed once again to suspend the pay adjustment mechanism of 37 U.S.C. §1009. In the Department of Defense Authorization Act, 1984, Public Law 98-94, §901, 97 Stat. 614, 634-635 (1983), the uniformed services were granted a 4 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence. This increase applied to all members of the uniformed services except for "enlisted members in pay grade E-1 with less than 4 months of active duty." Section 901(b)(2) of the Department of Defense Authorization Act, 1984, Public Law 98-94, *id.*, §901(b)(2), 97 Stat. at 634; see 37 U.S.C. §1009 note. This pay increase became effective January 1, 1984.[44]

In addition to increasing basic pay and allowances as previously indicated, the 1984 Department of Defense Authorization Act, Public Law 98-94, *id.*, also amended 37 U.S.C. §203(d) to provide that the basic pay of a commissioned officer in pay grades O-1, O-2, or O-3 who had more than four years of "active service" as a warrant officer or as a warrant officer and enlisted member was to be computed in the same way as the basic pay of a commissioned officer in the same pay grade with over four years of "active service" as an enlisted member. Section 902(a) of the 1984 Authorization Act, Public Law 98-94, *id.*, 97 Stat. at 635.[45] This amendment became effective October 1, 1983. *id.*, §902(b). As explained by the House Armed Services Committee, the amendment was intended to rectify an incorrect interpretation of Congress's intent in the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §6(b), 94 Stat. 1123, 1127 (1980):

> Current law authorizes a special basic pay table for commissioned officers who served over four years of active service as warrant officers or as enlisted members. The table recognizes the experience such officials bring to the

accompanying H.R. 2969, 98th Congress, 1st Session (1983), in which the primary concern expressed was that uniformed service pay rates not be allowed to fall too far behind "comparability".

[44] Executive Order No. 12456, 49 Fed. Reg. 347 (December 30, 1983). See House Report No. 98-352 (Committee of Conference), pp. 223-224, and Senate Report No. 98-213 (Committee of Conference), pp. 223-224, accompanying S. 675, 98th Congress, 1st Session (1983).

[45] See footnotes 30 and 31 and accompanying text to this chapter, above.

> commissioned officer corps. Unfortunately, the wording of the current authority has been interpreted to mean that a member have either four years of prior enlisted service or over four years of prior warrant officer service in order to be eligible to use the special table. Combined enlisted and warrant officer service totaling over four years is not considered to meet the requirements of the law.
>
> The committee recommends correction of this anomaly by permitting active service as warrant officer and enlisted member to be combined for the purpose of establishing eligibility to use the special basic pay.[46] [47]

The Department of Defense Authorization Act, 1985, Public Law 98-525, §601, 98 Stat 2492, 2533 (1984), again bypassed the pay adjustment mechanism of 37 U.S.C. §1009. In the 1985 Authorization Act, basic pay and basic allowance for subsistence were each increased by 4 percent, while basic allowance for quarters was effectively restructured. See Chapter II.B.2., "Housing Allowances ," below. The 4 percent increase applied to all members of the uniformed services except personnel in pay grade E-1 with less than four months of active duty. Although the House expressed concern that members of the uniformed services were continuing to fall farther behind "comparability with private sector wages,"[48] both Houses of Congress agreed to limit the increase to 4 percent because of "the extraordinary pressure to reduce defense spending"[49] and "difficult budgetary constraints."[50] The limited pay raise was characterized as "identical to the terms of the cost-of-living increase"[51] given to uniformed services personnel the

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[46] House Report No. 98-107 (Committee on Armed Services), pp. 209-210, accompanying H.R. 2969, 98th Congress, 1st Session (1983). See House Report No. 98-352 (Committee of Conference), p. 224, and Senate Report No. 98-213 (Committee of Conference), p. 224, accompanying S. 675, 98th Congress, 1st Session (1983).

[47] See text accompanying footnotes 30 and 31 to this chapter, above.

[48] House Report No. 98-691 (Committee on Armed Services), pp. 255-256, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[49] House Report No. 98-691 (Committee on Armed Services), p. 256, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[50] Senate Report No. 98-500 (Committee on Armed Services), p. 204, accompanying S. 2723, 98th Congress, 2d Session (1984).

[51] Senate Report No. 98-500 (Committee on Armed Services), p. 204, accompanying S. 2723, 98th Congress, 2d Session (1984).

preceding year.[52] The increase became effective January 1, 1985. Section 601(b)(1) of the 1985 Authorization Act, Public Law 98-525, *id*., §601(b)(1), 98 Stat. at 2533; see 37 U.S.C. §1009 note.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §601, 99 Stat. 583, 635-636 (1985), provided a 3 percent increase in basic pay, basic allowance for subsistence, and basic allowance for quarters, thus again bypassing the pay adjustment mechanism of 37 U.S.C. §1009. These increases, which applied to all members of the uniformed services, became effective on October 1, 1985. Section 601(b) of the 1986 Authorization Act, *id*., §601(b), 99 Stat. at 636; see 37 U.S.C. §1009 note. Again, "difficult budgetary constraints" were cited as factors limiting the increase authorized.[53] Nevertheless, the House Armed Services Committee indicated that it... recognizes the importance of adequate pay to recruiting and retaining high quality personnel and reiterates its commitment to providing periodic pay increases for our nation's men and women in uniform.[54]

Like the 1986 Defense Authorization Act, the authorization acts for fiscal years 1987, 1988, 1989, 1990, and 1991 all bypassed the Section 1009 adjustment mechanism. In bypassing this adjustment mechanism, the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §601(a) and (b), 100 Stat. 3816, 3873 (1986), incorporated a 3 percent increase in basic pay, basic allowance for subsistence, and basic allowance for quarters, effective January 1, 1987; the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §601(b) and (c), 101 Stat. 1019, 1092 (1987), as amended by the Act of December 22, 1987 (Continuing Appropriations for Fiscal Year 1988), Public Law 100-202, §110(b), 101 Stat. 1329, 1329-436 (1987), a 2 percent increase in basic pay, basic allowance for subsistence, and basic allowance for quarters, effective January 1, 1988; the National Defense

[52] See House Report No. 98-1080 (Committee of Conference), pp. 294-295, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[53] Senate Report No. 99-41 (Committee on Armed Services), p. 190, accompanying S. 1029, 99th Congress, 1st Session (1985).

[54] House Report No. 99-41 (Committee on Armed Services), p. 216, accompanying S. 1872, 99th Congress, 1st Session (1985).

Authorization Act, Fiscal Year 1989, Public Law 100-456, §601(b) and (c), 102 Stat. 1918, 1976 (1988), a 4.1 percent increase in basic pay and basic allowance for subsistence and a 7 percent increase in basic allowance for quarters, effective January 1, 1989; the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §601(b), 103 Stat. 1352, 1444 (1989), a 3.6 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1990; and the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §601(b), 104 Stat. 1485, 1575 (1990), a 4.1 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1991.[55]

In adopting these increases, Congress continued to express concern about the level of military compensation and its relationship to private sector wage rates, on the once hand, and the overall budget deficit, on the other. In connection with its consideration of the 1987 National Defense Authorization Act, Public Law 99-661, 100 Stat. 3816 (1986), cited above, the Senate Armed Services Committee noted:

> Military pay levels continue to lag behind comparable civilian wages. As measured by the Employment Cost Index of the Bureau of Labor Statistics, military pay trails civilian wages by 8.3 percent. Without a four percent increase in military pay [the increase proposed by the Senate Armed Services Committee in its original bill, S. 2638] during1987, it is likely that this gap will grow even larger. The committee believes that, even in light of the severe budget constraints being imposed on defense, it is essential that military pay not be permitted to fall further behind civilian wages.[56]
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> The House-Senate conference agreed on a three percent pay increase.[57]

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[55] In providing these increases in military pay for fiscal years 1986 through 1991, the relevant Authorization Acts did not in terms provide authority for the President to redistribute, or reallocate, the increase pursuant to the supplementary adjustment mechanisms incorporated in 37 U.S.C. §1009(c)(1) and (d)(1).

[56] Senate Report No. 99-331 (Committee on Armed Services), p. 225, accompanying S. 2638, 99th Congress, 2d Session (1986).

[57] National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §601(a), 100 Stat. 3816, 3873 (1986). See House Report No. 99-1001 (Committee of Conference), p. 476, accompanying S. 2638, 99th Congress, 2d Session (1986).

In considering a military pay raise for fiscal year 1988, the House Armed Services Committee apparently concluded that a 3 percent raise would keep "military pay ... competitive with the private sector."[58] As the Committee stated more fully:

> Recognizing the importance of maintaining a competitive edge, particularly as the recruiting environment becomes tighter, the committee is strongly committed to ensuring that active duty personnel receive a pay raise. However, given the climate of fiscal austerity, the committee was unable to grant the Administration's request for a four percent increase.
>
> The ... [House Committee on Armed Services] assumes that military personnel will receive a three percent pay raise on January 1, 1988; .... This increase is consistent with the pay raise granted last year and allows pay to keep ahead of inflation.
>
> Clearly, the large military pay raises provided in 1980 (11.7 percent) and 1981 (14.3 percent) restoring pay comparability with the private sector were critical to the dramatic turn-around in recruitment and retention experienced since that time. The committee believes that military pay must remain competitive with the private sector and, therefore, recommends a three percent pay raise in January 1988.[59]

The Senate, on the other hand, saw matters somewhat differently and again proposed a 4 percent increase in the cash elements of RMC, noting as follows:

> The committee recommends approval of the 4.0 percent request [submitted by the Administration] for fiscal year 1988.... The 4 percent raise in fiscal year 1988 will essentially match expected wage growth in the private sector and prevent the 9.4 percent gap between military pay and private sector pay from widening.[60]

In conference, the House and Senate Conferees did not directly address their seemingly differing views on the adequacy of military compensation in relationship to private sector wage rates. Rather, in recommending the bill that became the National

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[58] House Report No. 100-58 (Committee on Armed Services), p. 203, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

[59] House Report No. 100-58 (Committee on Armed Services), p. 203, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

[60] Senate Report No. 100-57 (Committee on Armed Services), p. 144, accompanying S. 1174, 100th Congress, 1st Session (1987).

Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, 100 Stat. 1019 (1987), the Conferees agreed to a 3 percent increase in basic pay and basic allowance for subsistence and a 6 percent increase in basic allowance for quarters, stating simply:

> The Conferees note that, in 1985, basic allowance for quarters (BAQ) rates are [sic, were?] restructured so that they would cover 65 percent of national median housing costs in each pay grade. Since the 1985 restructuring, BAQ has lagged behind housing cost growth, causing BAQ to fall below the 65 percent standard. The Conferees intend the six percent increase in BAQ to be a step toward restoring BAQ to the 65 percent standard.[61]

The House view on the adequacy of military compensation levels evidently prevailed *sub silentio.* Despite the 3 percent increase in basic pay and basic allowance for subsistence and the 6 percent increase in basic allowance for quarters provided for in the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §601(b) and (c), 101 Stat. 1019, 1092 (1987), that amount was scaled back to a 2 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence by the "budget summit agreement" memorialized in the Act of December 22, 1987 (Continuing Appropriations for Fiscal Year 1988), Public Law 100-202, §110(b), 101 Stat. 1329, 1329-436 (1987). The driving force behind the reduction from the increases proposed in the 1988/1989 Authorization Act was concern over the overall federal budget deficit. No specific concerns were expressed about the impact of the limitation on military recruitment or retention--just as no concerns were expressed for parallel reductions in increases that otherwise would have become effective for federal Civil Service employees.[62]

In recommending a military pay increase in connection with its consideration of the 1989 National Defense Authorization Act--enacted as the National Defense

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[61] House Report No. 100-446 (Committee of Conference), p. 641, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

[62] See Act of December 22, 1987 (Continuing Appropriations for Fiscal Year 1988), Public Law 100-202, §110(a), 101 Stat. 1329, 1329-436 (1987).

Authorization Act, Fiscal Year 1989, Public Law 100-456, 102 Stat. 1918 (1988)—the House Armed Services Committee stated:

> In fiscal year 1988, as a part of the budget summit agreement, military personnel received only a two percent pay raise. The committee anticipates considerable budgetary pressure to reduce substantially the pay raise request for fiscal year 1989....
>
> Today, the nation's armed forces have the highest quality young men and women in history, representing a dramatic reversal of the dark days of the 1970's when recruiting and retention rates plummeted. Although several factors contributed to the turnaround, the large pay raises in October 1980 and 1981 played a paramount role. The committee believes that a competitive rate of pay remains important and is deeply concerned that the gap between private sector and military salaries, as measured by the Employment Cost Index (ECI), is widening. Currently, military pay lags 11 percent behind wages in the civilian economy. If this trend is not reversed, the nation's armed forces could again fall on hard times.
>
> The committee therefore recommends a four percent increase in basic pay and basic allowance for subsistence (BAS) and a seven percent increase in basic allowance for quarters (BAQ). The committee believes reallocation of a small fraction of the pay raise into the basic allowance for quarters is sensible because basic allowance for quarters continues to fall behind the soaring cost of housing in the civilian economy.
>
> In an effort to address the problem of inadequate reimbursement for housing costs for certain individuals, Congress in the 1985 Defense Authorization Act (Public Law 98-525 [98 Stat. 2492 (1984)]) restructured the basic allowance for quarters and variable housing allowance (VHA) programs, pegging the basic allowance for quarters to a percentage (65 percent) of national median housing costs. The service member was expected to absorb 15 percent of housing costs, at which point the variable housing allowance kicks in.
>
> The program envisioned that the Department of Defense would periodically seek to update the BAQ rates, in order to maintain the linkage with national median housing costs. This, however, has not occurred. Instead, basic allowance for quarters has been increased each year, along with and by the same percentage as the annual pay raise, but national housing costs have gone up faster than pay raises. The Department of Defense has attempted to address this problem through increased variable housing allowance. This year's budget proposes a 3.4 percent VHA increase. Unfortunately, due to budget constraints, variable housing allowance has been capped through the appropriations process for the past two years.
>
> Currently, the BAQ rates have declined to slightly over 59 percent of national median housing costs, instead of 65 percent. With the caps on variable

housing allowance, service members are now absorbing over 22 percent of their housing costs, instead of the 15 percent envisioned when the program was restricted [sic, restructured?[63] by Public Law 98-525 [Department of Defense Authorization Act, 1985, 98 Stat. 2492 (1984)].

In an attempt to address this problem, last year the fiscal 1988/1989 Defense Authorization Act (Public Law100-180 [§601(b) and (c), 101 Stat. 1019, 1092 (1987)]) authorized a six percent increase in basic allowance for quarters, along with a three percent increase in basic pay. Both the pay raise and the BAQ increase were subsequently limited to two percent in compliance with the budget summit agreement.

The seven percent increase [in basic allowance for quarters, as proposed in the House bill, H.R. 4264, 100th Congress, 2d Session (1988)] would raise basic allowance for quarters to 62 percent of national median housing costs and, hopefully, would constitute the first step of a return to the 65 percent level established in the 1985 Defense Authorization Act [Public Law 98-525, §602(a)(1), 98 Stat. 2492, 2533 (1984) (establishing new BAQ rates), see House Report No. 98-1080 (Committee of Conference), p. 295, accompanying H.R. 5167, 98th Congress, 2d Session (1984) (stating that the BAQ rates thus established are 65 percent of national median housing costs)].[64]

The Senate Armed Services Committee, on the other hand, accepted the recommendations of the Department of Defense for a 4.3 percent pay raise, which the Committee noted should "keep the reported pay gap between private sector wages and military pay of 11 percent from widening."[65]

In conference, a 4.1 percent increase in basic pay and basic allowance for subsistence and a seven percent increase in basic allowance for quarters were agreed upon, with the Conferees noting:

The 4.3 percent across the board [sic] military pay raise requested by the Administration was based on projected private sector wage growth as measured

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[63] See characterization of the 1985 Defense Authorization Act, Public Law 98-525, as having "restructured the basic allowance for quarters and variable housing allowance (VHA) programs" in the second preceding paragraph. In granting increases in basic allowance for quarters and pegging BAQ rates at 65 percent of national median housing costs, the 1985 Defense Authorization Act can hardly be said to have "restricted" the BAQ program.

[64] House Report No. 100-563 (Committee on Armed Services), p. 251-252, accompanying H.R. 4624, 100th Congress, 2d Session (1988).

[65] Senate Report No. 100-326 (Committee on Armed Services), p. 92, accompanying S. 2355, 100th Congress, 2d Session (1988).

> by the employment cost index (ECI). At the time the request was submitted, the projected ECI was 4.3 percent. The 4.3 percent pay raise request matched the projected ECI increase to keep the 11 percent gap between private sector pay increases and military pay increases from widening.
>
> The actual ECI has now been reported as 3.5 percent. Therefore, the projection on which the Administration's request was based is overstated by 0.8 of a percentage point. As a result, the conference agreement will actually close the gap between private sector and military wage growth by 0.6 of a percentage point, the first time the military pay raise will exceed the ECI since 1981.[66]

The conference committee did not specifically address the question of the appropriateness of a 7 percent increase in basic allowance for quarters, apparently accepting the reasoning of the House Committee on Armed Services as expounded in House Report No. 100-563, quoted above *in extenso*.

In recommending approval of the administration's proposal to increase military pay rates by 3.6 percent in fiscal year 1990, the House Armed Services Committee stated:

> Recognizing the importance of pay to the total military compensation package, especially in a tight recruiting environment, the committee remains committed to ensuring that military pay remains competitive with the private sector. Accordingly, the committee recommends approval of the administration request for a 3.6 percent increase in basic pay, basic allowance for quarters and basic allowance for subsistence and regrets that fiscal constraints preclude the payment of a higher pay raise.[67]

Expressing concern over the gap between military and private sector pays, the Senate Armed Services Committee nevertheless recommended approval of the 3.6 percent pay increase proposed by the Department of Defense:

> The committee recommends ... approval of the 3.6 percent pay raise requested by the Department of Defense for military personnel effective January 1, 1990.

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[66] House Report No. 100-753 (Committee of Conference), p. 403, accompanying H.R. 4264, and House Report No. 100-989 (Committee of Conference), pp. 404-405, accompanying H.R. 4481, 100th Congress, 2d Session (1988).

[67] House Report No. 101-121 (Committee on Armed Services), p. 274, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

> The committee notes that the requested pay raise for military personnel is less than the projected wage growth in the private sector, as measured by the Employment Cost Index (ECI), of 4.3 percent. Using this measure, the gap between military and private sector pay has grown from relative comparability in 1981 to 11 percent. This gap is of concern to the committee.[68]

In connection with its consideration of a military pay increase for fiscal year 1991, the Senate Armed Services Committee noted:

> The committee notes that the recommended pay raise [of 3.5 percent] is less than the expected wage growth in the private sector. However, the committee also notes that the administration recommended the 3.5 percent pay raise in its annual report on the adequacy of pay and allowances of the Armed Forces as "... adequate at this time to support our force objectives going into the early 1990s."[69]

In commenting on a 1991 pay increase, the House Armed Services Committee, on the other hand, stated:

> The committee remains committed to preserving a total military compensation package that will continue to attract and retain the high quality young men and women in the nation's armed forces today. The committee is determined to maintain a competitive level of compensation in the future and to protect the quality of life for service members and their families. Accordingly the committee recommends a 4.1 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence.... This is a 0.6 percent increase over the President's budget request of 3.5 percent.[70]

The House proposal to increase military pay by 4.1 percent beginning January 1, 1991, was adopted in Conference without discussion.[71]

In contrast to the extensive concern expressed over the level and adequacy of military pay raises for fiscal years 1987 through 1991, as well as the appropriate index to

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[68] Senate Report No. 101-82 (Committee on Armed Services), p. 176, accompanying S. 1352, 101st Congress, 1st Session (1989).

[69] Senate Report No. 101-384 (Committee on Armed Services), p. 171, accompanying S. 2884, 101st Congress, 2d Session (1990).

[70] House Report No. 101-665 (Committee on Armed Services), p. 286, accompanying H.R. 4739, 101st Congress, 2d Session (1990).

[71] House Report No. 101-923 (Committee of Conference), p. 611, accompanying H.R. 4739, 101st Congress, 2d Session (1990).

use in adjusting pay rates from year to year, some of the military pay raises for fiscal years 1992 through 1996-- were treated as more of a routine affair. Like the pay raises stretching back to fiscal year 1983, the authorization acts for fiscal years 1992 through 1996 all bypassed the Section 1009 adjustment mechanism,[72] although during that period only in 1985 and 1994 did the Congressionally mandated raises not match those that would have been called for by Section 1009.[73]

The National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §601(b), 105 Stat. 1290, 1372 (1991), provided for a 4.2 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1992; the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §601(b), 106 Stat. 2315, 2420 (1992), a 3.7 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1993; the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160,

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[72] The Section 1009 adjustment mechanism, 37 U.S.C. §1009, was used on an interim basis to provide a 1996 military pay raise, but the pay raise effected by the Section 1009 mechanism was subsequently rescinded. On December 28, 1995, President Clinton vetoed H.R. 1530, 104th Congress, 1st Session (1995), the National Defense Authorization Bill for Fiscal Year 1996, which incorporated a 2.4 percent increase in basic pay and basic allowance for subsistence and a 5.2 percent increase in basic allowance for quarters, while at the same time issuing Executive Order 12984, 61 FED. REG. 237 (January 3, 1996), as required by and under the authority of 37 U.S.C. §1009, to provide a 2.0 percent increase in military pay effective January 1, 1996. A substitute bill, S. 1124, 104th Congress, 1st Session (1995), was presented to the President on January 30, 1996, and approved by him on February 10, 1996, thereby becoming the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, 110 Stat. 186 (1996). In addition to providing a 2.4 percent increase in basic pay and basic allowance for subsistence, Section 601(b) of the Act, §601(b), *id*., 110 Stat. at 356, and a 5.2 percent increase in basic allowance for quarters, Section 601(c) of the Act, §601(c), *id*., 110 Stat. at 356, effective retroactively to January 1, 1996, Section 601(d) of the Act, §601(d), *id*., 110 Stat. at 356, as had H.R. 1530, Section 601(a) of the Act, *id*., §601(a), 110 Stat. at 356, specifically rescinded the pay increase effected by Executive Order 12984. (The President's reason for vetoing H.R. 1530 had nothing to do with the increases in basic pay and the basic allowances for quarters and subsistence incorporated in the bill. President's Message to the House of Representatives Returning Without Approval the National Defense Authorization Act for Fiscal Year 1996, 31 WEEKLY COMP. OF PRES. DOC. 2233 (December 28, 1995), and President's Letter to the Speaker of the House of Representatives on Vetoing the National Defense Authorization Act, 31 WEEKLY COMP. PRES. DOC. 2235 (December 28, 1995); see 142 CONG. REC. H12 (daily ed. January 3, 1996).)

The increases in basic pay and the basic allowances for quarters and subsistence authorized by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §601(b) and (c), 110 Stat. 186, 356 (1996), were implemented by Executive Order 12990 of February 29, 1996, 61 FED. REG. 8467 (March 5, 1996). See in particular the schedule attached to Executive Order 12990 titled "Pay and Allowances of the Uniformed Services (Effective January 1, 1996)", *id*., 61 FED. REG. at 8468-8470 (schedule reprinted at 37 U.S.C. §1009 note).

[73] Robert L. Goldich, "Military Pay and Benefits: Key Questions and Answers," *CRS Issue Brief for Congress*, 27 December 2001, 6.

§601(b), 107 Stat. 1547, 1677 (1993), a 2.2 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1994; the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §601(b), 108 Stat. 2663, 2779 (1994), a 2.6 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1995; and the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §601(b) and (c), 110 Stat. 186, 356 (1996), a 2.4 percent increase in basic pay and basic allowance for subsistence and a 5.2 percent increase in basic allowance for quarters, effective January 1, 1996.

Except for the pay raises for military personnel for fiscal years 1994 and 1996, none of the deliberations on allowance adjustments in these years explicitly dealt with either the level or adequacy of military pay in terms of attracting and retaining appropriate numbers of military personnel or the skills necessary for a modern military force. The question of the appropriate index to use in adjusting military pay rates from year to year also did not arise.[74]

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[74] With respect to the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §601(b), 105 Stat. 1290, 1372 (1991), and the pay raise authorized for calendar year 1992, see House Report No. 102-60 (Committee on Armed Services), p. 247, accompanying H.R. 2100, and Senate Report No. 102-113 (Committee on Armed Services), p. 221, accompanying S. 1507, cf. House Report No. 102-311 (Committee of Conference), p. 548, accompanying H.R. 2100, 102d Congress, 1st Session (1991); with respect to the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §601(b), 106 Stat. 2315, 2420 (1992), and the pay raise authorized for calendar year 1993, see House Report No. 102-527 (Committee on Armed Services), p.243, accompanying H.R. 5006, and Senate Report No. 102-352 (Committee on Armed Services), p. 208, accompanying S. 3114, *cf*. House Report No. 102-966 (Committee of Conference), p. 712, accompanying H.R. 5006, 102d Congress, 2d Session (1992); with respect to the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §601(b), 107 Stat. 1547, 1677 (1993), and the pay raise authorized for calendar year 1994, see House Report No. 103-200 (Committee on Armed Services), p. 293, accompanying H.R. 2401, Senate Report No. 103-112 (Committee on Armed Services), pp. 151-152, accompanying S. 1298, and House Report No. 103-357 (Committee of Conference), p. 682, accompanying H.R. 2401, 103d Congress, 1st Session (1993); with respect to the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §601(b), 108 Stat. 2663, 2779 (1994), and the pay raise authorized for calendar year 1995, see House Report No. 103-499 (Committee on Armed Services), p. 601, accompanying H.R. 4301, Senate Report No. 103-282 (Committee on Armed Services), p. 193, accompanying S. 2182, and House Report No. 103-701 (Committee of Conference), p. 711, accompanying S. 2182, 103d Congress, 2d Session (1994); and with respect to the National Defense Act for Fiscal Year 1996, Public Law 104-106, §601(b) and (c), 110 Stat. 186, 356 (1996), and the pay raise authorized for calendar year 1996, see House Report No. 104-131 (Committee on National Security), p. 229, accompanying H.R. 1530, Senate Report No. 104-112, p. 253, accompanying S. 1026, and House Report No. 104-406 (Committee of Conference), p. 813, accompanying H.R. 1530, 104th Congress, 1st Session (1995), as well as House Report No. 104-450 (Committee of Conference), pp. 803-804, accompanying S. 1124, 104th Congress, 2d Session (1996).

In providing these increases in military pay for calendar years 1992 through 1996, the relevant Authorization Acts did not in terms provide authority for the President to redistribute, or reallocate, the

For fiscal year 1994, the Clinton Administration had proposed a freeze on military pay, but neither the Senate nor the House chose to go along with the administration. The Senate in particular felt it would be inequitable to freeze the pay of military personnel when federal civilian employees would almost certainly get a pay raise and the "comparability gap" between private sector and military pay would increase. As the Senate noted:

> The committee recommends a provision ... that would authorize a 2.2 percent pay raise for military personnel on January 1, 1994. The administration proposed a pay freeze for federal civilian employees, including military personnel, in its budget request. Under current law, the normal pay raise would have been a 2.2 percent increase on January 1, 1994 [under the provisions of 37 U.S.C. §1009]. In testimony before the committee, Defense Department witnesses indicated that military personnel overwhelmingly oppose the pay freeze, but that they could justify the pay freeze as long as military personnel are not singled out to bear a disparate sacrifice.
>
> Although federal civilians would forego the normal January 1 pay raise just as military personnel would under the administration's pay freeze proposal, current law provides for a second component to federal civilian pay, a locality adjustment, to address pay disparities for different areas which takes effect on January 1, 1994. Locality payments are mandated by law for areas where the difference between federal and non-federal pay exceeds five percent. According to the Office of Management and Budget, because federal civilian pay lags private sector pay by over 25 percent in the aggregate, practically all civilian white collar workers would receive a locality pay increase.
>
> The administration has requested in its budget that the locality pay adjustment be delayed for one year to January 1, 1995. This would require legislative action. At the time of this report, the House [Budget] Reconciliation bill contains a provision that would delay the implementation of federal civilian locality pay by six months to July 1, 1994. The Senate Reconciliation bill contains no provision on federal civilian locality pay. Therefore, the committee assumes that civilian locality pay will be implemented on January 1, 1994 as provided for under current law or by July 1, 1994 as provided for in the House bill.
>
> The committee also notes that under the pay freeze recommended by the administration, the comparability gap between private sector pay as measured by the employment cost index and military pay would widen to 14.5 percent. This would be the largest gap since the Congress equalized private sector and military

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increase pursuant to the supplementary adjustment mechanisms incorporated in 37 U.S.C. §1009(c)(1) and (d)(1).

pay by authorizing a 14.3 percent military pay raise for October 1, 1981 [in the Uniformed Services Pay Act of 1981, Public Law 97-60, 95 Stat. 989 (1981)].[75]

The committee further notes that military personnel are operating at a higher tempo as our military downsizes. While the state of personnel readiness is high, there are signs of strain, such as the decline in the propensity of youth to serve in the military, and persistent shortages in certain skills that are also in demand in the private sector.

In view of the foregoing, the committee believes that it would be fair and prudent to provide a pay raise for military personnel.[76]

In recommending its own version of a pay raise for military personnel for fiscal year 1994, the House Committee on Armed Services noted:

The budget proposed a freeze on military pay during fiscal year 1994. The committee has identified offsets elsewhere within the defense budget request for fiscal year 1994 sufficient to fund the full 2.2 percent pay raise authorized under current law.

The committee, therefore, recommends a 2.2 percent increase in basic pay, basic allowance for quarters and basic allowance for subsistence, for military personnel.[77]

For fiscal year 1995, the Clinton Administration proposed a 1.6 percent military pay raise--one percentage point less than the 2.6 percent pay raise that would have been automatically authorized under the pay adjustment mechanism of 37 U.S.C. §1009. Noting that it had "identified offsets elsewhere within the defense budget request" made by the Clinton Administration, the House Armed Services Committee recommended the full 2.6 percent increase,[78] and the Senate Armed Services Committee agreed.[79] President Clinton approved the 2.6 percent military pay raise incorporated in the National Defense

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[75] See text following footnote 31 of this chapter, above.

[76] Senate Report No. 103-112 (Committee on Armed Services), pp. 151-152, accompanying S. 1298, 103d Congress, 1st Session (1993).

[77] House Report No. 103-200 (Committee on Armed Services), p. 293, accompanying H.R. 2401, 103d Congress, 1st Session (1993).

[78] House Report No. 103-499 (Committee on Armed Services), p. 249, accompanying H.R. 4301, 103d Congress, 2d Session (1994).

[79] Senate Report No. 103-282 (Committee on Armed Services), p. 193, and House Report No. 103-701 (Committee of Conference), p. 711, accompanying S. 2182, 103d Congress, 2d Session (1994).

Authorization Act for Fiscal Year 1995, Public Law 103-337, §601(b), 108 Stat. 2663, 2779 (1994), on October 5, 1994.

For fiscal year 1996, Congress, although evidencing some concern about the level of the military pay raise urged by the Clinton Administration, approved the Administration's proposed 2.4 percent increase in basic pay rates. Referring to the "cumulative gap" between private sector and military pay levels, the House Committee on National Security noted:

> This section [Section 601 of the National Defense Authorization Bill for Fiscal Year 1996, H.R. 1530, 104th Congress, 1st Session (1995)] would provide a 2.4 percent military pay raise as proposed in the President's budget. The Committee has reservations about this level of raise because it would institutionally sanction a one-half of one percent lower level of increase than is expected within the private sector. The committee expects the ongoing Eighth Quadrennial Review of Military Compensation (QRMC) to evaluate the importance of the cumulative gap that exists between military and private sector ay levels and to reassess the process for determining the level of pay increases. The committee looks forward to receiving the recommendations of the QRMC for changes that will protect readiness and the ability of the armed services to recruit and retain quality personnel.[80]

The President approved the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, 110 Stat. 186 (1996), on February 12, 1996.[81] The pay raise incorporated in the Act became effective retroactively to January 1, 1996.[82] The National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201, 110 Stat. 2538) provided for 3.0 percent increases in basic pay and subsistence and an increase of 4.6 percent in the BAQ. Thus, the year 1995 was the last year in which housing and

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[80] House Report No. 104-131 (Committee on National Security), p. 229, accompanying H.R. 1530, 104th Congress, 1st Session (1995). *cf.* Senate Report No. 104-112 (Committee on Armed Services), p. 253, accompanying S. 1026, 104th Congress, 1st Session (1995); House Report No. 104-406 (Committee of Conference), p. 813, accompanying H.R. 1530, 104th Congress, 1st Session (1995); and House Report No. 104-450 (Committee of Conference), pp. 803-804, accompanying S. 1124, 104th Congress, 2d Session (1996).

[81] As ultimately enacted, Section 601 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §601, 110 Stat. 186, 356 (1996), also incorporated a 2.4 percent increase in basic allowance for subsistence, §601(b), 110 Stat. at 356, and a 5.2 percent increase in basic allowance for quarters, §601(c), 110 Stat. at 356. For the reasons underlying the differentially greater increase in BAQ, see Chapter II.B.2 hereof, "Housing Allowances," below.

[82] See footnote 72 to this chapter, above.

subsistence increase rates both matched the increase rate of basic pay, and 1997 was the last year in which the increase rate in subsistence allowance matched the increase rate in basic pay.

In the report it issued in 1997, the Eighth Quadrennial Review of Military Compensation reviewed and modified the recommendations made by the Seventh QRMC for reform of the military pay tables, which had undergone only minor changes since 1949. See Appendix III, Highlights of Major Structural Studies of Military Compensation. In ensuing years, administrations and Congress showed greater awareness of disparities between military and civilian pay rates, of the need to reward particularly valuable segments of the military profession, and of inequities within the system of military basic pay. This increased awareness was stimulated by rapid growth in the civilian economy, which provided more alternatives to military service; post-Cold War manpower contraction, which complicated military personnel management; and a general public perception that post-Cold War military service was no longer as vital or as economically attractive as it had been in previous decades.[83] Recognizing that these factors were at work, in 1999 the House Committee on Armed Services noted that the restructuring of military pay tables would "reduce pay compression between grades, eliminate inconsistencies in the pay table, and increase incentives for promotion."[84]

This awareness brought about the recommendation of greater annual percentage increases in military pay than had been the practice in the mid-1990s. Section 601 of the National Defense Authorization Bill for 1997 ratified the Clinton Administration's proposed basic pay increase of 3 percent, which was .7 percent higher than the Employment Cost Index (ECI). Increases passed by Congress in the Defense Authorization bills for FY 1998, 1999, and 2000 were 2.8 percent, 3.6 percent, and 4.8 percent respectively. The 1998 figure matched the ECI guideline, but the 1999 increase was .5 percent above the guideline and the 2000 increase exceeded the guideline (and the level that the Clinton Administration requested) by .4 percent.

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[83] Robert L. Goldich, "Military Pay and Benefits: Key Questions and Answers," *CRS Issue Brief*, 3 October 2002, 2.

[84] House Report 106-162 (Committee on Armed Forces), p. 364 (accompanying H.R. 106—65), 106th Congress, 1st Session.

Beginning in 2000, legislative changes began responding to the pay inequity issue. The National Defense Authorization Act for 2000 put forward a new formula that replaced the Section 1009 guideline for the years 2001-2006. Initially, the House and Senate disagreed on the terms of the new formula. The conference resolution accepted the Senate version, which set basic pay increases over the following five years at .5 percent above, rather than .5 percent below, the ECI, effectively adding 1 percent to each year's pay increase compared with the Section 1009 guideline. (The House version would have mandated an increase equal to the ECI percentage.) The new formula went into effect October 1, 2000. The purpose of this stipulation was to ensure that the gap between military pay and the pay of civilian government employees continued to close during the five-year period. Accordingly, the the new National Defense Appropriation Act for FY2001, Public Law 106-398, set the pay increase for FY 2001 at 3.7 percent, compared with the 2.7 percent increase that would have been mandated by Section 1009.

In 2000 and 2001, some personnel also received midyear pay increases. The reform of the military pay tables, which took effect on July 1 2000 in accordance with Section 601 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, §601, 113 Stat. 644, introduced the concept of pay increases targeted to members at certain pay grades and with certain lengths of service. Targeting is to make pay increases more responsive to advancement in grade and less responsive to years in service. This policy in turn aims at encouraging members who show particular promise to remain in the military once they reach mid-career. The initial application of targeting in mid-2000 raised the basic pay of mid-career officers and enlisted members and resulted in a midyear increase that averaged 1.4 percent. Additional restructuring of the pay tables, prescribed by the FY2001 national defense authorization law, resulted in a second round of midyear targeting-based increases. Based solely on targeted increases for grades E-5 through E-7, basic pay increased by an average of .4 percent beginning July 1, 2001.

The national defense authorization legislation for 2002, 2003, and 2004 included full tables of adjusted pay rates by rank, targeting.mid-level officers and mid- to- senior-level noncommissioned officers for raises exceeding the average. Beginning in 2002, the targeting procedure made the overall basic pay increase percentage for a given year an

average figure rather than one applying across-the-board to every grade. Including increases for targeted grades, the average increases for 2002 and 2003 were, respectively, 6.9 and 4.7 percent. The National Defense Authorization Bill for 2002, Public Law 107-107, 115 Stat. 1128, prescribed raises between 5 and 9.5 percent for the targeted pay levels. That legislation awarded the highest raises to mid-career officers at grade O-5 with 10 to 12 years of service and enlisted personnel in grades E-5 through E-9 with service time ranging from 6 to 26 years.

The maximum increases in the 2004 legislation were 6.25 percent, targeting mid-level officers, some warrant officers, and mid-level and senior enlisted personnel. At the other end of the scale, some grades received only a 2 percent increase for 2004. The National Defense Authorization Act for 2004, Public Law 108-136, 117 Stat. 1498, set out guidelines for basic pay increases in the years after 2006, in which average annual increases would match the ECI.

However, the goal of the plan that Congress set out in 2000 was to achieve parity between military and civilian pay by 2006. The House Report on the National Defense Appropriations Act of 2003 put this goal, and possible future Congressional policy on military pay, into perspective:

> The [House Armed Services] committee recognizes that, depending on the pay raises planned for the defense budgets through fiscal year 2006, the pay gap will likely not be eliminated during fiscal year 2006. The committee is inclined to extend beyond fiscal year 2006 the period of time that military pay raises are required to exceed the private sector pay raise rates. While such an action would signal military forces and their leaders that the committee is committed to restoring and maintaining parity between military and private sector pay raises, it may also prematurely set a goal that will ultimately be unnecessary.[85]

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The present chapter, dealing with basic pay, has focused on how military personnel have been paid over the years and the process by which adjustments to basic pay have been made, not on how much military personnel have been paid. Innumerable adjustments have of course been made to military pay rates during the past 200-plus

[85] House Report No. 107-436 (House Armed Services Committee), accompanying HR 2586, 107th Congress, 2d Session. (2003).

years. The following pages set out the schedule of basic pay rates by pay grade and longevity step for 2004, as they have changed from 1945 to 2003, and as pay increase rates compare between military and civilian service.

**Cost**: For the cost of basic pay from 1972 to 2004, see Table II-1 of *Military Compensation Statistics Tables*, volume II of this edition.

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-10

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jun-58 | 1200.00 | 1250.00 | 1250.00 | 1250.00 | 1250.00 | 1300.00 | 1300.00 | 1400.00 | 1400.00 | 1500.00 | 1500.00 | 1600.00 | 1600.00 | 1600.00 | 1700.00 | 1700.00 |
| Oct-63 | 1200.00 | 1315.00 | 1315.00 | 1315.00 | 1315.00 | 1365.00 | 1365.00 | 1470.00 | 1470.00 | 1575.00 | 1575.00 | 1680.00 | 1680.00 | 1680.00 | 1785.00 | 1785.00 |
| Sep-64 | 1302.00 | 1347.90 | 1347.20 | 1347.90 | 1347.90 | 1399.20 | 1399.20 | 1506.90 | 1506.90 | 1614.30 | 1614.30 | 1722.00 | 1722.00 | 1722.00 | 1829.70 | 1829.70 |
| Sep-65 | 1380.00 | 1428.90 | 1428.90 | 1428.90 | 1428.90 | 1483.20 | 1483.20 | 1597.20 | 1597.20 | 1711.20 | 1711.20 | 1825.20 | 1825.20 | 1825.20 | 1939.50 | 1939.50 |
| Jul-66 | 1424.10 | 1474.50 | 1474.50 | 1474.50 | 1474.50 | 1530.60 | 1530.60 | 1648.20 | 1648.20 | 1766.10 | 1766.10 | 1883.70 | 1883.70 | 1883.70 | 2001.60 | 2001.60 |
| Oct-67 | 1503.90 | 1557.00 | 1557.00 | 1557.00 | 1557.00 | 1616.40 | 1616.40 | 1740.60 | 1740.60 | 1865.10 | 1865.10 | 1989.30 | 1989.30 | 1989.30 | 2113.80 | 2113.80 |
| Jul-68 | 1607.70 | 1664.40 | 1664.40 | 1664.40 | 1664.40 | 1728.00 | 1728.00 | 1860.60 | 1860.60 | 1993.80 | 1993.80 | 2126.70 | 2126.70 | 2126.70 | 2259.60 | 2259.60 |
| Jul-69 | 1810.20 | 1874.10 | 1874.10 | 1874.10 | 1874.10 | 1945.80 | 1945.80 | 2094.90 | 2094.90 | 2244.90 | 2244.90 | 2394.60 | 2394.60 | 2394.60 | 2544.30 | 2544.30 |
| Jan-70 | 1956.90 | 2025.90 | 2025.90 | 2025.90 | 2025.90 | 2103.30 | 2103.30 | 2264.70 | 2264.70 | 2426.70 | 2426.70 | 2588.70 | 2588.70 | 2588.70 | 2750.40 | 2750.40 |
| Jan-71 | 2111.40 | 2185.80 | 2185.80 | 2185.80 | 2185.80 | 2269.50 | 2269.50 | 2443.50 | 2443.50 | 2618.40 | 2618.40 | 2793.30 | 2793.30 | 2793.30 | 2967.60 | 2967.60 |
| Nov-71 | 2111.40 | 2185.80 | 2185.80 | 2185.80 | 2185.80 | 2269.50 | 2269.50 | 2443.50 | 2443.50 | 2618.40 | 2618.40 | 2793.30 | 2793.30 | 2793.30 | 2967.60 | 2967.60 |
| Jan-72 | 2263.50 | 2343.30 | 2343.30 | 2343.30 | 2343.30 | 2433.00 | 2433.00 | 2619.60 | 2619.60 | 2807.10 | 2807.10 | 2994.60 | 2994.60 | 2994.60 | 3000.00 | 3000.00 |
| Oct-72 | 2415.00 | 2500.20 | 2500.20 | 2500.20 | 2500.20 | 2595.90 | 2595.90 | 2794.80 | 2794.80 | 2994.90 | 2994.90 | 3000.00 | 3000.00 | 3000.00 | 3000.00 | 3000.00 |
| Oct-73 | 2564.10 | 2654.40 | 2654.40 | 2654.40 | 2654.40 | 2756.10 | 2756.10 | 2967.30 | 2967.30 | 3000.00 | 3000.00 | 3000.00 | 3000.00 | 3000.00 | 3000.00 | 3000.00 |
| Oct-74 | 2705.70 | 2800.80 | 2800.80 | 2800.80 | 2800.80 | 2908.20 | 2908.20 | 3000.00 | 3000.00 | 3000.00 | 3000.00 | 3000.00 | 3000.00 | 3000.00 | 3000.00 | 3000.00 |
| Oct-75 | 2841.00 | 2940.90 | 2940.90 | 2940.90 | 2940.90 | 3053.70 | 3053.70 | 3150.00 | 3150.00 | 3150.00 | 3150.00 | 3150.00 | 3150.00 | 3150.00 | 3150.00 | 3150.00 |
| Oct-76 | 2943.90 | 3047.40 | 3047.40 | 3047.40 | 3047.40 | 3164.10 | 3164.10 | 3300.00 | 3300.00 | 3300.00 | 3300.00 | 3300.00 | 3300.00 | 3300.00 | 3300.00 | 3300.00 |
| Oct-77 | 3126.30 | 3236.40 | 3236.40 | 3236.40 | 3236.40 | 3360.30 | 3360.30 | 3618.00 | 3618.00 | 3876.60 | 3876.60 | 3958.20 | 3958.20 | 3958.20 | 3958.20 | 3958.20 |
| Oct-78 | 3298.20 | 3414.30 | 3414.30 | 3414.30 | 3414.30 | 3545.10 | 3545.10 | 3816.90 | 3816.90 | 3958.20 | 3958.20 | 3958.20 | 3958.20 | 3958.20 | 3958.20 | 3958.20 |
| Oct-79 | 3529.80 | 3654.00 | 3654.00 | 3654.00 | 3654.00 | 3794.10 | 3794.10 | 4084.80 | 4084.80 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 |
| Oct-80 | 3942.90 | 4081.50 | 4081.50 | 4081.50 | 4081.50 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 |
| Oct-81 | 4506.60 | 4665.30 | 4665.30 | 4665.30 | 4665.30 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 |
| Oct-82 | 4686.90 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 |
| Jan-84 | 4874.40 | 5046.00 | 5046.00 | 5046.00 | 5046.00 | 5239.50 | 5239.50 | 5533.20 | 5533.20 | 5533.20 | 5533.20 | 5533.20 | 5533.20 | 5533.20 | 5533.20 | 5533.20 |
| Jan-85 | 5069.40 | 5247.90 | 5247.90 | 5247.90 | 5247.90 | 5449.20 | 5449.20 | 5866.20 | 5866.20 | 6285.90 | 6285.90 | 6706.50 | 6706.50 | 6706.50 | 7124.70 | 7124.70 |
| Oct-85 | 5221.50 | 5405.40 | 5405.40 | 5405.40 | 5405.40 | 5612.70 | 5612.70 | 6042.30 | 6042.30 | 6474.60 | 6474.60 | 6907.80 | 6907.80 | 6907.80 | 7338.30 | 7338.30 |
| Jan-87 | 5378.10 | 5567.70 | 5567.70 | 5567.70 | 5567.70 | 5781.00 | 5781.00 | 6223.50 | 6223.50 | 6668.70 | 6668.70 | 7115.10 | 7115.10 | 7115.10 | 7558.50 | 7558.50 |
| Jan-88 | 5485.80 | 5679.00 | 5679.00 | 5679.00 | 5679.00 | 5896.50 | 5896.50 | 6223.50 | 6223.50 | 6668.70 | 6668.70 | 7115.10 | 7115.10 | 7115.10 | 7558.50 | 7558.50 |
| Jan-89 | 5710.80 | 5911.80 | 5911.80 | 5911.80 | 5911.80 | 6138.30 | 6138.30 | 6478.80 | 6478.80 | 6875.10 | 6875.10 | 7115.10 | 7115.10 | 7115.10 | 7558.50 | 7558.50 |
| Jan-90 | 5916.30 | 6124.50 | 6124.50 | 6124.50 | 6124.50 | 6359.40 | 6359.40 | 6711.90 | 6711.90 | 7191.90 | 7191.90 | 7673.40 | 7673.40 | 7673.40 | 8151.60 | 8151.60 |
| Jan-91 | 6159.00 | 6375.60 | 6375.60 | 6375.60 | 6375.60 | 6620.10 | 6620.10 | 6987.00 | 6987.00 | 7486.80 | 7486.80 | 7988.10 | 7988.10 | 7988.10 | 8485.80 | 8485.80 |
| Jan-92 | 6417.60 | 6643.50 | 6643.50 | 6643.50 | 6643.50 | 6898.20 | 6898.20 | 7280.40 | 7280.40 | 7801.20 | 7801.20 | 8323.50 | 8323.50 | 8323.50 | 8733.30 | 8733.30 |
| Jan-93 | 6655.20 | 6889.20 | 6889.20 | 6889.20 | 6889.20 | 7153.50 | 7153.50 | 7549.80 | 7549.80 | 8089.80 | 8089.80 | 8631.60 | 8631.60 | 8631.60 | 9016.80 | 9016.80 |
| Jan-94 | 6801.60 | 7040.70 | 7040.70 | 7040.70 | 7040.70 | 7311.00 | 7311.00 | 7716.00 | 7716.00 | 8267.70 | 8267.70 | 8821.50 | 8821.50 | 8821.50 | 9016.80 | 9016.80 |
| Jan-95 | 6978.30 | 7223.70 | 7223.70 | 7223.70 | 7223.70 | 7501.20 | 7501.20 | 7916.70 | 7916.70 | 8482.80 | 8482.80 | 9016.80 | 9016.80 | 9016.80 | 9016.80 | 9016.80 |
| Jan-96 | 7145.70 | 7397.10 | 7397.10 | 7397.10 | 7397.10 | 7681.20 | 7681.20 | 8106.60 | 8106.60 | 8686.50 | 8686.50 | 9016.80 | 9016.80 | 9016.80 | 9016.80 | 9016.80 |
| Jan-97 | 7360.20 | 7619.10 | 7619.10 | 7619.10 | 7619.10 | 7911.60 | 7911.60 | 8349.90 | 8349.90 | 8947.20 | 8947.20 | 9016.80 | 9016.80 | 9016.80 | 9016.80 | 9016.80 |
| Jan-98 | 7566.30 | 7832.40 | 7832.40 | 7832.40 | 7832.40 | 8133.00 | 8133.00 | 8583.60 | 8583.60 | 9197.70 | 9197.70 | 9225.00 | 9225.00 | 9225.00 | 9225.00 | 9225.00 |
| Jan-99 | 7838.70 | 8114.40 | 8114.40 | 8114.40 | 8114.40 | 8425.80 | 8425.80 | 8892.60 | 8892.60 | 9225.00 | 9225.00 | 9225.00 | 9225.00 | 9225.00 | 9225.00 | 9225.00 |
| Jan-00 | 8214.90 | 8503.80 | 8503.80 | 8503.80 | 8503.80 | 8830.20 | 8830.20 | 9319.50 | 9319.50 | 9986.40 | 9986.40 | 10655.10 | 10655.10 | 10655.10 | 10850.10 | 10850.10 |
| Jul-00 | | | | | | | | | | | | 10655.10 | 10707.60 | 10850.10 | 10850.10 | 10850.10 |
| Jan-01 | | | | | | | | | | | | 11049.30 | 11103.90 | 11141.70 | 11141.70 | 11141.70 |
| Jan-02 | | | | | | | | | | | | 11516.70 | 11516.70 | 11516.70 | 11516.70 | 11516.70 |
| Jan-03 | | | | | | | | | | | | 11874.90 | 11874.90 | 11874.90 | 11874.90 | 11874.90 |
| Jan-04 | | | | | | | | | | | | 12133.20 | 12133.20 | 12133.20 | 12133.20 | 12133.20 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-9

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jun-58 | 1063.30 | 1100.00 | 1122.00 | 1122.00 | 1122.00 | 1150.00 | 1150.00 | 1200.00 | 1200.00 | 1300.00 | 1300.00 | 1400.00 | 1400.00 | 1400.00 | 1500.00 | 1500.00 |
| Oct-63 | 1063.30 | 1155.00 | 1180.00 | 1180.00 | 1180.00 | 1210.00 | 1210.00 | 1260.00 | 1260.00 | 1365.00 | 1365.00 | 1470.00 | 1470.00 | 1470.00 | 1575.00 | 1575.00 |
| Sep-64 | 1153.80 | 1183.80 | 1209.60 | 1209.60 | 1209.60 | 1240.20 | 1240.20 | 1291.50 | 1291.50 | 1399.20 | 1399.20 | 1506.90 | 1506.90 | 1506.90 | 1614.30 | 1614.30 |
| Sep-65 | 1223.10 | 1254.90 | 1282.20 | 1282.20 | 1282.20 | 1314.60 | 1314.60 | 1368.90 | 1368.90 | 1483.20 | 1483.20 | 1597.20 | 1597.20 | 1597.20 | 1711.20 | 1711.20 |
| Jul-66 | 1262.10 | 1295.10 | 1323.30 | 1323.30 | 1323.30 | 1356.60 | 1356.60 | 1412.70 | 1412.70 | 1530.60 | 1530.60 | 1648.20 | 1648.20 | 1648.20 | 1766.10 | 1766.10 |
| Oct-67 | 1332.90 | 1367.70 | 1397.40 | 1397.40 | 1397.40 | 1432.50 | 1432.50 | 1491.90 | 1491.90 | 1616.40 | 1616.40 | 1740.60 | 1740.60 | 1740.60 | 1865.10 | 1856.10 |
| Jul-68 | 1425.00 | 1462.20 | 1493.70 | 1493.70 | 1493.70 | 1531.20 | 1531.20 | 1594.80 | 1594.80 | 1728.00 | 1728.00 | 1860.60 | 1860.60 | 1860.60 | 1933.80 | 1933.80 |
| Jul-69 | 1604.40 | 1646.40 | 1681.80 | 1681.80 | 1681.80 | 1724.10 | 1724.10 | 1795.80 | 1795.80 | 1945.80 | 1945.80 | 2094.90 | 2094.90 | 2094.90 | 2244.90 | 2244.90 |
| Jan-70 | 1734.30 | 1779.90 | 1818.00 | 1818.00 | 1863.90 | 1863.90 | 1941.30 | 1941.30 | 2103.30 | 2103.30 | 2103.30 | 2264.70 | 2264.70 | 2264.70 | 2426.70 | 2426.70 |
| Jan-71 | 1871.40 | 1920.60 | 1961.70 | 1961.70 | 1961.70 | 2011.20 | 2011.20 | 2094.60 | 2094.60 | 2269.50 | 2269.50 | 2443.50 | 2443.50 | 2443.50 | 2618.40 | 2618.40 |
| Nov-71 | 1871.40 | 1920.60 | 1961.70 | 1961.70 | 1961.70 | 2011.20 | 2011.20 | 2094.60 | 2094.60 | 2269.50 | 2269.50 | 2443.50 | 2443.50 | 2443.50 | 2618.40 | 2618.40 |
| Jan-72 | 2006.40 | 2059.20 | 2103.00 | 2103.00 | 2103.00 | 2156.10 | 2156.10 | 2245.50 | 2245.50 | 2433.00 | 2433.00 | 2619.60 | 2619.60 | 2619.60 | 2807.10 | 2807.10 |
| Oct-72 | 2140.50 | 2196.90 | 2243.70 | 2243.70 | 2243.70 | 2300.40 | 2300.40 | 2395.80 | 2395.80 | 2595.90 | 2595.90 | 2794.80 | 2794.80 | 2794.80 | 2994.90 | 2994.90 |
| Oct-73 | 2272.50 | 2332.50 | 2382.00 | 2382.00 | 2382.00 | 2442.30 | 2442.30 | 2543.70 | 2543.70 | 2756.10 | 2756.10 | 2967.30 | 2967.30 | 2967.30 | 3000.00 | 3000.00 |
| Oct-74 | 2397.90 | 2461.20 | 2513.40 | 2513.40 | 2513.40 | 2577.00 | 2577.00 | 2684.10 | 2684.10 | 2908.20 | 2908.20 | 3000.00 | 3000.00 | 3000.00 | 3000.00 | 3000.00 |
| Oct-75 | 2517.90 | 2584.20 | 2639.10 | 2639.10 | 2639.10 | 2706.00 | 2706.00 | 2818.20 | 2818.20 | 3053.70 | 3053.70 | 3150.00 | 3150.00 | 3150.00 | 3150.00 | 3150.00 |
| Oct-76 | 2609.10 | 2677.80 | 2734.50 | 2734.50 | 2734.50 | 3804.10 | 2804.10 | 2920.20 | 2920.20 | 3164.10 | 3164.10 | 3300.00 | 3300.00 | 3300.00 | 3300.00 | 3300.00 |
| Oct-77 | 2770.80 | 2843.70 | 2904.00 | 2904.00 | 2904.00 | 2978.10 | 2978.10 | 3101.40 | 3101.40 | 3360.30 | 3360.30 | 3618.00 | 3618.00 | 3618.00 | 3876.60 | 3876.60 |
| Oct-78 | 2923.20 | 3000.00 | 3063.60 | 3063.60 | 3063.60 | 3141.90 | 3141.90 | 3272.10 | 3272.10 | 3545.10 | 3545.10 | 3816.90 | 3816.90 | 3816.90 | 3958.20 | 3958.20 |
| Oct-79 | 3128.40 | 3210.60 | 3278.70 | 3278.70 | 3278.70 | 3362.40 | 3362.40 | 3501.90 | 3501.90 | 3794.10 | 3794.10 | 4084.80 | 4084.80 | 4084.80 | 4176.00 | 4176.00 |
| Oct-80 | 3494.40 | 3586.20 | 3662.40 | 3662.40 | 3662.40 | 3755.70 | 3755.70 | 3911.70 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 |
| Oct-81 | 3994.20 | 4098.90 | 4186.20 | 4186.20 | 4186.20 | 4292.70 | 4292.70 | 4471.20 | 4471.20 | 4844.10 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 |
| Oct-82 | 4154.10 | 4263.00 | 4353.60 | 4353.60 | 4353.60 | 4464.30 | 4464.30 | 4650.00 | 4650.00 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 |
| Jan-84 | 5320.30 | 4433.40 | 4527.60 | 4527.60 | 4527.60 | 4642.80 | 4642.80 | 4836.00 | 4836.00 | 5239.50 | 5239.50 | 5533.20 | 5533.20 | 5533.20 | 5533.20 | 5533.20 |
| Jan-85 | 4493.10 | 4610.70 | 4708.80 | 4708.80 | 4708.80 | 4828.50 | 4828.50 | 5029.50 | 5029.50 | 5449.20 | 5449.20 | 5866.20 | 5866.20 | 5866.20 | 6285.90 | 6285.90 |
| Oct-85 | 4627.80 | 4749.00 | 4850.10 | 4850.10 | 4850.10 | 4973.40 | 4973.40 | 5180.40 | 5180.40 | 5612.70 | 5612.70 | 6042.30 | 6042.30 | 6042.30 | 6474.60 | 6474.60 |
| Jan-87 | 4766.70 | 4891.50 | 4995.60 | 4995.60 | 4995.60 | 5122.50 | 5122.50 | 5335.80 | 5335.80 | 5781.00 | 5781.00 | 6223.50 | 6223.50 | 6223.50 | 6668.70 | 6668.70 |
| Jan-88 | 4862.10 | 4989.30 | 5095.50 | 5095.50 | 5095.50 | 5225.10 | 5225.10 | 5442.60 | 5442.60 | 5896.50 | 5896.50 | 6223.50 | 6223.50 | 6223.50 | 6668.70 | 6668.70 |
| Jan-89 | 5061.30 | 5193.90 | 5304.30 | 5304.30 | 5304.30 | 5439.30 | 5439.30 | 5665.80 | 5665.80 | 6138.30 | 6138.30 | 6478.80 | 6478.80 | 6478.80 | 6478.80 | 6875.10 |
| Jan-90 | 5243.40 | 5380.80 | 5495.40 | 5495.40 | 5495.40 | 5635.20 | 5635.20 | 5869.80 | 5869.80 | 6359.40 | 6359.40 | 6711.90 | 6711.90 | 6711.90 | 7191.90 | 7191.90 |
| Jan-91 | 5485.50 | 5601.30 | 5720.70 | 5720.70 | 5720.70 | 5866.20 | 5866.20 | 6110.40 | 6110.40 | 6620.10 | 6620.10 | 6987.00 | 6987.00 | 6987.00 | 7486.80 | 7486.80 |
| Jan-92 | 5687.70 | 5836.50 | 5961.00 | 5961.00 | 5961.00 | 6112.50 | 6112.50 | 6366.90 | 6366.90 | 6898.20 | 6898.20 | 7280.40 | 7280.40 | 7280.40 | 7801.20 | 7801.20 |
| Jan-93 | 5898.00 | 6052.50 | 6181.50 | 6181.50 | 6181.50 | 6338.70 | 6338.70 | 6602.40 | 6602.40 | 7153.50 | 7153.50 | 7549.80 | 7549.80 | 7549.80 | 8089.80 | 8089.80 |
| Jan-94 | 6027.90 | 6185.70 | 6317.40 | 6317.40 | 6317.40 | 6478.20 | 6478.20 | 8747.60 | 6747.60 | 7311.00 | 7311.00 | 7716.00 | 7716.00 | 7716.00 | 7716.00 | 8267.70 |
| Jan-95 | 6184.50 | 6346.50 | 6481.80 | 6481.80 | 6481.80 | 6646.50 | 6646.50 | 6923.10 | 6923.10 | 7501.20 | 7501.20 | 7916.70 | 7916.70 | 7916.70 | 8482.80 | 8482.80 |
| Jan-96 | 6333.00 | 6498.90 | 6637.50 | 6637.50 | 6637.50 | 6806.10 | 6806.10 | 7089.30 | 7089.30 | 7681.20 | 7681.20 | 8106.60 | 8106.60 | 8106.60 | 8686.50 | 8686.50 |
| Jan-97 | 6522.90 | 6693.90 | 6836.70 | 6836.70 | 6836.70 | 7010.40 | 7010.40 | 7302.00 | 7302.00 | 7911.60 | 7911.60 | 8349.90 | 8349.90 | 8349.90 | 8947.20 | 8947.20 |
| Jan-98 | 6705.60 | 6881.40 | 7028.10 | 7028.10 | 7028.10 | 7206.60 | 7206.60 | 7506.60 | 7506.60 | 8133.00 | 8133.00 | 8583.60 | 8583.60 | 8583.60 | 9197.70 | 9197.70 |
| Jan-99 | 6947.10 | 7129.20 | 7281.00 | 7281.00 | 7281.00 | 7466.10 | 7466.10 | 7776.90 | 7776.90 | 8425.80 | 8425.80 | 8892.60 | 8892.60 | 8892.60 | 9225.00 | 9225.00 |
| Jan-00 | 7280.70 | 7471.50 | 7630.50 | 7630.50 | 7630.50 | 7824.60 | 7824.60 | 8150.10 | 8150.10 | 8830.20 | 8830.20 | 9319.50 | 9319.50 | 9319.50 | 9986.40 | 9986.40 |
| Jul-00 | | | | | | | | | | | | 9319.50 | 9453.60 | 9647.70 | 9986.40 | 9986.40 |
| Jul-01 | | | | | | | | | | | | 9664.20 | 9803.40 | 10004.70 | 10356.00 | 10356.00 |
| Jan-02 | | | | | | | | | | | | 10147.50 | 10293.60 | 10504.80 | 10873.80 | 10873.80 |
| Jan-03 | | | | | | | | | | | | 10563.60 | 10715.70 | 10935.60 | 11319.60 | 11319.60 |
| Jan-04 | | | | | | | | | | | | 10954.50 | 11112.30 | 11340.30 | 11738.40 | 11738.40 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-8

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-22 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 |
| Jun-42 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 | 666.67 |
| Jul-46 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 | 733.33 |
| Oct-49 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 926.25 | 954.75 |
| May-52 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 963.30 | 992.94 |
| Apr-55 | 963.30 | 963.30 | 1021.80 | 1021.80 | 1021.80 | 1021.80 | 1021.80 | 1021.80 | 1021.80 | 1021.80 | 1021.80 | 1021.80 | 1021.80 | 1012.80 | 1021.80 | 1076.40 |
| Jun-58 | 963.30 | 1000.00 | 1022.00 | 1022.00 | 1022.00 | 1100.00 | 1100.00 | 1150.00 | 1150.00 | 1200.00 | 1250.00 | 1300.00 | 1350.00 | 1350.00 | 1350.00 | 1350.00 |
| Oct-63 | 963.30 | 1050.00 | 1075.00 | 1075.00 | 1075.00 | 1155.00 | 1155.00 | 1210.00 | 1210.00 | 1260.00 | 1315.00 | 1365.00 | 1420.00 | 1420.00 | 1420.00 | 1420.00 |
| Sep-64 | 1045.20 | 1076.40 | 1101.90 | 1101.90 | 1101.90 | 1183.80 | 1183.80 | 1240.20 | 1240.20 | 1291.50 | 1347.90 | 1399.20 | 1455.60 | 1455.60 | 1455.60 | 1455.60 |
| Sep-65 | 1107.90 | 1140.90 | 1167.90 | 1167.90 | 1167.90 | 1254.90 | 1254.90 | 1314.60 | 1314.60 | 1368.90 | 1428.90 | 1483.20 | 1542.90 | 1542.90 | 1542.90 | 1542.90 |
| Jul-66 | 1143.30 | 1177.50 | 1205.40 | 1205.40 | 1205.40 | 1295.10 | 1295.10 | 1356.60 | 1356.60 | 1412.70 | 1474.50 | 1530.60 | 1592.40 | 1542.90 | 1592.40 | 1594.40 |
| Oct-67 | 1207.20 | 1243.50 | 1272.90 | 1272.90 | 1272.90 | 1367.70 | 1367.70 | 1432.50 | 1432.50 | 1491.90 | 1557.00 | 1616.40 | 1681.50 | 1681.50 | 1681.50 | 1681.50 |
| Jul-68 | 1290.60 | 1329.30 | 1360.80 | 1360.80 | 1360.80 | 1462.20 | 1462.20 | 1531.20 | 1531.20 | 1594.80 | 1664.40 | 1728.00 | 1797.60 | 1797.60 | 1797.60 | 1797.60 |
| Jul-69 | 1453.20 | 1496.70 | 1532.40 | 1532.40 | 1646.40 | 1646.40 | 1724.10 | 1724.10 | 1795.80 | 1874.10 | 1945.80 | 2024.10 | 2024.10 | 2024.10 | 2024.10 | 2024.10 |
| Jan-70 | 1570.80 | 1617.90 | 1656.60 | 1656.60 | 1656.60 | 1779.90 | 1779.90 | 1863.90 | 1863.90 | 1941.30 | 2025.90 | 2103.30 | 2188.20 | 2118.20 | 2188.20 | 2188.20 |
| Jan-71 | 1695.00 | 1745.70 | 1787.40 | 1787.40 | 1787.40 | 1920.60 | 1920.60 | 2011.20 | 2011.20 | 2094.60 | 2185.80 | 2269.50 | 2361.00 | 2361.00 | 2361.00 | 2361.00 |
| Nov-71 | 1695.00 | 1745.70 | 1787.40 | 1787.40 | 1787.40 | 1920.60 | 1920.60 | 2011.20 | 2011.20 | 2094.60 | 2185.80 | 2269.50 | 2361.00 | 2361.00 | 2361.00 | 2361.00 |
| Jan-72 | 1817.10 | 1871.70 | 1916.40 | 1916.40 | 1916.40 | 2059.20 | 2059.20 | 2156.10 | 2156.10 | 2245.50 | 2343.30 | 2433.00 | 2531.10 | 2531.10 | 2531.10 | 2531.10 |
| Oct-72 | 1938.60 | 1996.80 | 2044.50 | 2044.50 | 2044.50 | 2196.90 | 2196.90 | 2300.40 | 2300.40 | 2395.80 | 2500.20 | 2595.90 | 2700.30 | 2700.30 | 2700.30 | 2700.30 |
| Oct-73 | 2058.30 | 2120.10 | 2170.50 | 2170.50 | 2170.50 | 2332.50 | 2332.50 | 2442.30 | 2442.30 | 2543.70 | 2654.40 | 2756.10 | 2866.80 | 2866.80 | 2866.80 | 2866.80 |
| Oct-74 | 2172.00 | 2237.10 | 2290.20 | 2290.20 | 2290.20 | 2461.20 | 2461.20 | 2577.00 | 2577.00 | 2684.10 | 2800.80 | 2908.20 | 3000.00 | 3000.00 | 3000.00 | 3000.00 |
| Oct-75 | 2280.60 | 2349.00 | 2404.80 | 2404.80 | 2404.80 | 2584.20 | 2584.20 | 2706.00 | 2706.00 | 2818.20 | 2940.90 | 3053.70 | 3150.00 | 3150.00 | 3150.00 | 3150.00 |
| Oct-76 | 2363.10 | 2433.90 | 2491.80 | 2491.80 | 2491.80 | 2677.80 | 2677.80 | 2804.10 | 2804.10 | 2920.20 | 3047.40 | 3164.10 | 3291.00 | 3291.00 | 3291.00 | 3291.00 |
| Oct-77 | 2509.50 | 2584.80 | 2646.30 | 2646.30 | 2646.30 | 2843.70 | 3843.70 | 2978.10 | 2978.10 | 3101.40 | 3236.40 | 3360.30 | 3495.00 | 3495.00 | 3495.00 | 3495.00 |
| Oct-78 | 2647.50 | 2727.00 | 2791.80 | 2791.80 | 2791.80 | 3000.00 | 3000.00 | 3141.90 | 3141.90 | 3272.10 | 3414.30 | 3545.10 | 3687.30 | 3687.30 | 3687.30 | 3687.30 |
| Oct-79 | 2833.50 | 2918.40 | 2987.70 | 2987.70 | 2987.70 | 3210.60 | 3210.60 | 3362.40 | 3362.40 | 3501.90 | 3654.00 | 3794.10 | 3946.20 | 3946.20 | 3946.20 | 3946.20 |
| Oct-80 | 3165.00 | 3259.80 | 3337.20 | 3337.20 | 3337.20 | 3586.20 | 3586.20 | 3755.70 | 3755.70 | 3911.70 | 4081.50 | 4176.00 | 4176.00 | 4176.00 | 4176.00 | 4176.00 |
| Oct-81 | 3617.70 | 3726.00 | 3814.50 | 3814.50 | 3814.50 | 4098.90 | 4098.90 | 4292.70 | 4292.70 | 4471.20 | 4665.30 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 |
| Oct-82 | 3762.30 | 3875.10 | 3967.20 | 3967.20 | 3967.20 | 4263.00 | 4263.00 | 4464.30 | 4464.30 | 4650.00 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 | 4791.60 |
| Jan-84 | 3912.90 | 4030.20 | 4125.90 | 4125.90 | 4125.90 | 4433.40 | 4433.40 | 4642.80 | 4642.80 | 4836.00 | 5046.00 | 5239.50 | 5449.50 | 5449.50 | 5449.50 | 5549.50 |
| Jan-85 | 4069.50 | 4191.30 | 4290.90 | 4290.90 | 4290.90 | 4610.70 | 4610.70 | 4828.50 | 4828.50 | 5029.50 | 5247.90 | 5449.20 | 5667.60 | 5667.60 | 5667.60 | 5667.60 |
| Oct-85 | 4191.60 | 4317.00 | 4419.60 | 4419.60 | 4419.60 | 4749.00 | 4749.00 | 4973.40 | 4973.40 | 5180.40 | 5405.40 | 5612.70 | 5837.70 | 5837.70 | 5837.70 | 5837.70 |
| Jan-87 | 4317.30 | 4446.60 | 4552.20 | 4552.20 | 4552.20 | 4891.50 | 4891.50 | 5122.50 | 5122.50 | 5335.80 | 5567.70 | 5781.00 | 6012.90 | 6012.90 | 6012.90 | 6012.90 |
| Jan-88 | 4403.70 | 4535.40 | 4643.10 | 4643.10 | 4643.10 | 4989.30 | 4989.30 | 5225.10 | 5225.10 | 5442.60 | 5679.00 | 5896.50 | 6041.70 | 6041.70 | 6041.70 | 6041.70 |
| Jan-89 | 4584.30 | 4721.40 | 4833.60 | 4833.60 | 4833.60 | 5193.90 | 5193.90 | 5439.30 | 5439.30 | 5665.80 | 5911.80 | 6138.30 | 6289.50 | 6289.50 | 6289.50 | 6289.50 |
| Jan-90 | 4749.30 | 4891.50 | 5007.60 | 5007.60 | 5007.60 | 5380.80 | 5380.80 | 5635.20 | 5635.20 | 5869.80 | 6124.50 | 6359.40 | 6516.00 | 6516.00 | 6516.00 | 6516.00 |
| Jan-91 | 4944.00 | 5092.20 | 5212.80 | 5212.80 | 5212.80 | 5601.30 | 5601.30 | 5866.20 | 5866.20 | 6110.40 | 6375.60 | 6620.10 | 6783.30 | 6783.30 | 6783.30 | 6783.30 |
| Jan-92 | 5151.60 | 5306.10 | 5431.80 | 5431.80 | 5431.80 | 5836.50 | 5836.50 | 6112.50 | 6112.50 | 6366.90 | 6643.50 | 6898.20 | 7068.30 | 7068.30 | 7068.30 | 7068.30 |
| Jan-93 | 5342.10 | 5502.30 | 5632.80 | 5632.80 | 5632.80 | 6052.50 | 6052.50 | 6338.70 | 6338.70 | 6602.40 | 6889.20 | 7153.50 | 7329.90 | 7329.90 | 7329.90 | 7329.90 |
| Jan-94 | 5459.70 | 5623.50 | 5756.70 | 5756.70 | 5756.70 | 6185.70 | 6185.70 | 6478.20 | 6478.20 | 6747.60 | 7040.70 | 7311.00 | 7491.30 | 7491.30 | 7491.30 | 7491.30 |
| Jan-95 | 5601.60 | 5769.60 | 5906.40 | 5906.40 | 5906.40 | 6346.50 | 6346.50 | 6646.50 | 6646.50 | 6923.10 | 7223.70 | 7501.20 | 7686.00 | 7686.00 | 7686.00 | 7686.00 |
| Jan-96 | 5736.00 | 5908.20 | 6048.30 | 6048.30 | 6048.30 | 6498.90 | 6498.90 | 6806.10 | 6806.10 | 7089.30 | 7397.10 | 7681.20 | 7870.50 | 7870.50 | 7870.50 | 7870.50 |
| Jan-97 | 5908.20 | 6085.50 | 6229.80 | 6229.80 | 6229.80 | 6693.90 | 6693.90 | 7010.40 | 7010.40 | 7302.00 | 7619.10 | 7911.60 | 8106.60 | 8106.60 | 8106.60 | 8106.60 |
| Jan-98 | 6073.50 | 6255.90 | 6404.10 | 6404.10 | 6404.10 | 6881.40 | 6881.40 | 7206.60 | 7206.60 | 7506.60 | 7832.40 | 8133.00 | 8333.70 | 8333.70 | 8333.70 | 8333.70 |
| Jan-99 | 6292.20 | 6481.20 | 6634.50 | 6634.50 | 6634.50 | 7129.20 | 7129.20 | 7466.10 | 7466.10 | 7776.90 | 8114.40 | 8425.80 | 8633.70 | 8633.70 | 8633.70 | 8633.70 |
| Jan-00 | 6594.30 | 6792.30 | 6953.10 | 6953.10 | 6953.10 | 7471.50 | 7471.50 | 7824.60 | 7824.60 | 8150.10 | 8503.80 | 8830.20 | 9048.00 | 9048.00 | 9048.00 | 9048.00 |
| Jul-00 | 6594.30 | 6810.30 | 6953.10 | 6993.30 | 7171.80 | 7471.50 | 7540.80 | 7824.60 | 7906.20 | 8150.10 | 8503.80 | 8830.20 | 9048.00 | 9048.00 | 9048.00 | 9048.00 |
| Jan-01 | 6838.20 | 7062.30 | 7210.50 | 7252.20 | 7437.30 | 7747.80 | 7819.80 | 8114.10 | 8198.70 | 8451.60 | 8818.50 | 9156.90 | 9382.80 | 9382.80 | 9382.80 | 9382.80 |
| Jan-02 | 7180.20 | 7415.40 | 7571.10 | 7614.90 | 7809.30 | 8135.10 | 8210.70 | 8519.70 | 8608.50 | 8874.30 | 9259.50 | 9614.70 | 9852.00 | 9852.00 | 9852.00 | 9852.00 |
| Jan-03 | 7474.50 | 7719.30 | 7881.60 | 7927.20 | 8129.40 | 8468.70 | 8547.30 | 8868.90 | 8961.30 | 9238.20 | 9639.00 | 10008.90 | 10255.80 | 10255.80 | 10255.80 | 10255.80 |
| Jan-04 | 7751.10 | 8004.90 | 8173.20 | 8220.60 | 8430.30 | 8781.90 | 8863.50 | 9197.10 | 9292.80 | 9579.90 | 9995.70 | 10379.10 | 10635.30 | 10635.30 | 10635.30 | 10635.30 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-7

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-22 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 |
| Jun-42 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 |
| Jul-46 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 | 550.00 |
| Oct-49 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 798.00 | 826.50 |
| May-52 | 800.28 | 800.28 | 800.28 | 800.28 | 800.28 | 800.28 | 800.28 | 800.28 | 800.28 | 800.28 | 800.28 | 800.28 | 800.28 | 800.28 | 829.92 | 859.56 |
| Apr-55 | 800.28 | 800.28 | 850.20 | 850.20 | 850.20 | 850.20 | 850.20 | 850.20 | 850.20 | 850.20 | 850.20 | 850.20 | 850.20 | 850.20 | 904.80 | 967.20 |
| Jun-58 | 800.28 | 860.00 | 860.00 | 860.00 | 900.00 | 900.00 | 950.00 | 950.00 | 1000.00 | 1100.00 | 1175.00 | 1175.00 | 1175.00 | 1175.00 | 1175.00 | 1175.00 |
| Oct-63 | 800.28 | 905.00 | 905.00 | 905.00 | 945.00 | 945.00 | 1000.00 | 1000.00 | 1050.00 | 1155.00 | 1235.00 | 1235.00 | 1235.00 | 1235.00 | 1235.00 | 1235.00 |
| Sep-64 | 868.20 | 927.60 | 927.60 | 927.60 | 968.70 | 968.70 | 1025.10 | 1025.10 | 1076.40 | 1183.80 | 1266.00 | 1266.00 | 1266.00 | 1266.00 | 1266.00 | 1266.00 |
| Sep-65 | 920.40 | 983.40 | 983.40 | 983.40 | 1026.90 | 1026.90 | 1086.60 | 1086.60 | 1140.90 | 1254.90 | 1341.90 | 1341.90 | 1341.90 | 1341.90 | 1341.90 | 1341.90 |
| Jul-66 | 949.80 | 1014.90 | 1014.90 | 1014.90 | 1059.90 | 1059.90 | 1121.40 | 1121.40 | 1177.50 | 1295.10 | 1384.80 | 1384.80 | 1384.80 | 1384.80 | 1384.80 | 1384.80 |
| Oct-67 | 1002.90 | 1071.60 | 1071.60 | 1071.60 | 1119.30 | 1119.30 | 1184.10 | 1184.10 | 1243.50 | 1367.70 | 1462.20 | 1462.20 | 1462.20 | 1462.20 | 1462.20 | 1462.20 |
| Jul-68 | 1072.20 | 1145.40 | 1145.40 | 1145.40 | 1196.40 | 1196.40 | 1265.70 | 1265.70 | 1329.30 | 1462.20 | 1563.00 | 1563.00 | 1563.00 | 1563.00 | 1563.00 | 1563.00 |
| Jul-69 | 1207.20 | 1289.70 | 1289.70 | 1289.70 | 1347.00 | 1347.00 | 1425.30 | 1425.30 | 1496.70 | 1646.40 | 1759.80 | 1759.80 | 1759.80 | 1759.80 | 1759.80 | 1759.80 |
| Jan-70 | 1305.00 | 1394.10 | 1394.10 | 1394.10 | 1456.20 | 1456.20 | 1540.80 | 1540.80 | 1617.90 | 1779.90 | 1902.30 | 1902.30 | 1902.30 | 1902.30 | 1902.30 | 1902.30 |
| Jan-71 | 1408.20 | 1504.20 | 1504.20 | 1504.20 | 1571.10 | 1571.10 | 1662.60 | 1662.60 | 1745.70 | 1920.60 | 2052.60 | 2052.60 | 2052.60 | 2052.60 | 2052.60 | 2052.60 |
| Nov-71 | 1408.20 | 1504.20 | 1504.20 | 1504.20 | 1571.10 | 1571.10 | 1662.60 | 1662.60 | 1745.70 | 1920.60 | 2052.60 | 2052.60 | 2052.60 | 2052.60 | 2052.60 | 2052.60 |
| Jan-72 | 1509.60 | 1612.80 | 1612.80 | 1612.80 | 1684.50 | 1684.50 | 1782.60 | 1782.60 | 1871.70 | 2059.20 | 2200.50 | 2200.50 | 2200.50 | 2200.50 | 2200.50 | 2200.50 |
| Oct-72 | 1610.70 | 1720.80 | 1720.80 | 1720.80 | 1797.30 | 1797.30 | 1902.00 | 1902.00 | 1996.80 | 2196.90 | 2347.80 | 2347.80 | 2347.80 | 2347.80 | 2347.80 | 2347.80 |
| Oct-73 | 1710.00 | 1827.00 | 1827.00 | 1827.00 | 1908.30 | 1908.30 | 2019.30 | 2019.30 | 2120.10 | 2332.50 | 2492.70 | 2492.70 | 2492.70 | 2492.70 | 2492.70 | 2492.70 |
| Oct-74 | 1804.50 | 1927.80 | 1927.80 | 1927.80 | 2013.60 | 2013.60 | 2130.90 | 2130.90 | 2237.10 | 2461.20 | 2630.40 | 2630.40 | 2630.40 | 2630.40 | 2630.40 | 2630.40 |
| Oct-75 | 1894.80 | 2024.10 | 2024.10 | 2024.10 | 2114.40 | 2114.40 | 2237.40 | 2237.40 | 2349.00 | 2584.20 | 2761.80 | 2761.80 | 2761.80 | 2761.80 | 2761.80 | 2761.80 |
| Oct-76 | 1963.50 | 2097.30 | 2097.30 | 2097.30 | 2190.90 | 2190.90 | 2318.40 | 2318.40 | 2433.90 | 2677.80 | 2861.70 | 2861.70 | 2861.70 | 2861.70 | 2861.70 | 2861.70 |
| Oct-77 | 2085.30 | 2227.20 | 2227.20 | 2227.20 | 2326.80 | 2326.80 | 2462.10 | 2462.10 | 2584.80 | 2843.70 | 3039.00 | 3039.00 | 3039.00 | 3039.00 | 3039.00 | 3039.00 |
| Oct-78 | 2199.90 | 2349.60 | 2349.60 | 2349.60 | 2454.90 | 2454.90 | 2597.40 | 2597.40 | 2727.00 | 3000.00 | 3206.10 | 3206.10 | 3206.10 | 3206.10 | 3206.10 | 3206.10 |
| Oct-79 | 2354.40 | 2514.60 | 2514.60 | 2514.60 | 2627.10 | 2627.10 | 2779.80 | 2779.80 | 2918.40 | 3210.60 | 3431.10 | 3431.10 | 3431.10 | 3431.10 | 3431.10 | 3431.10 |
| Oct-80 | 2629.80 | 2808.90 | 2808.90 | 2808.90 | 2934.60 | 2934.60 | 3105.00 | 3105.00 | 3259.80 | 3586.20 | 3832.50 | 3832.50 | 3832.50 | 3832.50 | 3832.50 | 3832.50 |
| Oct-81 | 3006.00 | 3210.60 | 3210.60 | 3210.60 | 3354.30 | 3354.30 | 3549.00 | 3549.00 | 3726.00 | 4098.90 | 4380.60 | 4380.60 | 4380.60 | 4380.60 | 4380.60 | 4380.60 |
| Oct-82 | 3126.30 | 3339.00 | 3339.00 | 3339.00 | 3488.40 | 3488.40 | 3690.90 | 3690.90 | 3875.10 | 4263.00 | 4555.80 | 4555.80 | 4555.80 | 4555.80 | 4555.80 | 4555.80 |
| Jan-84 | 3251.40 | 3472.50 | 3472.50 | 3472.50 | 3627.90 | 3627.90 | 3838.50 | 3838.50 | 4030.20 | 4433.40 | 4737.90 | 4737.90 | 4737.90 | 4737.90 | 4737.90 | 4737.90 |
| Jan-85 | 3381.60 | 3611.40 | 3611.40 | 3611.40 | 3773.10 | 3773.10 | 3992.10 | 3992.10 | 4191.30 | 4610.70 | 4927.50 | 4927.50 | 4927.50 | 4927.50 | 4927.50 | 4927.50 |
| Oct-85 | 3483.00 | 3719.70 | 3719.70 | 3719.70 | 3886.20 | 3886.20 | 4111.80 | 4111.80 | 4317.00 | 4749.00 | 5075.40 | 5075.40 | 5075.40 | 5075.40 | 5075.40 | 5075.40 |
| Jan-87 | 3587.40 | 3831.30 | 3831.30 | 3831.30 | 4002.90 | 4002.90 | 4235.10 | 4235.10 | 4446.60 | 4891.50 | 5227.80 | 5227.80 | 5227.80 | 5227.80 | 5227.80 | 5227.80 |
| Jan-88 | 3659.10 | 3907.80 | 3907.80 | 3907.80 | 4083.00 | 4083.00 | 4319.70 | 4319.70 | 4535.40 | 4989.30 | 5332.50 | 5332.50 | 5332.50 | 5332.50 | 5332.50 | 5332.50 |
| Jan-89 | 3809.10 | 4068.00 | 4068.00 | 4068.00 | 4250.40 | 4250.40 | 4496.70 | 4496.70 | 4721.40 | 5193.90 | 5551.20 | 5551.20 | 5551.20 | 5551.20 | 5551.20 | 5551.20 |
| Jan-90 | 3946.20 | 4214.40 | 4214.40 | 4214.40 | 4403.40 | 4403.40 | 4658.70 | 4658.70 | 4891.50 | 5380.80 | 5751.00 | 5751.00 | 5751.00 | 5751.00 | 5751.00 | 5751.00 |
| Jan-91 | 4107.90 | 4387.20 | 4387.20 | 4387.20 | 4584.00 | 4584.00 | 4849.80 | 4849.80 | 5092.20 | 5601.30 | 5986.80 | 5986.80 | 5986.80 | 5986.80 | 5986.80 | 5986.80 |
| Jan-92 | 4280.40 | 4571.40 | 4571.40 | 4571.40 | 4776.60 | 4776.60 | 5053.50 | 5053.50 | 5306.10 | 5836.50 | 6238.20 | 6238.20 | 6238.20 | 6238.20 | 6238.20 | 6238.20 |
| Jan-93 | 4438.80 | 4740.60 | 4740.60 | 4740.60 | 4953.30 | 4953.30 | 5240.40 | 5240.40 | 5502.30 | 6052.50 | 6468.90 | 6468.90 | 6468.90 | 6468.90 | 6468.90 | 6468.90 |
| Jan-94 | 4536.60 | 4845.00 | 4845.00 | 4845.00 | 5062.20 | 5062.20 | 5355.60 | 5355.60 | 5623.50 | 6185.70 | 6611.10 | 6611.10 | 6611.10 | 6611.10 | 6611.10 | 6611.10 |
| Jan-95 | 4654.50 | 4971.00 | 4971.00 | 4971.00 | 5193.90 | 5193.90 | 5494.80 | 5494.80 | 5769.60 | 6346.50 | 6783.00 | 6783.00 | 6783.00 | 6783.00 | 6783.00 | 6783.00 |
| Jan-96 | 4766.10 | 5090.40 | 5090.40 | 5090.40 | 5318.70 | 5318.70 | 5626.80 | 5626.80 | 5908.20 | 6498.90 | 6945.90 | 6945.90 | 6945.90 | 6945.90 | 6945.90 | 6945.90 |
| Jan-97 | 4909.20 | 5243.10 | 5243.10 | 5243.10 | 5478.30 | 5478.30 | 5795.70 | 5795.70 | 6085.50 | 6693.90 | 7154.40 | 7154.40 | 7154.40 | 7154.40 | 7154.40 | 7154.40 |
| Jan-98 | 5046.60 | 5389.80 | 5389.80 | 5389.80 | 5631.60 | 5631.60 | 5958.00 | 5958.00 | 6255.90 | 6881.40 | 7354.80 | 7354.80 | 7354.80 | 7354.80 | 7354.80 | 7354.80 |
| Jan-99 | 5528.40 | 5583.90 | 5583.90 | 5583.90 | 5834.40 | 5834.40 | 6172.50 | 6172.50 | 6481.20 | 7129.20 | 7619.70 | 7619.70 | 7619.70 | 7619.70 | 7619.70 | 7619.70 |
| Jan-00 | 5479.50 | 5851.80 | 5851.80 | 5851.80 | 6114.60 | 6114.60 | 6468.90 | 6468.90 | 6792.30 | 7471.50 | 7985.40 | 7985.40 | 7985.40 | 7985.40 | 7985.40 | 7985.40 |
| Jul-00 | 5479.50 | 5851.80 | 5851.80 | 5894.40 | 6114.60 | 6282.00 | 6475.80 | 6669.00 | 6863.10 | 7471.50 | 7985.40 | 7985.40 | 7985.40 | 7985.40 | 8025.60 | 8025.60 |
| Jan-01 | 5682.30 | 6068.60 | 6068.40 | 6112.50 | 6340.80 | 6514.50 | 6715.50 | 6915.90 | 7116.90 | 7747.80 | 8280.90 | 8280.90 | 8280.90 | 8280.90 | 8322.60 | 8322.60 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-7

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-02 | 5966.40 | 6371.70 | 6371.70 | 6418.20 | 6657.90 | 6840.30 | 7051.20 | 7261.80 | 7472.70 | 8135.10 | 8694.90 | 8694.90 | 8694.90 | 8694.90 | 8738.70 | 8738.70 |
| Jan-03 | 6210.90 | 6499.20 | 6633.00 | 6739.20 | 6930.90 | 7120.80 | 7340.40 | 7559.40 | 7779.00 | 8468.70 | 9051.30 | 9051.30 | 9051.30 | 9051.30 | 9096.90 | 9096.90 |
| Jan-04 | 6440.70 | 6739.80 | 6878.40 | 6988.50 | 7187.40 | 7384.20 | 7611.90 | 7839.00 | 8066.70 | 8781.90 | 9386.10 | 9386.10 | 9386.10 | 9386.10 | 9433.50 | 9433.50 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-6

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-22 | 291.67 | 291.67 | 306.25 | 306.25 | 320.83 | 320.83 | 335.42 | 350.00 | 350.00 | 364.58 | 379.17 | 393.75 | 408.33 | 408.33 | 483.33 | 500.00 |
| Jun-42 | 333.33 | 333.33 | 350.00 | 350.00 | 366.67 | 366.67 | 383.33 | 400.00 | 400.00 | 416.67 | 433.33 | 450.00 | 450.00 | 450.00 | 483.33 | 500.00 |
| Jul-46 | 366.67 | 366.67 | 385.00 | 385.00 | 403.33 | 403.33 | 421.67 | 440.00 | 440.00 | 458.33 | 476.67 | 495.00 | 495.00 | 495.00 | 531.67 | 550.00 |
| Oct-49 | 570.00 | 570.00 | 570.00 | 570.00 | 570.00 | 570.00 | 570.00 | 570.00 | 570.00 | 584.25 | 612.75 | 612.75 | 641.25 | 641.25 | 669.75 | 698.25 |
| May-52 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 607.62 | 637.26 | 637.26 | 666.90 | 666.90 | 696.54 | 726.18 |
| Apr-55 | 592.80 | 592.80 | 631.80 | 631.80 | 631.80 | 631.80 | 631.80 | 631.80 | 631.80 | 655.20 | 717.60 | 717.60 | 748.80 | 748.80 | 780.00 | 811.20 |
| Jun-58 | 592.80 | 628.00 | 670.00 | 670.00 | 670.00 | 670.00 | 670.00 | 670.00 | 690.00 | 800.00 | 840.00 | 860.00 | 910.00 | 910.00 | 985.00 | 985.00 |
| Oct-63 | 592.80 | 690.00 | 735.00 | 735.00 | 735.00 | 735.00 | 735.00 | 735.00 | 760.00 | 880.00 | 925.00 | 945.00 | 1000.00 | 1000.00 | 1085.00 | 1085.00 |
| Sep-64 | 643.20 | 707.40 | 753.30 | 753.30 | 753.30 | 753.30 | 753.30 | 753.30 | 779.10 | 902.10 | 948.00 | 968.70 | 1025.10 | 1025.10 | 1112.10 | 1112.10 |
| Sep-65 | 681.90 | 749.70 | 798.60 | 798.60 | 798.60 | 798.60 | 798.60 | 798.60 | 825.90 | 956.10 | 1005.00 | 1026.90 | 1086.60 | 1086.60 | 1178.70 | 1178.70 |
| Jul-66 | 703.80 | 773.70 | 824.10 | 824.10 | 824.10 | 824.10 | 824.10 | 824.10 | 852.30 | 986.70 | 1037.10 | 1059.90 | 1121.40 | 1121.40 | 1216.50 | 1216.50 |
| Oct-67 | 743.10 | 816.90 | 870.30 | 870.30 | 870.30 | 870.30 | 870.30 | 870.30 | 900.00 | 1041.90 | 1095.30 | 1119.30 | 1184.10 | 1184.10 | 1284.60 | 1284.60 |
| Jul-68 | 794.40 | 873.30 | 930.30 | 930.30 | 930.30 | 930.30 | 930.30 | 930.30 | 962.10 | 1113.90 | 1170.90 | 1196.40 | 1265.70 | 1265.70 | 1373.10 | 1373.10 |
| Jul-69 | 894.60 | 983.40 | 1047.60 | 1047.60 | 1047.60 | 1047.60 | 1047.60 | 1047.60 | 1083.30 | 1254.30 | 1318.50 | 1347.00 | 1425.30 | 1425.30 | 1546.20 | 1546.20 |
| Jan-70 | 967.20 | 1063.20 | 1132.50 | 1132.50 | 1132.50 | 1132.50 | 1132.50 | 1132.50 | 1170.90 | 1356.00 | 1425.30 | 1456.20 | 1540.80 | 1540.80 | 1671.30 | 1671.30 |
| Jan-71 | 1043.70 | 1147.20 | 1221.90 | 1221.90 | 1221.90 | 1221.90 | 1221.90 | 1221.90 | 1263.30 | 1463.10 | 1537.80 | 1571.10 | 1662.60 | 1662.60 | 1803.30 | 1803.30 |
| Nov-71 | 1043.70 | 1147.20 | 1221.90 | 1221.90 | 1221.90 | 1221.90 | 1221.90 | 1221.90 | 1263.30 | 1463.10 | 1537.80 | 1571.10 | 1662.60 | 1662.60 | 1803.30 | 1803.30 |
| Jan-72 | 1119.00 | 1230.00 | 1310.10 | 1310.10 | 1310.10 | 1310.10 | 1310.10 | 1310.10 | 1354.50 | 1568.70 | 1648.80 | 1684.50 | 1782.60 | 1782.60 | 1933.20 | 1933.20 |
| Oct-72 | 1194.00 | 1312.20 | 1397.70 | 1397.70 | 1397.70 | 1397.70 | 1397.70 | 1397.70 | 1445.10 | 1673.70 | 1759.20 | 1797.30 | 1902.00 | 1902.00 | 2062.50 | 2062.50 |
| Oct-73 | 1267.80 | 1393.20 | 1483.80 | 1483.80 | 1483.80 | 1483.80 | 1483.80 | 1483.80 | 1534.20 | 1776.90 | 1867.80 | 1908.30 | 2019.30 | 2019.30 | 2189.70 | 2189.70 |
| Oct-74 | 1337.70 | 1470.00 | 1565.70 | 1565.70 | 1565.70 | 1565.70 | 1565.70 | 1565.70 | 1618.80 | 1875.00 | 1971.00 | 2013.60 | 2130.90 | 2130.90 | 2310.60 | 2310.60 |
| Oct-75 | 1404.60 | 1543.50 | 1644.00 | 1644.00 | 1644.00 | 1644.00 | 1644.00 | 1644.00 | 1699.80 | 1968.90 | 2069.70 | 2114.40 | 2237.40 | 2237.40 | 2426.10 | 2426.10 |
| Oct-76 | 1455.30 | 1599.30 | 1703.40 | 1703.40 | 1703.40 | 1703.40 | 1703.40 | 1703.40 | 1761.30 | 2040.30 | 2144.70 | 2190.90 | 2318.40 | 2318.40 | 2514.00 | 2514.00 |
| Oct-77 | 1545.60 | 1698.60 | 1809.00 | 1809.00 | 1809.00 | 1809.00 | 1809.00 | 1809.00 | 1870.50 | 2166.90 | 2277.60 | 2326.80 | 2462.10 | 2462.10 | 2670.00 | 2670.00 |
| Oct-78 | 1630.50 | 1791.90 | 1908.60 | 1908.60 | 1908.60 | 1908.60 | 1908.60 | 1908.60 | 1973.40 | 2286.00 | 2403.00 | 2454.90 | 2597.40 | 2597.40 | 2817.00 | 2817.00 |
| Oct-79 | 1745.20 | 1917.60 | 2042.70 | 2042.70 | 2042.70 | 2042.70 | 2042.70 | 2042.70 | 2112.00 | 2446.50 | 2571.60 | 2627.10 | 2779.80 | 2779.80 | 3014.70 | 3014.70 |
| Oct-80 | 1949.40 | 2142.00 | 2281.80 | 2281.80 | 2281.80 | 2281.80 | 2281.80 | 2281.80 | 2359.20 | 2732.70 | 2872.50 | 2934.60 | 3105.00 | 3105.00 | 3367.50 | 3367.50 |
| Oct-81 | 2228.10 | 2448.30 | 2608.20 | 2608.20 | 2608.20 | 2608.20 | 2608.20 | 2608.20 | 2696.70 | 3123.60 | 3283.20 | 3354.30 | 3549.00 | 3549.00 | 3849.00 | 3849.00 |
| Oct-82 | 2317.20 | 2546.10 | 2712.60 | 2712.60 | 2712.60 | 2712.60 | 2712.60 | 2712.60 | 2804.70 | 3248.40 | 3414.60 | 3488.40 | 3690.90 | 3690.90 | 4002.90 | 4002.90 |
| Jan-84 | 2409.90 | 2647.80 | 2821.20 | 2821.20 | 2821.20 | 2821.20 | 2821.20 | 2821.20 | 2916.90 | 3378.30 | 3551.10 | 3627.90 | 3838.50 | 3838.50 | 4163.10 | 4163.10 |
| Jan-85 | 2506.20 | 2753.70 | 2934.00 | 2934.00 | 2934.00 | 2934.00 | 2934.00 | 2934.00 | 3033.60 | 3513.30 | 3693.00 | 3773.10 | 3992.10 | 3992.10 | 4329.60 | 4329.60 |
| Oct-85 | 2581.50 | 2836.20 | 3021.90 | 3021.90 | 3021.90 | 3021.90 | 3021.90 | 3021.90 | 3124.50 | 3618.60 | 3803.70 | 3886.20 | 4111.80 | 4111.80 | 4459.50 | 4459.50 |
| Jan-87 | 2658.90 | 2921.40 | 3112.50 | 3112.50 | 3112.50 | 3112.50 | 3112.50 | 3112.50 | 3218.10 | 3727.20 | 3917.70 | 4002.90 | 4235.10 | 4235.10 | 4593.30 | 4592.30 |
| Jan-88 | 2712.00 | 2979.90 | 3174.90 | 3174.90 | 3174.90 | 3174.90 | 3174.90 | 3174.90 | 3282.60 | 3801.60 | 3996.00 | 4083.00 | 4319.70 | 4319.70 | 4685.10 | 4685.10 |
| Jan-89 | 2823.30 | 3102.00 | 3305.10 | 3305.10 | 3305.10 | 3305.10 | 3305.10 | 3305.10 | 3417.30 | 3957.60 | 4159.80 | 4250.40 | 4496.70 | 4496.70 | 4877.10 | 4877.10 |
| Jan-90 | 2925.00 | 3213.60 | 3424.20 | 3424.20 | 3424.20 | 3424.20 | 3424.20 | 3424.20 | 3540.30 | 4100.10 | 4309.50 | 4403.40 | 4658.70 | 4658.70 | 5052.60 | 5052.60 |
| Jan-91 | 3045.00 | 3345.30 | 3564.60 | 3564.60 | 3564.60 | 3564.60 | 3564.60 | 3564.60 | 3685.50 | 4268.10 | 4486.20 | 4584.00 | 4849.80 | 4849.80 | 5259.90 | 5259.90 |
| Jan-92 | 3172.80 | 3485.70 | 3714.30 | 3714.30 | 3714.30 | 3714.30 | 3714.30 | 3714.30 | 3840.30 | 4447.50 | 4674.60 | 4776.60 | 5053.50 | 5053.50 | 5480.70 | 5480.70 |
| Jan-93 | 3290.10 | 3614.70 | 3851.70 | 3851.70 | 3851.70 | 3851.70 | 3851.70 | 3851.70 | 3982.50 | 4612.20 | 4847.70 | 4953.30 | 5240.40 | 5417.70 | 5683.50 | 5683.50 |
| Jan-94 | 3362.40 | 3694.20 | 3936.30 | 3936.30 | 3936.30 | 3936.30 | 3936.30 | 3936.30 | 4070.10 | 4713.60 | 4954.20 | 5062.20 | 5355.60 | 5536.80 | 5808.60 | 5808.60 |
| Jan-95 | 3449.70 | 3790.20 | 4038.60 | 4038.60 | 4038.60 | 4038.60 | 4038.60 | 4038.60 | 4176.00 | 4836.30 | 5082.90 | 5193.90 | 5494.80 | 5680.80 | 5959.50 | 5959.50 |
| Jan-96 | 3532.50 | 3881.10 | 4135.50 | 4135.50 | 4135.50 | 4135.50 | 4135.50 | 4135.50 | 4276.20 | 4952.40 | 5205.00 | 5318.70 | 5626.80 | 5817.00 | 6102.60 | 6102.60 |
| Jan-97 | 3638.40 | 3997.50 | 4259.70 | 4259.70 | 4259.70 | 4259.70 | 4259.70 | 4259.70 | 4404.60 | 5100.90 | 5361.30 | 5478.30 | 5795.70 | 5991.60 | 6285.60 | 6285.60 |
| Jan-98 | 3740.40 | 4109.40 | 4379.10 | 4379.10 | 4379.10 | 4379.10 | 4379.10 | 4379.10 | 4527.90 | 5243.70 | 5511.30 | 5631.60 | 5958.00 | 6159.30 | 6461.70 | 6461.70 |
| Jan-99 | 3875.10 | 4257.30 | 4536.60 | 4536.60 | 4536.60 | 4536.60 | 4536.60 | 4536.60 | 4690.80 | 5432.40 | 5709.60 | 5834.40 | 6172.50 | 6381.00 | 6694.20 | 6694.20 |
| Jan-00 | 4061.10 | 4461.60 | 4754.40 | 4754.40 | 4754.40 | 4754.40 | 4754.40 | 4754.40 | 4916.10 | 5693.10 | 5983.80 | 6114.60 | 6468.90 | 6687.30 | 7015.50 | 7015.50 |
| Jul-00 | 4061.10 | 4461.60 | 4754.40 | 4754.40 | 4772.40 | 4976.70 | 5004.00 | 5004.00 | 5169.30 | 5791.20 | 6086.10 | 6381.30 | 6549.00 | 6719.10 | 7049.10 | 7049.10 |
| Jan-01 | 4211.40 | 4626.60 | 4930.20 | 4930.20 | 4949.10 | 5160.90 | 5189.10 | 5189.10 | 5360.70 | 6005.40 | 6311.40 | 6617.40 | 6791.40 | 6967.80 | 7309.80 | 7309.80 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-6

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-02 | 4422.00 | 4857.90 | 5176.80 | 5176.80 | 5196.60 | 5418.90 | 5448.60 | 5448.60 | 5628.60 | 6305.70 | 6627.00 | 6948.30 | 7131.00 | 7316.10 | 7675.20 | 7675.20 |
| Jan-03 | 4603.20 | 5057.10 | 5388.90 | 5388.90 | 5409.60 | 5641.20 | 5672.10 | 5672.10 | 5994.60 | 6564.30 | 6898.80 | 7233.30 | 7423.50 | 7616.10 | 7989.90 | 7989.90 |
| Jan-04 | 4773.60 | 5244.30 | 5588.40 | 5588.40 | 5609.70 | 5850.00 | 5882.10 | 5882.10 | 6216.30 | 6807.30 | 7154.10 | 7500.90 | 7698.30 | 7897.80 | 8285.40 | 8285.40 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-5

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-22 | 250.00 | 250.00 | 262.50 | 262.50 | 275.00 | 275.00 | 287.50 | 300.00 | 300.00 | 312.50 | 325.00 | 393.75 | 408.33 | 408.33 | 422.92 | 479.17 |
| Jun-42 | 291.67 | 291.67 | 306.25 | 306.25 | 320.83 | 320.83 | 335.42 | 350.00 | 350.00 | 364.58 | 379.17 | 393.75 | 408.33 | 408.33 | 422.92 | 500.00 |
| Jul-46 | 320.83 | 320.83 | 336.88 | 336.88 | 352.92 | 352.92 | 368.96 | 385.00 | 385.00 | 401.04 | 417.08 | 433.13 | 433.13 | 433.13 | 465.21 | 550.00 |
| Oct-49 | 456.00 | 456.00 | 456.00 | 456.00 | 456.00 | 456.00 | 456.00 | 470.25 | 484.50 | 498.75 | 527.25 | 527.25 | 555.75 | 555.75 | 584.25 | 584.25 |
| May-52 | 474.24 | 474.24 | 474.24 | 474.24 | 474.24 | 474.24 | 474.24 | 489.06 | 503.88 | 518.70 | 548.34 | 548.34 | 577.98 | 577.98 | 607.62 | 607.62 |
| Apr-55 | 474.24 | 474.24 | 507.00 | 507.00 | 507.00 | 507.00 | 507.00 | 530.40 | 561.60 | 577.20 | 608.40 | 608.40 | 639.60 | 639.60 | 670.80 | 670.80 |
| Jun-58 | 474.24 | 503.00 | 540.00 | 540.00 | 540.00 | 540.00 | 560.00 | 590.00 | 630.00 | 680.00 | 720.00 | 745.00 | 775.00 | 775.00 | 775.00 | 775.00 |
| Oct-63 | 474.24 | 590.00 | 630.00 | 630.00 | 630.00 | 630.00 | 650.00 | 685.00 | 730.00 | 785.00 | 830.00 | 855.00 | 885.00 | 885.00 | 885.00 | 885.00 |
| Sep-64 | 514.50 | 604.80 | 645.90 | 645.90 | 645.90 | 645.90 | 666.30 | 702.00 | 748.20 | 804.60 | 850.80 | 876.30 | 907.20 | 907.20 | 907.20 | 907.20 |
| Sep-65 | 545.40 | 641.10 | 684.60 | 684.60 | 684.60 | 684.60 | 706.20 | 744.00 | 793.20 | 852.90 | 901.80 | 928.80 | 961.50 | 961.50 | 961.50 | 961.50 |
| Jul-66 | 562.80 | 661.50 | 706.50 | 706.50 | 706.50 | 706.50 | 728.70 | 767.70 | 818.70 | 880.20 | 930.60 | 958.50 | 992.40 | 992.40 | 992.40 | 992.40 |
| Oct-67 | 594.30 | 698.40 | 746.10 | 746.10 | 746.10 | 746.10 | 769.50 | 810.60 | 864.60 | 929.40 | 982.80 | 1012.20 | 1047.90 | 1047.90 | 1047.90 | 1047.90 |
| Jul-68 | 635.40 | 746.70 | 797.70 | 797.70 | 797.70 | 797.70 | 822.60 | 866.40 | 924.30 | 993.60 | 1050.60 | 1082.10 | 1120.20 | 1120.20 | 1120.20 | 1120.20 |
| Jul-69 | 715.50 | 840.90 | 898.20 | 898.20 | 898.20 | 898.20 | 926.10 | 975.60 | 1040.70 | 1118.70 | 1182.90 | 1218.30 | 1261.20 | 1261.20 | 1261.20 | 1261.20 |
| Jan-70 | 773.40 | 909.00 | 971.10 | 971.10 | 971.10 | 971.10 | 1001.10 | 1054.50 | 1125.00 | 1209.30 | 1278.60 | 1317.00 | 1363.50 | 1363.50 | 1363.50 | 1363.50 |
| Jan-71 | 834.60 | 980.70 | 1047.90 | 1047.90 | 1047.90 | 1047.90 | 1080.80 | 1137.90 | 1213.80 | 1304.70 | 1379.70 | 1421.10 | 1471.20 | 1471.20 | 1471.20 | 1471.20 |
| Nov-71 | 834.60 | 980.70 | 1047.90 | 1047.90 | 1047.90 | 1047.90 | 1080.80 | 1137.90 | 1213.80 | 1304.70 | 1379.70 | 1421.10 | 1471.20 | 1471.20 | 1471.20 | 1471.20 |
| Jan-72 | 894.90 | 1051.50 | 1123.50 | 1123.50 | 1123.50 | 1123.50 | 1158.30 | 1219.80 | 1301.40 | 1398.90 | 1479.30 | 1523.70 | 1577.40 | 1577.40 | 1577.40 | 1577.40 |
| Oct-72 | 954.90 | 1121.70 | 1198.80 | 1198.80 | 1198.80 | 1198.80 | 1235.70 | 1301.40 | 1388.40 | 1492.50 | 1578.30 | 1625.70 | 1683.00 | 1683.00 | 1683.00 | 1683.00 |
| Oct-73 | 1013.70 | 1191.00 | 1272.90 | 1272.90 | 1272.90 | 1272.90 | 1311.90 | 1381.80 | 1474.20 | 1584.60 | 1675.80 | 1725.90 | 1786.80 | 1786.80 | 1786.80 | 1786.80 |
| Oct-74 | 1069.80 | 1256.70 | 1343.10 | 1343.10 | 1343.10 | 1343.10 | 1384.20 | 1458.00 | 1555.50 | 1672.20 | 1768.20 | 1821.30 | 1885.50 | 1885.50 | 1885.50 | 1885.50 |
| Oct-75 | 1123.20 | 1319.40 | 1410.30 | 1410.30 | 1410.30 | 1410.30 | 1453.50 | 1530.90 | 1633.20 | 1755.90 | 1856.70 | 1912.50 | 1979.70 | 1979.70 | 1979.70 | 1979.70 |
| Oct-76 | 1164.00 | 1367.10 | 1461.30 | 1461.30 | 1461.30 | 1461.30 | 1506.00 | 1586.40 | 1692.30 | 1819.50 | 1923.90 | 1981.80 | 2051.40 | 2051.40 | 2051.40 | 2051.40 |
| Oct-77 | 1236.30 | 1452.00 | 1551.90 | 1551.90 | 1551.90 | 1551.90 | 1599.30 | 1684.80 | 1797.30 | 1932.30 | 2043.30 | 2104.80 | 2178.60 | 2178.60 | 2178.60 | 2178.60 |
| Oct-78 | 1304.40 | 1531.80 | 1637.40 | 1637.40 | 1637.40 | 1637.40 | 1687.20 | 1777.50 | 1896.30 | 2038.50 | 2155.80 | 2220.60 | 2298.30 | 2298.30 | 2298.30 | 2298.30 |
| Oct-79 | 1395.90 | 1639.20 | 1752.30 | 1752.30 | 1752.30 | 1752.30 | 1805.70 | 1902.30 | 2029.50 | 2181.60 | 2307.00 | 2376.60 | 2459.70 | 2459.70 | 2459.70 | 2459.70 |
| Oct-80 | 1559.10 | 1830.90 | 1957.20 | 1957.20 | 1957.20 | 1957.20 | 2016.90 | 2124.90 | 2267.10 | 2436.90 | 2577.00 | 2654.70 | 2747.40 | 2747.40 | 2747.40 | 2747.40 |
| Oct-81 | 1782.00 | 2092.80 | 2237.10 | 2237.10 | 2237.10 | 2237.10 | 2305.20 | 2428.80 | 2591.40 | 2785.50 | 2945.40 | 3034.20 | 3140.40 | 3140.40 | 3140.40 | 3140.40 |
| Oct-82 | 1853.40 | 2176.50 | 2326.50 | 2326.50 | 2326.50 | 2326.50 | 2397.30 | 2526.00 | 2695.20 | 2896.80 | 3063.30 | 3155.70 | 3266.10 | 3266.10 | 3266.10 | 3266.10 |
| Jan-84 | 1927.50 | 2263.50 | 2419.50 | 2419.50 | 2419.50 | 2419.50 | 2493.30 | 2627.10 | 2802.90 | 3012.60 | 3185.70 | 3282.00 | 3396.60 | 3396.60 | 3396.60 | 3396.60 |
| Jan-85 | 2004.60 | 2354.10 | 2516.40 | 2516.40 | 2516.40 | 2516.40 | 2592.90 | 2732.10 | 2915.10 | 3133.20 | 3313.20 | 3413.40 | 3532.50 | 3532.50 | 3532.50 | 3532.50 |
| Oct-85 | 2064.60 | 2424.60 | 2592.00 | 2592.00 | 2592.00 | 2592.00 | 2670.60 | 2814.00 | 3002.70 | 3227.10 | 3412.50 | 3515.70 | 3638.40 | 3638.40 | 3638.40 | 3638.40 |
| Jan-87 | 2126.40 | 2497.20 | 2669.70 | 2669.70 | 2669.70 | 2669.70 | 2750.70 | 2898.30 | 3092.70 | 3324.00 | 3514.80 | 3621.30 | 3747.60 | 3747.60 | 3747.60 | 3747.60 |
| Jan-88 | 2159.00 | 2547.00 | 2723.10 | 2723.10 | 2723.10 | 2723.10 | 2805.60 | 2956.20 | 3154.50 | 3390.60 | 3585.00 | 3693.60 | 3822.60 | 3822.60 | 3822.60 | 3822.60 |
| Jan-89 | 2257.80 | 2651.40 | 2834.70 | 2834.70 | 2834.70 | 2834.70 | 2920.50 | 3077.40 | 3283.80 | 3529.50 | 3732.00 | 3845.10 | 3979.20 | 3979.20 | 3979.20 | 3979.20 |
| Jan-90 | 2339.10 | 2746.80 | 2936.70 | 2936.70 | 2936.70 | 2936.70 | 3025.50 | 3188.10 | 3402.00 | 3656.70 | 3866.40 | 3983.40 | 4122.60 | 4122.60 | 4122.60 | 4122.60 |
| Jan-91 | 2435.10 | 2589.30 | 3057.00 | 3057.00 | 3057.00 | 3057.00 | 3149.40 | 3318.90 | 3541.50 | 3806.70 | 4024.80 | 4146.60 | 4291.50 | 4291.50 | 4291.50 | 4291.50 |
| Jan-92 | 2537.40 | 2979.30 | 3185.40 | 3185.40 | 3185.40 | 3185.40 | 3281.70 | 3458.40 | 3690.30 | 3966.60 | 4193.70 | 4320.90 | 4471.80 | 4471.80 | 4471.80 | 4471.80 |
| Jan-93 | 2631.30 | 3089.40 | 3303.30 | 3303.30 | 3303.30 | 3303.30 | 3403.20 | 3586.50 | 3826.80 | 4113.30 | 4348.80 | 4480.80 | 4637.40 | 4637.40 | 4637.40 | 4637.40 |
| Jan-94 | 2689.20 | 3157.50 | 3375.90 | 3375.90 | 3375.90 | 3375.90 | 3478.20 | 3665.40 | 3911.10 | 4203.90 | 4444.50 | 4579.50 | 4739.40 | 4739.40 | 4739.40 | 4739.40 |
| Jan-95 | 2759.10 | 3239.70 | 3463.80 | 3463.80 | 3463.80 | 3463.80 | 3568.50 | 3760.80 | 4012.80 | 4313.10 | 4560.00 | 4698.60 | 4862.70 | 4862.70 | 4862.70 | 4862.70 |
| Jan-96 | 2825.40 | 3317.40 | 3546.90 | 3546.90 | 3546.90 | 3546.90 | 3654.00 | 3851.10 | 4109.10 | 4416.60 | 4669.50 | 4811.40 | 4979.40 | 4979.40 | 4979.40 | 4979.40 |
| Jan-97 | 2910.30 | 3417.00 | 3653.40 | 3653.40 | 3653.40 | 3653.40 | 3763.50 | 3966.60 | 4232.40 | 4549.20 | 4809.60 | 4955.70 | 5128.80 | 5128.80 | 5128.80 | 5128.80 |
| Jan-98 | 2991.90 | 3512.70 | 3755.70 | 3755.70 | 3755.70 | 3755.70 | 3868.80 | 4077.60 | 4350.90 | 4676.70 | 4944.30 | 5094.60 | 5272.50 | 5272.50 | 5272.50 | 5272.50 |
| Jan-99 | 3099.60 | 3639.30 | 3891.00 | 3891.00 | 3891.00 | 3891.00 | 4008.00 | 4224.30 | 4507.50 | 4845.00 | 5122.20 | 5277.90 | 5462.40 | 5462.40 | 5462.40 | 5462.40 |
| Jan-00 | 3248.40 | 3813.90 | 4077.90 | 4077.90 | 4077.90 | 4077.90 | 4200.30 | 4427.10 | 4723.80 | 5077.50 | 5368.20 | 5531.10 | 5724.60 | 5724.60 | 5724.60 | 5724.60 |
| Jul-00 | 3248.40 | 3813.90 | 4077.90 | 4127.70 | 4291.80 | 4291.80 | 4420.80 | 4659.30 | 4971.90 | 5286.00 | 5436.00 | 5583.60 | 5751.90 | 5751.90 | 5751.90 | 5751.90 |
| Jan-01 | 3368.70 | 3954.90 | 4228.80 | 4280.40 | 4450.50 | 4450.50 | 4584.30 | 4831.80 | 5155.80 | 5481.60 | 5637.00 | 5790.30 | 5964.60 | 5964.60 | 5964.60 | 5964.60 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-5

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-02 | 3537.00 | 4152.60 | 4440.30 | 4494.30 | 4673.10 | 4673.10 | 4813.50 | 5073.30 | 5413.50 | 5755.80 | 5919.00 | 6079.80 | 6262.80 | 6262.80 | 6262.80 | 6262.80 |
| Jan-03 | 3837.60 | 4323.00 | 4622.40 | 4678.50 | 4864.80 | 4977.00 | 5222.70 | 5403.00 | 5635.50 | 5991.90 | 6161.70 | 6329.10 | 6519.60 | 6519.60 | 6519.60 | 6519.60 |
| Jan-04 | 3979.50 | 4482.90 | 4793.40 | 4851.60 | 5044.80 | 5161.20 | 5415.90 | 5602.80 | 5844.00 | 6213.60 | 6389.70 | 6563.40 | 6760.80 | 6760.80 | 6760.80 | 6760.80 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-4

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-22 | 200.00 | 200.00 | 210.00 | 210.00 | 220.00 | 220.00 | 230.00 | 240.00 | 240.00 | 312.50 | 325.00 | 337.50 | 408.33 | 408.33 | 422.92 | 437.50 |
| Jun-42 | 250.00 | 250.00 | 262.50 | 262.50 | 275.00 | 275.00 | 287.50 | 300.00 | 300.00 | 312.50 | 325.00 | 337.50 | 408.33 | 408.33 | 422.92 | 437.50 |
| Jul-46 | 275.00 | 275.00 | 288.75 | 288.75 | 302.50 | 302.50 | 316.25 | 330.00 | 330.00 | 343.75 | 357.50 | 371.25 | 433.13 | 433.13 | 465.20 | 481.25 |
| Oct-49 | 384.75 | 384.75 | 384.75 | 384.75 | 384.75 | 399.00 | 413.25 | 427.50 | 441.75 | 456.00 | 484.50 | 484.50 | 498.75 | 498.75 | 513.00 | 513.00 |
| May-52 | 400.14 | 400.14 | 400.14 | 400.14 | 400.14 | 414.96 | 429.78 | 444.60 | 459.42 | 474.24 | 503.88 | 503.88 | 518.70 | 518.70 | 533.52 | 533.52 |
| Apr-55 | 400.14 | 400.14 | 429.00 | 429.00 | 429.90 | 452.40 | 483.60 | 499.20 | 514.80 | 530.40 | 561.60 | 561.60 | 577.20 | 577.20 | 592.80 | 592.80 |
| Jun-58 | 400.14 | 424.00 | 455.00 | 455.00 | 465.00 | 485.00 | 520.00 | 550.00 | 570.00 | 610.00 | 630.00 | 630.00 | 630.00 | 630.00 | 630.00 | 630.00 |
| Oct-63 | 400.14 | 515.00 | 550.00 | 550.00 | 560.00 | 585.00 | 625.00 | 660.00 | 690.00 | 720.00 | 740.00 | 740.00 | 740.00 | 740.00 | 740.00 | 740.00 |
| Sep-64 | 434.10 | 528.00 | 563.70 | 563.70 | 573.90 | 599.70 | 640.50 | 676.50 | 707.40 | 738.00 | 758.40 | 758.40 | 758.40 | 758.40 | 758.40 | 758.40 |
| Sep-65 | 460.20 | 559.80 | 597.60 | 597.60 | 608.40 | 635.70 | 678.90 | 717.00 | 749.70 | 782.40 | 804.00 | 804.00 | 804.00 | 804.00 | 804.00 | 804.00 |
| Jul-66 | 474.90 | 577.80 | 616.80 | 616.80 | 627.90 | 656.10 | 700.50 | 739.80 | 773.70 | 807.30 | 829.80 | 829.80 | 829.80 | 829.80 | 829.80 | 829.80 |
| Oct-67 | 501.60 | 610.20 | 651.30 | 663.00 | 692.70 | 739.80 | 781.20 | 816.90 | 852.60 | 876.30 | 876.30 | 876.30 | 876.30 | 876.30 | 876.30 | 876.30 |
| Jul-68 | 536.10 | 652.20 | 696.30 | 696.30 | 708.60 | 740.40 | 790.80 | 835.20 | 873.30 | 911.40 | 936.90 | 936.90 | 936.90 | 936.90 | 936.90 | 936.90 |
| Jul-69 | 603.60 | 734.40 | 783.90 | 783.90 | 798.00 | 833.70 | 890.40 | 940.50 | 983.40 | 1026.30 | 1054.80 | 1054.80 | 1054.80 | 1054.80 | 1054.80 | 1054.80 |
| Jan-70 | 652.50 | 793.80 | 847.50 | 847.50 | 862.50 | 901.20 | 962.40 | 1016.70 | 1063.20 | 1109.40 | 1140.30 | 1140.30 | 1140.30 | 1140.30 | 1140.30 | 1140.30 |
| Jan-71 | 704.10 | 856.50 | 914.40 | 914.40 | 930.60 | 972.30 | 1038.30 | 1097.10 | 1147.20 | 1197.00 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 |
| Nov-71 | 704.10 | 856.50 | 914.40 | 914.40 | 930.60 | 972.30 | 1038.30 | 1097.10 | 1147.20 | 1197.00 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 |
| Jan-72 | 754.80 | 918.30 | 980.40 | 980.40 | 997.80 | 1042.50 | 1113.30 | 1176.30 | 1230.00 | 1283.40 | 1319.10 | 1319.10 | 1319.10 | 1319.10 | 1319.10 | 1319.10 |
| Oct-72 | 805.20 | 979.80 | 1046.10 | 1064.70 | 1064.70 | 1112.10 | 1187.70 | 1254.90 | 1312.20 | 1369.20 | 1407.30 | 1407.30 | 1407.30 | 1407.30 | 1407.30 | 1407.30 |
| Oct-73 | 855.00 | 1040.40 | 1110.60 | 1110.60 | 1130.40 | 1180.80 | 1260.90 | 1332.30 | 1393.20 | 1453.80 | 1494.00 | 1494.00 | 1494.00 | 1494.00 | 1494.00 | 1494.00 |
| Oct-74 | 902.10 | 1097.70 | 1171.80 | 1171.80 | 1192.80 | 1245.90 | 1330.50 | 1405.80 | 1470.00 | 1533.90 | 1576.50 | 1576.50 | 1576.50 | 1576.50 | 1576.50 | 1576.50 |
| Oct-75 | 947.10 | 1152.60 | 1230.30 | 1230.30 | 1252.50 | 1308.30 | 1397.10 | 1476.00 | 1543.50 | 1610.70 | 1655.40 | 1655.40 | 1655.40 | 1655.40 | 1655.40 | 1655.40 |
| Oct-76 | 981.30 | 1194.30 | 1274.70 | 1274.70 | 1297.80 | 1355.70 | 1447.80 | 1529.40 | 1599.30 | 1668.90 | 1715.40 | 1715.40 | 1715.40 | 1715.40 | 1715.40 | 1715.40 |
| Oct-77 | 1042.20 | 1268.40 | 1353.60 | 1353.60 | 1378.20 | 1439.70 | 1537.50 | 1624.20 | 1698.60 | 1772.40 | 1821.90 | 1821.90 | 1821.90 | 1821.90 | 1821.90 | 1821.90 |
| Oct-78 | 1099.50 | 1338.30 | 1428.00 | 1428.00 | 1454.10 | 1518.90 | 1622.10 | 1713.60 | 1791.90 | 1869.90 | 1922.10 | 1922.10 | 1922.10 | 1922.10 | 1922.10 | 1922.10 |
| Oct-79 | 1176.60 | 1432.20 | 1528.20 | 1528.20 | 1556.10 | 1625.40 | 1736.10 | 1833.90 | 1917.60 | 2001.30 | 2057.10 | 2057.10 | 2057.10 | 2057.10 | 2057.10 | 2057.10 |
| Oct-80 | 1314.30 | 1599.90 | 1707.00 | 1707.00 | 1738.20 | 1815.60 | 1939.20 | 2048.40 | 2142.00 | 2235.60 | 2297.70 | 2297.70 | 2297.70 | 2297.70 | 2297.70 | 2297.70 |
| Oct-81 | 1502.10 | 1828.80 | 1951.20 | 1951.20 | 1986.90 | 2075.10 | 2216.10 | 2341.20 | 2448.30 | 2555.40 | 2626.20 | 2626.20 | 2626.20 | 2626.20 | 2626.20 | 2626.20 |
| Oct-82 | 1562.10 | 1902.00 | 2029.20 | 2029.20 | 2066.40 | 2158.20 | 2305.20 | 2434.80 | 2546.10 | 2657.70 | 2731.20 | 2731.20 | 2731.20 | 2731.20 | 2731.20 | 2731.20 |
| Jan-84 | 1624.50 | 1978.20 | 2110.50 | 2110.50 | 2149.20 | 2244.60 | 2397.30 | 2532.30 | 2647.80 | 2763.90 | 2840.40 | 2840.40 | 2840.40 | 2840.40 | 2840.40 | 2840.40 |
| Jan-85 | 1689.60 | 2057.40 | 2194.80 | 2194.80 | 2235.30 | 2334.30 | 2493.30 | 2633.70 | 2753.70 | 2874.60 | 2954.10 | 2954.10 | 2954.10 | 2954.10 | 2954.10 | 2954.10 |
| Oct-85 | 1740.30 | 2119.20 | 2260.50 | 2260.50 | 2302.50 | 2404.20 | 2568.00 | 2712.60 | 2836.20 | 2960.70 | 3042.60 | 3042.60 | 3042.60 | 3042.60 | 3042.60 | 3042.60 |
| Jan-87 | 1792.50 | 2182.80 | 2328.30 | 2328.30 | 2371.50 | 2476.20 | 2645.10 | 2793.90 | 2921.40 | 3049.50 | 3133.80 | 3133.80 | 3133.80 | 3133.80 | 3133.80 | 3133.80 |
| Jan-88 | 1828.50 | 2226.60 | 2374.80 | 2374.80 | 2418.90 | 2525.70 | 2697.90 | 2849.70 | 2979.90 | 3110.40 | 3196.50 | 3196.50 | 3196.50 | 3196.50 | 3196.50 | 3196.50 |
| Jan-89 | 1903.50 | 2317.80 | 2472.30 | 2472.30 | 2518.20 | 2629.20 | 2808.60 | 2966.40 | 3102.00 | 3237.90 | 3327.60 | 3327.60 | 3327.60 | 3327.60 | 3327.60 | 3327.60 |
| Jan-90 | 1971.90 | 2401.20 | 2561.40 | 2561.40 | 2608.80 | 2724.00 | 2909.70 | 3073.20 | 3213.60 | 3354.60 | 3447.30 | 3447.30 | 3447.30 | 3447.30 | 3447.30 | 3447.30 |
| Jan-91 | 2052.60 | 2499.60 | 2666.40 | 2666.40 | 2715.90 | 2835.60 | 3029.10 | 3199.20 | 3345.30 | 3492.00 | 3588.60 | 3588.60 | 3588.60 | 3588.60 | 3588.60 | 3588.60 |
| Jan-92 | 2138.70 | 2604.60 | 2778.30 | 2778.30 | 2829.90 | 2954.70 | 3156.30 | 3333.60 | 3485.70 | 3638.70 | 3739.20 | 3739.20 | 3739.20 | 3739.20 | 3739.20 | 3739.20 |
| Jan-93 | 2217.90 | 2700.90 | 2881.20 | 2881.20 | 2934.60 | 3063.90 | 3273.00 | 3456.90 | 3614.70 | 3773.40 | 3877.50 | 3877.50 | 3877.50 | 3877.50 | 3877.50 | 3877.50 |
| Jan-94 | 2266.80 | 2760.30 | 2944.50 | 2944.50 | 2999.10 | 3131.40 | 3345.00 | 3533.10 | 3694.20 | 3856.50 | 3862.70 | 3862.70 | 3862.70 | 3862.70 | 3862.70 | 3862.70 |
| Jan-95 | 2325.60 | 2832.00 | 3021.00 | 3021.00 | 3077.10 | 3212.70 | 3432.00 | 3624.90 | 3790.20 | 3956.70 | 4065.60 | 4065.60 | 4065.60 | 4065.60 | 4065.60 | 4065.60 |
| Jan-96 | 2381.40 | 2900.10 | 3093.60 | 3093.60 | 3150.90 | 3289.80 | 3514.50 | 3711.90 | 3881.10 | 4051.80 | 4163.10 | 4163.10 | 4163.10 | 4163.10 | 4163.10 | 4163.10 |
| Jan-97 | 2452.80 | 2987.10 | 3186.30 | 3186.30 | 3245.40 | 3388.50 | 3619.80 | 3823.20 | 3997.50 | 4173.30 | 4287.90 | 4287.90 | 4287.90 | 4287.90 | 4287.90 | 4287.90 |
| Jan-98 | 2521.50 | 3070.80 | 3275.40 | 3275.40 | 3336.30 | 3483.30 | 3721.20 | 3930.30 | 4109.40 | 4290.30 | 4407.90 | 4407.90 | 4407.90 | 4407.90 | 4407.90 | 4407.90 |
| Jan-99 | 2612.40 | 3181.20 | 3393.30 | 3393.30 | 3456.30 | 3608.70 | 3855.30 | 4071.90 | 4257.30 | 4444.80 | 4566.60 | 4566.60 | 4566.60 | 4566.60 | 4566.60 | 4566.60 |
| Jan-00 | 2737.80 | 3333.90 | 3556.20 | 3556.20 | 3622.20 | 3781.80 | 4040.40 | 4267.50 | 4461.60 | 4658.10 | 4785.90 | 4785.90 | 4785.90 | 4785.90 | 4785.90 | 4785.90 |
| Jul-00 | 2737.80 | 3333.90 | 3556.20 | 3606.00 | 3812.40 | 3980.40 | 4252.50 | 4464.00 | 4611.00 | 4758.90 | 4808.70 | 4808.70 | 4808.70 | 4808.70 | 4808.70 | 4808.70 |
| Jan-01 | 2839.20 | 3457.20 | 3687.90 | 3739.50 | 3953.40 | 4127.70 | 4409.70 | 4629.30 | 4781.70 | 4935.00 | 4986.60 | 4986.60 | 4986.60 | 4986.60 | 4986.60 | 4986.60 |
| Jan-02 | 3023.70 | 3681.90 | 3927.60 | 3982.50 | 4210.50 | 4395.90 | 4696.20 | 4930.20 | 5092.50 | 5255.70 | 5310.60 | 5310.60 | 5310.60 | 5310.60 | 5310.60 | 5310.60 |
| Jan-03 | 3311.10 | 3832.80 | 4088.70 | 4145.70 | 4383.00 | 4637.70 | 4954.50 | 5201.40 | 5372.70 | 5471.10 | 5528.40 | 5528.40 | 5528.40 | 5528.40 | 5528.40 | 5528.40 |
| Jan-04 | 3433.50 | 3974.70 | 4239.90 | 4299.00 | 4545.30 | 4809.30 | 5137.80 | 5394.00 | 5571.60 | 5673.60 | 5733.00 | 5733.00 | 5733.00 | 5733.00 | 5733.00 | 5733.00 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-3

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-22 | 200.00 | 200.00 | 210.00 | 210.00 | 220.00 | 220.00 | 230.00 | 240.00 | 240.00 | 250.00 | 325.00 | 337.50 | 350.00 | 350.00 | 362.50 | 375.00 |
| Jun-42 | 200.00 | 200.00 | 210.00 | 210.00 | 220.00 | 230.00 | 230.00 | 240.00 | 240.00 | 312.50 | 325.00 | 337.50 | 350.00 | 350.00 | 362.50 | 375.00 |
| Jul-46 | 230.00 | 230.00 | 241.50 | 241.50 | 253.00 | 264.50 | 264.50 | 276.00 | 276.00 | 343.75 | 357.50 | 371.25 | 385.00 | 385.00 | 398.75 | 412.50 |
| Oct-49 | 313.50 | 313.50 | 313.50 | 327.75 | 342.00 | 356.25 | 370.50 | 384.75 | 399.00 | 413.25 | 427.50 | 427.50 | 441.75 | 441.75 | 441.75 | 441.75 |
| May-52 | 326.04 | 326.04 | 326.04 | 340.86 | 355.68 | 370.50 | 385.32 | 400.14 | 414.96 | 429.78 | 444.60 | 444.60 | 459.42 | 459.42 | 459.42 | 459.42 |
| Apr-55 | 326.04 | 326.04 | 351.00 | 374.40 | 405.60 | 421.20 | 436.80 | 452.40 | 468.00 | 483.60 | 499.20 | 499.20 | 514.80 | 514.80 | 514.80 | 514.80 |
| Jun-58 | 326.04 | 346.00 | 372.00 | 415.00 | 440.00 | 460.00 | 480.00 | 510.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 |
| Oct-63 | 326.04 | 440.00 | 470.00 | 520.00 | 545.00 | 565.00 | 595.00 | 625.00 | 640.00 | 640.00 | 640.00 | 640.00 | 640.00 | 640.00 | 640.00 | 640.00 |
| Sep-64 | 353.70 | 450.90 | 481.80 | 533.10 | 558.60 | 579.00 | 609.90 | 640.50 | 656.10 | 656.10 | 656.10 | 656.10 | 656.10 | 656.10 | 656.10 | 656.10 |
| Sep-65 | 427.80 | 477.90 | 510.60 | 565.20 | 592.20 | 613.80 | 646.50 | 678.90 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 |
| Jul-66 | 441.60 | 493.20 | 526.80 | 583.20 | 611.10 | 633.30 | 667.20 | 700.50 | 717.60 | 717.60 | 717.60 | 717.60 | 717.60 | 717.60 | 717.60 | 717.60 |
| Oct-67 | 466.20 | 520.80 | 556.20 | 615.90 | 645.30 | 668.70 | 704.70 | 739.80 | 757.80 | 757.80 | 757.80 | 757.80 | 757.80 | 757.80 | 757.80 | 757.80 |
| Jul-68 | 498.30 | 556.80 | 594.60 | 658.50 | 689.70 | 714.90 | 753.30 | 790.80 | 810.00 | 810.00 | 810.00 | 810.00 | 810.00 | 810.00 | 810.00 | 810.00 |
| Jul-69 | 561.00 | 627.00 | 669.60 | 741.60 | 776.70 | 804.90 | 848.10 | 890.40 | 912.00 | 912.00 | 912.00 | 912.00 | 912.00 | 912.00 | 912.00 | 912.00 |
| Jan-70 | 606.30 | 677.70 | 723.90 | 801.60 | 839.70 | 870.00 | 916.80 | 962.40 | 985.80 | 985.80 | 985.80 | 985.80 | 985.80 | 985.80 | 985.80 | 985.80 |
| Jan-71 | 654.30 | 731.10 | 781.20 | 864.90 | 906.00 | 938.70 | 989.10 | 1038.30 | 1063.80 | 1063.80 | 1063.80 | 1063.80 | 1063.80 | 1063.80 | 1063.80 | 1063.80 |
| Nov-71 | 654.30 | 731.10 | 781.20 | 864.90 | 906.00 | 938.70 | 989.10 | 1038.30 | 1063.80 | 1063.80 | 1063.80 | 1063.80 | 1063.80 | 1063.80 | 1063.80 | 1063.80 |
| Jan-72 | 701.40 | 783.90 | 837.60 | 927.30 | 971.40 | 1006.50 | 1060.50 | 1113.30 | 1140.60 | 1140.60 | 1140.60 | 1140.60 | 1140.60 | 1140.60 | 1140.60 | 1140.60 |
| Oct-72 | 748.20 | 836.40 | 893.70 | 989.40 | 1036.50 | 1073.70 | 1131.30 | 1187.70 | 1216.80 | 1216.80 | 1216.80 | 1216.80 | 1216.80 | 1216.80 | 1216.80 | 1216.80 |
| Oct-73 | 794.40 | 888.00 | 948.90 | 1050.30 | 1100.40 | 1140.00 | 1201.20 | 1260.90 | 1291.80 | 1291.80 | 1291.80 | 1291.80 | 1291.80 | 1291.80 | 1291.80 | 1291.80 |
| Oct-74 | 838.20 | 936.90 | 1001.40 | 1108.20 | 1161.00 | 1203.00 | 1267.50 | 1330.50 | 1363.20 | 1363.20 | 1363.20 | 1363.20 | 1363.20 | 1363.20 | 1363.20 | 1363.20 |
| Oct-75 | 880.20 | 983.70 | 1051.50 | 1163.70 | 1219.20 | 1263.30 | 1330.80 | 1397.10 | 1431.30 | 1431.30 | 1431.30 | 1431.30 | 1431.30 | 1431.30 | 1431.30 | 1431.30 |
| Oct-76 | 912.00 | 1019.40 | 1089.60 | 1205.70 | 1263.30 | 1308.90 | 1379.10 | 1447.80 | 1483.20 | 1483.20 | 1483.20 | 1483.20 | 1483.20 | 1483.20 | 1483.20 | 1483.20 |
| Oct-77 | 968.40 | 1082.70 | 1157.10 | 1280.40 | 1341.60 | 1390.20 | 1464.60 | 1537.50 | 1575.30 | 1575.30 | 1575.30 | 1575.30 | 1575.30 | 1575.30 | 1575.30 | 1575.30 |
| Oct-78 | 1021.80 | 1142.10 | 1220.70 | 1350.90 | 1415.40 | 1466.70 | 1545.30 | 1622.10 | 1662.00 | 1662.00 | 1662.00 | 1662.00 | 1662.00 | 1662.00 | 1662.00 | 1662.00 |
| Oct-79 | 1093.50 | 1222.20 | 1306.50 | 1445.70 | 1514.70 | 1569.60 | 1653.90 | 1736.10 | 1778.70 | 1778.70 | 1778.70 | 1778.70 | 1778.70 | 1778.70 | 1778.70 | 1778.70 |
| Oct-80 | 1221.30 | 1365.30 | 1459.50 | 1614.90 | 1692.00 | 1753.20 | 1847.40 | 1939.20 | 1986.90 | 1986.90 | 1986.90 | 1986.90 | 1986.90 | 1986.90 | 1986.90 | 1986.90 |
| Oct-81 | 1395.90 | 1560.60 | 1668.30 | 1845.90 | 1934.10 | 2004.00 | 2111.70 | 2216.40 | 2271.00 | 2271.00 | 2271.00 | 2271.00 | 2271.00 | 2271.00 | 2271.00 | 2271.00 |
| Oct-82 | 1451.70 | 1623.00 | 1734.90 | 1919.70 | 2011.50 | 2084.10 | 2196.30 | 2305.20 | 2361.90 | 2361.90 | 2361.90 | 2361.90 | 2361.90 | 2361.90 | 2361.90 | 2361.90 |
| Jan-84 | 1509.90 | 1687.80 | 1804.20 | 1996.50 | 2091.90 | 2167.50 | 2284.20 | 2397.30 | 2456.40 | 2456.40 | 2456.40 | 2456.40 | 2456.40 | 2456.40 | 2456.40 | 2456.40 |
| Jan-85 | 1570.20 | 1755.30 | 1876.50 | 2076.30 | 2175.60 | 2254.20 | 2375.70 | 2493.30 | 2554.80 | 2554.80 | 2554.80 | 2554.80 | 2554.80 | 2554.80 | 2554.80 | 2554.80 |
| Oct-85 | 1617.30 | 1808.10 | 1932.90 | 2138.70 | 2241.00 | 2321.70 | 2447.10 | 2568.00 | 2631.30 | 2631.30 | 2631.30 | 2631.30 | 2631.30 | 2631.30 | 2631.30 | 2631.30 |
| Jan-87 | 1665.90 | 1862.40 | 1990.80 | 2202.90 | 2308.20 | 2391.30 | 2520.60 | 2645.10 | 2710.20 | 2710.20 | 2710.20 | 2710.20 | 2710.20 | 2710.20 | 2710.20 | 2710.20 |
| Jan-88 | 1699.20 | 1899.60 | 2030.70 | 2247.00 | 2354.40 | 2439.00 | 2571.00 | 2697.90 | 2764.50 | 2764.50 | 2764.50 | 2764.50 | 2764.50 | 2764.50 | 2764.50 | 2764.50 |
| Jan-89 | 1768.80 | 1977.60 | 2114.10 | 2339.10 | 2451.00 | 2538.90 | 2676.30 | 2808.60 | 2877.90 | 2877.90 | 2877.90 | 2877.90 | 2877.90 | 2877.90 | 2877.90 | 2877.90 |
| Jan-90 | 1832.40 | 2048.70 | 2190.30 | 2423.40 | 2539.20 | 2630.40 | 2772.60 | 2909.70 | 2981.40 | 2981.40 | 2981.40 | 2981.40 | 2981.40 | 2981.40 | 2981.40 | 2981.40 |
| Jan-91 | 1907.40 | 2132.70 | 2280.00 | 2522.70 | 2643.30 | 2738.10 | 2886.30 | 3029.10 | 3103.50 | 3103.50 | 3103.50 | 3103.50 | 3103.50 | 3103.50 | 3103.50 | 3103.50 |
| Jan-92 | 1987.50 | 2222.40 | 2375.70 | 2628.60 | 2754.30 | 2853.00 | 3007.50 | 3156.30 | 3233.70 | 3233.70 | 3233.70 | 3233.70 | 3233.70 | 3233.70 | 3233.70 | 3233.70 |
| Jan-93 | 2061.00 | 2304.60 | 2463.60 | 2725.80 | 2856.30 | 2958.60 | 3118.80 | 3273.00 | 3353.40 | 3353.40 | 3353.40 | 3353.40 | 3353.40 | 3353.40 | 3353.40 | 3353.40 |
| Jan-94 | 2106.30 | 2355.30 | 2517.90 | 2785.80 | 2919.00 | 3023.70 | 3187.50 | 3345.00 | 3427.20 | 3427.20 | 3427.20 | 3427.20 | 3427.20 | 3427.20 | 3427.20 | 3427.20 |
| Jan-95 | 2161.20 | 2416.50 | 2583.30 | 2858.10 | 2994.90 | 3102.30 | 3270.30 | 3432.00 | 3516.30 | 3516.30 | 3516.30 | 3516.30 | 3516.30 | 3516.30 | 3516.30 | 3516.30 |
| Jan-96 | 2213.10 | 2474.40 | 2645.40 | 2926.80 | 3066.90 | 3176.70 | 3348.90 | 3514.50 | 3600.60 | 3600.60 | 3600.60 | 3600.60 | 3600.60 | 3600.60 | 3600.60 | 3600.60 |
| Jan-97 | 2279.40 | 2548.50 | 2724.90 | 3014.70 | 3159.00 | 3272.10 | 3449.40 | 3619.80 | 3708.60 | 3708.60 | 3708.60 | 3708.60 | 3708.60 | 3708.60 | 3708.60 | 3708.60 |
| Jan-98 | 2343.30 | 2619.90 | 2801.10 | 3099.00 | 3247.50 | 3363.60 | 3546.00 | 3721.20 | 3812.40 | 3812.40 | 3812.40 | 3812.40 | 3812.40 | 3812.40 | 3812.40 | 3812.40 |
| Jan-99 | 2427.60 | 2714.10 | 2901.90 | 3210.60 | 3364.50 | 3484.80 | 3673.80 | 3855.30 | 3949.50 | 3949.50 | 3949.50 | 3949.50 | 3949.50 | 3949.50 | 3949.50 | 3949.50 |
| Jan-00 | 2544.00 | 2844.30 | 3041.10 | 3364.80 | 3525.90 | 3652.20 | 3850.20 | 4040.40 | 4139.10 | 4139.10 | 4139.10 | 4139.10 | 4139.10 | 4139.10 | 4139.10 | 4139.10 |
| Jul-00 | 2544.00 | 2884.20 | 3112.80 | 3364.80 | 3525.90 | 3702.60 | 3850.20 | 4040.40 | 4139.10 | 4139.10 | 4139.10 | 4139.10 | 4139.10 | 4139.10 | 4139.10 | 4139.10 |
| Jan-01 | 2638.20 | 2991.00 | 3228.00 | 3489.30 | 3656.40 | 3839.70 | 3992.70 | 4189.80 | 4292.10 | 4292.10 | 4292.10 | 4292.10 | 4292.10 | 4292.10 | 4292.10 | 4292.10 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-3

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-02 | 2796.60 | 3170.40 | 3421.80 | 3698.70 | 3875.70 | 4070.10 | 4232.40 | 4441.20 | 4549.50 | 4549.50 | 4549.50 | 4549.50 | 4549.50 | 4549.50 | 4549.50 | 4549.50 |
| Jan-03 | 2911.20 | 3300.30 | 3562.20 | 3883.50 | 4069.50 | 4273.50 | 4405.80 | 4623.30 | 4736.10 | 4736.10 | 4736.10 | 4736.10 | 4736.10 | 4736.10 | 4736.10 | 4736.10 |
| Jan-04 | 3018.90 | 3422.40 | 3693.90 | 4027.20 | 4220.10 | 4431.60 | 4568.70 | 4794.30 | 4911.30 | 4911.30 | 4911.30 | 4911.30 | 4911.30 | 4911.30 | 4911.30 | 4911.30 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-2

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-22 | 166.67 | 166.67 | 175.00 | 175.00 | 183.33 | 183.33 | 191.67 | 240.00 | 240.00 | 250.00 | 260.00 | 270.00 | 280.00 | 280.00 | 290.00 | 300.00 |
| Jun-42 | 166.67 | 166.67 | 175.00 | 175.00 | 183.33 | 191.67 | 230.00 | 240.00 | 240.00 | 250.00 | 260.00 | 270.00 | 280.00 | 280.00 | 290.00 | 300.00 |
| Jul-46 | 200.00 | 200.00 | 210.00 | 210.00 | 220.00 | 230.00 | 264.50 | 276.00 | 276.00 | 287.50 | 299.00 | 310.50 | 322.00 | 322.00 | 333.50 | 345.00 |
| Oct-49 | 249.38 | 263.63 | 263.63 | 277.88 | 292.13 | 306.38 | 320.63 | 334.88 | 349.13 | 349.13 | 349.13 | 349.13 | 349.13 | 349.13 | 349.13 | 349.13 |
| May-52 | 259.36 | 274.18 | 274.18 | 289.00 | 303.82 | 318.64 | 333.46 | 348.28 | 363.10 | 363.10 | 363.10 | 363.10 | 363.10 | 363.10 | 363.10 | 363.10 |
| Apr-55 | 259.36 | 274.18 | 335.40 | 335.40 | 351.00 | 366.60 | 382.20 | 397.80 | 413.40 | 413.40 | 413.40 | 413.40 | 413.40 | 413.40 | 413.40 | 413.40 |
| Jun-58 | 259.36 | 291.00 | 360.00 | 370.00 | 380.00 | 380.00 | 380.00 | 380.00 | 380.00 | 380.00 | 380.00 | 380.00 | 380.00 | 380.00 | 380.00 | 380.00 |
| Oct-63 | 259.36 | 375.00 | 450.00 | 465.00 | 475.00 | 475.00 | 475.00 | 475.00 | 475.00 | 475.00 | 475.00 | 475.00 | 475.00 | 475.00 | 475.00 | 475.00 |
| Sep-64 | 281.40 | 384.30 | 461.40 | 476.70 | 486.90 | 486.90 | 486.90 | 486.90 | 486.90 | 486.90 | 486.90 | 486.90 | 486.90 | 486.90 | 486.90 | 486.90 |
| Sep-65 | 342.60 | 407.40 | 489.00 | 505.20 | 516.00 | 516.00 | 516.00 | 516.00 | 516.00 | 516.00 | 516.00 | 516.00 | 516.00 | 516.00 | 516.00 | 516.00 |
| Jul-66 | 353.70 | 420.30 | 504.60 | 521.40 | 532.50 | 532.50 | 532.50 | 532.50 | 532.50 | 532.50 | 532.50 | 532.50 | 532.50 | 532.50 | 532.50 | 532.50 |
| Oct-67 | 373.50 | 443.70 | 532.80 | 550.50 | 562.20 | 562.20 | 562.20 | 562.20 | 562.20 | 562.20 | 562.20 | 562.20 | 562.20 | 562.20 | 562.20 | 562.20 |
| Jul-68 | 399.30 | 474.30 | 569.70 | 588.60 | 600.90 | 600.90 | 600.90 | 600.90 | 600.90 | 600.90 | 600.90 | 600.90 | 600.90 | 600.90 | 600.90 | 600.90 |
| Jul-69 | 449.70 | 534.00 | 641.40 | 662.70 | 676.50 | 676.50 | 676.50 | 676.50 | 676.50 | 676.50 | 676.50 | 676.50 | 676.50 | 676.50 | 676.50 | 676.50 |
| Jan-70 | 486.00 | 577.20 | 693.30 | 716.40 | 731.40 | 731.40 | 731.40 | 731.40 | 731.40 | 731.40 | 731.40 | 731.40 | 731.40 | 731.40 | 731.40 | 731.40 |
| Jan-71 | 524.40 | 622.80 | 748.20 | 773.10 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 |
| Nov-71 | 570.30 | 622.80 | 748.20 | 773.10 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 | 789.30 |
| Jan-72 | 611.40 | 667.80 | 802.20 | 828.90 | 846.30 | 846.30 | 846.30 | 846.30 | 846.30 | 846.30 | 846.30 | 846.30 | 846.30 | 846.30 | 846.30 | 846.30 |
| Oct-72 | 652.20 | 712.50 | 855.90 | 884.40 | 903.00 | 903.00 | 903.00 | 903.00 | 903.00 | 903.00 | 903.00 | 903.00 | 903.00 | 903.00 | 903.00 | 903.00 |
| Oct-73 | 692.40 | 756.60 | 908.70 | 939.00 | 958.80 | 958.80 | 958.80 | 958.80 | 958.80 | 958.80 | 958.80 | 958.80 | 958.80 | 958.80 | 958.80 | 958.80 |
| Oct-74 | 730.50 | 798.30 | 958.80 | 990.90 | 1011.60 | 1011.60 | 1011.60 | 1011.60 | 1011.60 | 1011.60 | 1011.60 | 1011.60 | 1011.60 | 1011.60 | 1011.60 | 1011.60 |
| Oct-75 | 767.10 | 838.20 | 1006.80 | 1040.40 | 1062.30 | 1062.30 | 1062.30 | 1062.30 | 1062.30 | 1062.30 | 1062.30 | 1062.30 | 1062.30 | 1062.30 | 1062.30 | 1062.30 |
| Oct-76 | 795.00 | 868.50 | 1043.10 | 1078.20 | 1100.70 | 1100.70 | 1100.70 | 1100.70 | 1100.70 | 1100.70 | 1100.70 | 1100.70 | 1100.70 | 1100.70 | 1100.70 | 1100.70 |
| Oct-77 | 844.20 | 922.20 | 1107.90 | 1145.10 | 1168.80 | 1168.80 | 1168.80 | 1168.80 | 1168.80 | 1168.80 | 1168.80 | 1168.80 | 1168.80 | 1168.80 | 1168.80 | 1168.80 |
| Oct-78 | 890.70 | 972.90 | 1168.80 | 1208.10 | 1233.00 | 1233.00 | 1233.00 | 1233.00 | 1233.00 | 1233.00 | 1233.00 | 1233.00 | 1233.00 | 1233.00 | 1233.00 | 1233.00 |
| Oct-79 | 953.10 | 1041.30 | 1250.70 | 1293.00 | 1319.70 | 1319.70 | 1319.70 | 1319.70 | 1319.70 | 1319.70 | 1319.70 | 1319.70 | 1319.70 | 1319.70 | 1319.70 | 1319.70 |
| Oct-80 | 1064.70 | 1163.10 | 1397.10 | 1444.20 | 1474.20 | 1474.20 | 1474.20 | 1474.20 | 1474.20 | 1474.20 | 1474.20 | 1474.20 | 1474.20 | 1474.20 | 1474.20 | 1474.20 |
| Oct-81 | 1217.10 | 1329.30 | 1596.90 | 1650.60 | 1685.10 | 1685.10 | 1685.10 | 1685.10 | 1685.10 | 1685.10 | 1685.10 | 1685.10 | 1685.10 | 1685.10 | 1685.10 | 1685.10 |
| Oct-82 | 1265.70 | 1382.40 | 1660.80 | 1716.60 | 1752.60 | 1752.60 | 1752.60 | 1752.60 | 1752.60 | 1752.60 | 1752.60 | 1752.60 | 1752.60 | 1752.60 | 1752.60 | 1752.60 |
| Jan-84 | 1316.40 | 1437.60 | 1727.10 | 1785.30 | 1822.80 | 1822.80 | 1822.80 | 1822.80 | 1822.80 | 1822.80 | 1822.80 | 1822.80 | 1822.80 | 1822.80 | 1822.80 | 1822.80 |
| Jan-85 | 1369.20 | 1495.20 | 1796.10 | 1856.70 | 1895.70 | 1895.70 | 1895.70 | 1895.70 | 1895.70 | 1895.70 | 1895.70 | 1895.70 | 1895.70 | 1895.70 | 1895.70 | 1895.70 |
| Oct-85 | 1410.30 | 1540.20 | 1830.10 | 1912.50 | 1952.70 | 1952.70 | 1952.70 | 1952.70 | 1952.70 | 1952.70 | 1952.70 | 1952.70 | 1952.70 | 1952.70 | 1952.70 | 1952.70 |
| Jan-87 | 1452.60 | 1586.40 | 1905.60 | 1969.80 | 2011.20 | 2011.20 | 2011.20 | 2011.20 | 2011.20 | 2011.20 | 2011.20 | 2211.20 | 2011.20 | 2011.20 | 2011.20 | 2011.20 |
| Jan-88 | 1481.70 | 1618.20 | 1943.70 | 2009.10 | 2051.40 | 2051.40 | 2051.40 | 2051.40 | 2051.40 | 2051.40 | 2051.40 | 2051.40 | 2051.40 | 2051.40 | 2051.40 | 2051.40 |
| Jan-89 | 1542.30 | 1684.50 | 2023.50 | 2091.60 | 2135.40 | 2135.40 | 2135.40 | 2135.40 | 2135.40 | 2135.40 | 2135.40 | 2135.40 | 2135.40 | 2135.40 | 2135.40 | 2135.40 |
| Jan-90 | 1597.80 | 1745.10 | 2096.40 | 2166.90 | 2212.20 | 2212.20 | 2212.20 | 2212.20 | 2212.20 | 2212.20 | 2212.20 | 2212.20 | 2212.20 | 2212.20 | 2212.20 | 2212.20 |
| Jan-91 | 1663.20 | 1816.50 | 2182.50 | 2255.70 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 |
| Jan-92 | 1733.10 | 1892.70 | 2274.30 | 2350.50 | 2399.40 | 2399.40 | 2399.40 | 2399.40 | 2399.40 | 2399.40 | 2399.40 | 2399.40 | 2399.40 | 2399.40 | 2399.40 | 2399.40 |
| Jan-93 | 1797.30 | 1962.60 | 2358.30 | 2437.50 | 2488.20 | 2488.20 | 2488.20 | 2488.20 | 2488.20 | 2488.20 | 2488.20 | 2488.20 | 2488.20 | 2488.20 | 2488.20 | 2488.20 |
| Jan-94 | 1836.90 | 2005.80 | 2410.20 | 2491.20 | 2542.80 | 2542.80 | 2542.80 | 2542.80 | 2542.80 | 2542.80 | 2542.80 | 2542.80 | 2542.80 | 2542.80 | 2542.80 | 2542.80 |
| Jan-95 | 1884.60 | 2058.00 | 2472.90 | 2556.00 | 2608.80 | 2608.80 | 2608.80 | 2608.80 | 2608.80 | 2608.80 | 2608.80 | 2608.80 | 2608.80 | 2608.80 | 2608.80 | 2608.80 |
| Jan-96 | 1929.90 | 2107.50 | 2532.30 | 2617.20 | 2671.50 | 2671.50 | 2671.50 | 2671.50 | 2671.50 | 2671.50 | 2671.50 | 2671.50 | 2671.50 | 2671.50 | 2671.50 | 2671.50 |
| Jan-97 | 1987.80 | 2170.80 | 2608.20 | 2695.80 | 2751.60 | 2751.60 | 2751.60 | 2751.60 | 2751.60 | 2751.60 | 2751.60 | 2751.60 | 2751.60 | 2751.60 | 2751.60 | 2751.60 |
| Jan-98 | 2043.60 | 2231.70 | 2681.10 | 2771.40 | 2828.70 | 2828.70 | 2828.70 | 2828.70 | 2828.70 | 2828.70 | 2828.70 | 2828.70 | 2828.70 | 2828.70 | 2828.70 | 2828.70 |
| Jan-99 | 2117.10 | 2312.10 | 2777.70 | 2871.30 | 2930.40 | 2930.40 | 2930.40 | 2930.40 | 2930.40 | 2930.40 | 2930.40 | 2930.40 | 2930.40 | 2930.40 | 2930.40 | 2930.40 |
| Jan-00 | 2218.80 | 2423.10 | 2910.90 | 3009.00 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 |
| Jul-00 | 2218.80 | 2527.20 | 2910.90 | 3009.00 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 | 3071.10 |
| Jan-01 | 2301.00 | 2620.80 | 3018.60 | 3120.30 | 3184.80 | 3184.80 | 3184.80 | 3184.80 | 3184.80 | 3184.80 | 3184.80 | 3184.80 | 3184.80 | 3184.80 | 3184.80 | 3184.80 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-2

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-02 | 2416.20 | 2751.90 | 3169.50 | 3276.30 | 3344.10 | 3344.10 | 3344.10 | 3344.10 | 3344.10 | 3344.10 | 3344.10 | 3344.10 | 3344.10 | 3344.10 | 3344.10 | 3344.10 |
| Jan-03 | 2515.20 | 2864.70 | 3299.40 | 3410.70 | 3481.20 | 3481.20 | 3481.20 | 3481.20 | 3481.20 | 3481.20 | 3481.20 | 3481.20 | 3481.20 | 3481.20 | 3481.20 | 3481.20 |
| Jan-04 | 2608.20 | 2970.60 | 3421.50 | 3537.00 | 3609.90 | 3609.90 | 3609.90 | 3609.90 | 3609.90 | 3609.90 | 3609.90 | 3609.90 | 3609.90 | 3609.90 | 3609.90 | 3609.90 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-1

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-22 | 125.00 | 125.00 | 131.25 | 131.25 | 183.33 | 183.33 | 191.67 | 200.00 | 200.00 | 208.33 | 216.67 | 225.00 | 233.33 | 233.33 | 241.67 | 250.00 |
| Jun-42 | 150.00 | 150.00 | 157.50 | 157.50 | 183.33 | 183.33 | 191.67 | 200.00 | 200.00 | 208.33 | 216.67 | 225.00 | 233.33 | 233.33 | 241.67 | 250.00 |
| Jul-46 | 180.00 | 180.00 | 189.00 | 189.00 | 220.00 | 230.00 | 230.00 | 240.00 | 240.00 | 250.00 | 260.00 | 270.00 | 280.00 | 280.00 | 290.00 | 300.00 |
| Oct-49 | 213.75 | 228.00 | 228.00 | 242.25 | 256.50 | 270.75 | 285.00 | 299.25 | 313.50 | 313.50 | 313.50 | 313.50 | 313.50 | 313.50 | 313.50 | 313.50 |
| May-52 | 222.30 | 237.12 | 237.12 | 251.94 | 266.76 | 281.58 | 296.40 | 311.22 | 326.04 | 326.04 | 326.04 | 326.04 | 326.04 | 326.04 | 326.04 | 326.04 |
| Apr-55 | 222.30 | 237.12 | 296.40 | 296.40 | 312.00 | 327.60 | 343.20 | 358.80 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 |
| Jun-58 | 222.30 | 251.00 | 314.00 | 314.00 | 314.00 | 314.00 | 314.00 | 314.00 | 314.00 | 314.00 | 314.00 | 314.00 | 314.00 | 314.00 | 314.00 | 314.00 |
| Oct-63 | 222.30 | 300.00 | 375.00 | 375.00 | 375.00 | 375.00 | 375.00 | 375.00 | 375.00 | 375.00 | 375.00 | 375.00 | 375.00 | 375.00 | 375.00 | 375.00 |
| Sep-64 | 241.20 | 307.50 | 384.30 | 384.30 | 384.30 | 384.30 | 384.30 | 384.30 | 384.30 | 384.30 | 384.30 | 384.30 | 384.30 | 384.30 | 384.30 | 384.30 |
| Sep-65 | 294.60 | 325.80 | 407.40 | 407.40 | 407.40 | 407.40 | 407.40 | 407.40 | 407.40 | 407.40 | 407.40 | 407.40 | 407.40 | 407.40 | 407.40 | 407.40 |
| Jul-66 | 303.90 | 336.30 | 420.30 | 420.30 | 420.30 | 420.30 | 420.30 | 420.30 | 420.30 | 420.30 | 420.30 | 420.30 | 420.30 | 420.30 | 420.30 | 420.30 |
| Oct-67 | 321.00 | 355.20 | 443.70 | 443.70 | 443.70 | 443.70 | 443.70 | 443.70 | 443.70 | 443.70 | 443.70 | 443.70 | 443.70 | 443.70 | 443.70 | 443.70 |
| Jul-68 | 343.20 | 379.80 | 474.30 | 474.30 | 474.30 | 474.30 | 474.30 | 474.30 | 474.30 | 474.30 | 474.30 | 474.30 | 474.30 | 474.30 | 474.30 | 474.30 |
| Jul-69 | 386.40 | 427.80 | 534.00 | 534.00 | 534.00 | 534.00 | 534.00 | 534.00 | 534.00 | 534.00 | 534.00 | 534.00 | 534.00 | 534.00 | 534.00 | 534.00 |
| Jan-70 | 417.60 | 462.60 | 577.20 | 577.20 | 577.20 | 577.20 | 577.20 | 577.20 | 577.20 | 577.20 | 577.20 | 577.20 | 577.20 | 577.20 | 577.20 | 577.20 |
| Jan-71 | 450.60 | 499.20 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 |
| Nov-71 | 495.00 | 515.40 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 | 622.80 |
| Jan-72 | 530.70 | 552.60 | 667.80 | 667.80 | 667.80 | 667.80 | 667.80 | 667.80 | 667.80 | 667.80 | 667.80 | 667.80 | 667.80 | 667.80 | 667.80 | 667.80 |
| Oct-72 | 566.10 | 589.50 | 712.50 | 712.50 | 712.50 | 712.50 | 712.50 | 712.50 | 712.50 | 712.50 | 712.50 | 712.50 | 712.50 | 712.50 | 712.50 | 712.50 |
| Oct-73 | 600.90 | 625.80 | 756.60 | 756.60 | 756.60 | 756.60 | 756.60 | 756.60 | 756.60 | 756.60 | 756.60 | 756.60 | 756.60 | 756.60 | 756.60 | 756.60 |
| Oct-74 | 634.20 | 660.30 | 798.30 | 798.30 | 798.30 | 798.30 | 798.30 | 798.30 | 798.30 | 798.30 | 798.30 | 798.30 | 798.30 | 798.30 | 798.30 | 798.30 |
| Oct-75 | 666.00 | 693.30 | 838.20 | 838.20 | 838.20 | 838.20 | 838.20 | 838.20 | 838.20 | 838.20 | 838.20 | 838.20 | 838.20 | 838.20 | 838.20 | 838.20 |
| Oct-76 | 690.00 | 718.50 | 868.50 | 868.50 | 868.50 | 868.50 | 868.50 | 868.50 | 868.50 | 868.50 | 868.50 | 868.50 | 868.50 | 868.50 | 868.50 | 868.50 |
| Oct-77 | 732.90 | 762.90 | 922.20 | 922.20 | 922.20 | 922.20 | 922.20 | 922.20 | 922.20 | 922.20 | 922.20 | 922.20 | 922.20 | 922.20 | 922.20 | 922.20 |
| Oct-78 | 773.10 | 804.90 | 972.90 | 972.90 | 972.90 | 972.90 | 972.90 | 972.90 | 972.90 | 972.90 | 972.90 | 972.90 | 972.90 | 972.90 | 972.90 | 972.90 |
| Oct-79 | 827.40 | 861.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 | 1041.30 |
| Oct-80 | 924.30 | 962.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 | 1163.10 |
| Oct-81 | 1056.60 | 1099.80 | 1329.30 | 1329.30 | 1329.30 | 1329.30 | 1329.30 | 1329.30 | 1329.30 | 1329.30 | 1329.30 | 1329.30 | 1329.30 | 1329.30 | 1329.30 | 1329.30 |
| Oct-82 | 1098.90 | 1143.90 | 1382.40 | 1382.40 | 1382.40 | 1382.40 | 1382.40 | 1382.40 | 1382.40 | 1382.40 | 1382.40 | 1382.40 | 1382.40 | 1382.40 | 1382.40 | 1382.40 |
| Jan-84 | 1143.00 | 1189.80 | 1437.60 | 1437.60 | 1437.60 | 1437.60 | 1437.60 | 1437.60 | 1437.60 | 1437.60 | 1437.60 | 1437.60 | 1437.60 | 1437.60 | 1437.60 | 1437.60 |
| Jan-85 | 1188.60 | 1237.50 | 1495.20 | 1495.20 | 1495.20 | 1495.20 | 1495.20 | 1495.20 | 1495.20 | 1495.20 | 1495.20 | 1495.20 | 1495.20 | 1495.20 | 1495.20 | 1495.20 |
| Oct-85 | 1224.30 | 1274.70 | 1540.20 | 1540.20 | 1540.20 | 1540.20 | 1540.20 | 1540.20 | 1540.20 | 1540.20 | 1540.20 | 1540.20 | 1540.20 | 1540.20 | 1540.20 | 1540.20 |
| Jan-87 | 1260.90 | 1312.80 | 1586.40 | 1586.40 | 1586.40 | 1586.40 | 1586.40 | 1586.40 | 1586.40 | 1586.40 | 1586.40 | 1586.40 | 1586.40 | 1586.40 | 1586.40 | 1586.40 |
| Jan-88 | 1286.10 | 1339.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 | 1618.20 |
| Jan-89 | 1338.90 | 1394.10 | 1684.50 | 1684.50 | 1684.50 | 1684.50 | 1684.50 | 1684.50 | 1684.50 | 1684.50 | 1684.50 | 1684.50 | 1684.50 | 1684.50 | 1684.50 | 1684.50 |
| Jan-90 | 1387.20 | 1444.20 | 1745.10 | 1745.10 | 1745.10 | 1745.10 | 1745.10 | 1745.10 | 1745.10 | 1745.10 | 1745.10 | 1745.10 | 1745.10 | 1745.10 | 1745.10 | 1745.10 |
| Jan-91 | 1444.20 | 1503.30 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 |
| Jan-92 | 1504.80 | 1566.30 | 1892.70 | 1892.70 | 1892.70 | 1892.70 | 1892.70 | 1892.70 | 1892.70 | 1892.70 | 1892.70 | 1892.70 | 1892.70 | 1892.70 | 1892.70 | 1892.70 |
| Jan-93 | 1560.60 | 1624.20 | 1962.60 | 1962.60 | 1962.60 | 1962.60 | 1962.60 | 1962.60 | 1962.60 | 1962.60 | 1962.60 | 1962.60 | 1962.60 | 1962.60 | 1962.60 | 1962.60 |
| Jan-94 | 1594.80 | 1659.90 | 2005.80 | 2005.80 | 2005.80 | 2005.80 | 2005.80 | 2005.80 | 2005.80 | 2005.80 | 2005.80 | 2005.80 | 2005.80 | 2005.80 | 2005.80 | 2005.80 |
| Jan-95 | 1636.20 | 1703.10 | 2058.00 | 2058.00 | 2058.00 | 2058.00 | 2058.00 | 2058.00 | 2058.00 | 2058.00 | 2058.00 | 2058.00 | 2058.00 | 2058.00 | 2058.00 | 2058.00 |
| Jan-96 | 1675.50 | 1743.90 | 2107.50 | 2107.50 | 2107.50 | 2107.50 | 2107.50 | 2107.50 | 2107.50 | 2107.50 | 2107.50 | 2107.50 | 2107.50 | 2107.50 | 2107.50 | 2107.50 |
| Jan-97 | 1725.90 | 1796.10 | 2170.80 | 2170.80 | 2170.80 | 2170.80 | 2170.80 | 2170.80 | 2170.80 | 2170.80 | 2170.80 | 2170.80 | 2170.80 | 2170.80 | 2170.80 | 2170.80 |
| Jan-98 | 1774.20 | 1846.50 | 2231.70 | 2231.70 | 2231.70 | 2231.70 | 2231.70 | 2231.70 | 2231.70 | 2231.70 | 2231.70 | 2231.70 | 2231.70 | 2231.70 | 2231.70 | 2231.70 |
| Jan-99 | 1838.10 | 1913.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 | 2312.10 |
| Jan-00 | 1926.30 | 2004.90 | 2423.10 | 2423.10 | 2423.10 | 2423.10 | 2423.10 | 2423.10 | 2423.10 | 2423.10 | 2423.10 | 2423.10 | 2423.10 | 2423.10 | 2423.10 | 2423.10 |
| Jan-01 | 1997.70 | 2079.00 | 2512.80 | 2512.80 | 2512.80 | 2512.80 | 2512.80 | 2512.80 | 2512.80 | 2512.80 | 2512.80 | 2512.80 | 2512.80 | 2512.80 | 2512.80 | 2512.80 |
| Jan-02 | 2097.60 | 2183.10 | 2638.50 | 2638.50 | 2638.50 | 2638.50 | 2638.50 | 2638.50 | 2638.50 | 2638.50 | 2638.50 | 2638.50 | 2638.50 | 2638.50 | 2638.50 | 2638.50 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-1

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-03 | 2183.70 | 2272.50 | 2746.80 | 2746.80 | 2746.80 | 2746.80 | 2746.80 | 2746.80 | 2746.80 | 2746.80 | 2746.80 | 2746.80 | 2746.80 | 2746.80 | 2746.80 | 2746.80 |
| Jan-04 | 2264.40 | 2356.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 | 2848.50 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-3E

## (Commissioned Officers with Over 4 Years of Active Service as Enlisted Members or Warrant Officers)

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jun-58 | | | | 414.90 | 440.10 | 459.90 | 480.00 | 510.00 | 534.90 | 534.90 | 534.90 | 534.90 | 534.90 | 534.90 | 534.90 | 534.90 |
| Oct-63 | | | | 519.90 | 545.10 | 564.90 | 594.90 | 624.90 | 650.10 | 650.10 | 650.10 | 650.10 | 650.10 | 650.10 | 650.10 | 650.10 |
| Sep-64 | | | | 533.10 | 558.60 | 579.00 | 609.90 | 640.50 | 666.30 | 666.30 | 666.30 | 666.30 | 666.30 | 666.30 | 666.30 | 666.30 |
| Sep-65 | | | | 565.20 | 592.20 | 613.80 | 646.50 | 678.90 | 706.20 | 706.20 | 706.20 | 706.20 | 706.20 | 706.20 | 706.20 | 706.20 |
| Jul-66 | | | | 583.20 | 611.10 | 633.30 | 667.20 | 700.50 | 728.70 | 728.70 | 728.70 | 728.70 | 728.70 | 728.70 | 728.70 | 728.70 |
| Oct-67 | | | | 615.90 | 645.30 | 668.70 | 704.70 | 739.80 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 | 769.50 |
| Jul-68 | | | | 658.50 | 689.70 | 714.90 | 753.30 | 790.80 | 822.60 | 822.60 | 822.60 | 822.60 | 822.60 | 822.60 | 822.60 | 822.60 |
| Jul-69 | | | | 741.60 | 776.70 | 804.90 | 848.10 | 890.40 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 |
| Jan-70 | | | | 801.60 | 839.70 | 870.00 | 916.80 | 962.40 | 1001.10 | 1001.10 | 1001.10 | 1001.10 | 1001.10 | 1001.10 | 1001.10 | 1001.10 |
| Jan-71 | | | | 864.90 | 906.00 | 938.70 | 989.10 | 1038.30 | 1080.30 | 1080.30 | 1080.30 | 1080.30 | 1080.30 | 1080.30 | 1080.30 | 1080.30 |
| Nov-71 | | | | 864.90 | 906.00 | 938.70 | 989.10 | 1038.30 | 1080.30 | 1080.30 | 1080.30 | 1080.30 | 1080.30 | 1080.30 | 1080.30 | 1080.30 |
| Jan-72 | | | | 927.30 | 971.40 | 1006.50 | 1060.50 | 1113.30 | 1158.30 | 1158.30 | 1158.30 | 1158.30 | 1158.30 | 1158.30 | 1158.30 | 1158.30 |
| Oct-72 | | | | 989.40 | 1036.50 | 1073.70 | 1131.30 | 1187.70 | 1235.70 | 1235.70 | 1235.70 | 1235.70 | 1235.70 | 1235.70 | 1235.70 | 1235.70 |
| Oct-73 | | | | 1050.30 | 1100.40 | 1140.00 | 1201.20 | 1260.90 | 1311.90 | 1311.90 | 1311.90 | 1311.90 | 1311.90 | 1311.90 | 1311.90 | 1311.90 |
| Oct-74 | | | | 1108.20 | 1161.00 | 1203.00 | 1267.50 | 1330.50 | 1384.20 | 1384.20 | 1384.20 | 1384.20 | 1384.20 | 1384.20 | 1384.20 | 1384.20 |
| Oct-75 | | | | 1163.70 | 1218.90 | 1263.00 | 1330.80 | 1397.10 | 1453.50 | 1453.50 | 1453.50 | 1453.50 | 1453.50 | 1453.50 | 1453.50 | 1453.50 |
| Oct-76 | | | | 1205.70 | 1263.30 | 1308.90 | 1379.10 | 1447.80 | 1506.00 | 1506.00 | 1506.00 | 1506.00 | 1506.00 | 1506.00 | 1506.00 | 1506.00 |
| Oct-77 | | | | 1280.40 | 1341.60 | 1390.20 | 1464.60 | 1537.50 | 1599.30 | 1599.30 | 1599.30 | 1599.30 | 1599.30 | 1599.30 | 1599.30 | 1599.30 |
| Oct-78 | | | | 1350.90 | 1415.40 | 1466.70 | 1545.30 | 1622.10 | 1687.20 | 1687.20 | 1687.20 | 1687.20 | 1687.20 | 1687.20 | 1687.20 | 1687.20 |
| Oct-79 | | | | 1445.70 | 1514.70 | 1569.60 | 1653.90 | 1736.10 | 1805.70 | 1805.70 | 1805.70 | 1805.70 | 1805.70 | 1805.70 | 1805.70 | 1805.70 |
| Oct-80 | | | | 1614.90 | 1692.00 | 1753.20 | 1847.40 | 1939.20 | 2016.90 | 2016.90 | 2016.90 | 2016.90 | 2016.90 | 2016.90 | 2016.90 | 2016.90 |
| Oct-81 | | | | 1845.90 | 1934.10 | 2004.00 | 2111.70 | 2216.40 | 2305.20 | 2305.20 | 2305.20 | 2305.20 | 2305.20 | 2305.20 | 2305.20 | 2305.20 |
| Oct-82 | | | | 1919.70 | 2011.50 | 2084.10 | 2196.30 | 2305.20 | 2397.30 | 2397.30 | 2397.30 | 2397.30 | 2397.30 | 2397.30 | 2397.30 | 2397.30 |
| Jan-84 | | | | 1996.50 | 2091.90 | 2167.50 | 2284.20 | 2397.30 | 2493.30 | 2493.30 | 2493.30 | 2493.30 | 2493.30 | 2493.30 | 2493.30 | 2493.30 |
| Jan-85 | | | | 2076.30 | 2175.60 | 2254.20 | 2375.70 | 2493.30 | 2592.90 | 2592.90 | 2592.90 | 2592.90 | 2592.90 | 2592.90 | 2592.90 | 2592.90 |
| Oct-85 | | | | 2138.70 | 2241.00 | 2321.70 | 2447.10 | 2568.00 | 2670.60 | 2670.60 | 2670.60 | 2670.60 | 2670.60 | 2670.60 | 2670.60 | 2670.60 |
| Jan-87 | | | | 2202.90 | 2308.20 | 2391.30 | 2520.60 | 2645.10 | 2750.70 | 2750.70 | 2750.70 | 2750.70 | 2750.70 | 2750.70 | 2750.70 | 2750.70 |
| Jan-88 | | | | 2247.00 | 2354.40 | 2439.00 | 2571.00 | 2697.90 | 2805.60 | 2805.60 | 2805.60 | 2805.60 | 2805.60 | 2805.60 | 2805.60 | 2805.60 |
| Jan-89 | | | | 2339.10 | 2451.00 | 2538.90 | 2676.30 | 2808.60 | 2920.50 | 2920.50 | 2920.50 | 2920.50 | 2920.50 | 2920.50 | 2920.50 | 2920.50 |
| Jan-90 | | | | 2423.40 | 2539.20 | 2630.40 | 2772.60 | 2909.70 | 3025.50 | 3025.50 | 3025.50 | 3025.50 | 3025.50 | 3025.50 | 3025.50 | 3025.50 |
| Jan-91 | | | | 2522.70 | 2643.30 | 2738.10 | 2886.30 | 3029.10 | 3149.40 | 3149.40 | 3149.40 | 3149.40 | 3149.40 | 3149.40 | 3149.40 | 3149.40 |
| Jan-92 | | | | 2628.60 | 2754.30 | 2853.00 | 3007.50 | 3156.30 | 3281.70 | 3281.70 | 3281.70 | 3281.70 | 3281.70 | 3281.70 | 3281.70 | 3281.70 |
| Jan-93 | | | | 2725.80 | 2856.30 | 2958.60 | 3118.80 | 3273.00 | 3403.20 | 3403.20 | 3403.20 | 3403.20 | 3403.20 | 3403.20 | 3403.20 | 3403.20 |
| Jan-94 | | | | 2785.80 | 2919.00 | 3023.70 | 3187.50 | 3345.00 | 3478.20 | 3478.20 | 3478.20 | 3478.20 | 3478.20 | 3478.20 | 3478.20 | 3478.20 |
| Jan-95 | | | | 2858.10 | 2994.90 | 3102.30 | 3270.30 | 3432.00 | 3568.50 | 3568.50 | 3568.50 | 3568.50 | 3568.50 | 3568.50 | 3568.50 | 3568.50 |
| Jan-96 | | | | 2926.80 | 3066.90 | 3176.70 | 3348.90 | 3514.50 | 3654.00 | 3654.00 | 3654.00 | 3654.00 | 3654.00 | 3654.00 | 3654.00 | 3654.00 |
| Jan-97 | | | | 3014.70 | 3159.00 | 3272.10 | 3449.40 | 3619.80 | 3763.50 | 3763.50 | 3763.50 | 3763.50 | 3763.50 | 3763.50 | 3763.50 | 3763.50 |
| Jan-98 | | | | 3099.00 | 3247.50 | 3363.60 | 3546.00 | 3721.20 | 3868.80 | 3868.80 | 3868.80 | 3868.80 | 3868.80 | 3868.80 | 3868.80 | 3868.80 |
| Jan-99 | | | | 3210.60 | 3364.50 | 3484.80 | 3673.80 | 3855.30 | 4008.00 | 4008.00 | 4008.00 | 4008.00 | 4008.00 | 4008.00 | 4008.00 | 4008.00 |
| Jan-00 | | | | 3364.80 | 3525.90 | 3652.20 | 3850.20 | 4040.40 | 4200.30 | 4200.30 | 4200.30 | 4200.30 | 4200.30 | 4200.30 | 4200.30 | 4200.30 |
| Jul-00 | | | | 3364.80 | 3525.90 | 3702.60 | 3850.20 | 4040.40 | 4200.30 | 4291.80 | 4416.90 | 4416.90 | 4416.90 | 4416.90 | 4416.90 | 4416.90 |
| Jan-01 | | | | 3489.30 | 3656.40 | 3839.70 | 3992.70 | 4189.80 | 4355.70 | 4450.50 | 4580.40 | 4580.40 | 4580.40 | 4580.40 | 4580.40 | 4580.40 |
| Jan-02 | | | | 3698.70 | 3875.70 | 4070.10 | 4232.40 | 4441.20 | 4617.00 | 4717.50 | 4855.20 | 4855.20 | 4855.20 | 4855.20 | 4855.20 | 4855.20 |
| Jan-03 | | | | 3883.50 | 4069.50 | 4273.50 | 4405.80 | 4623.30 | 4806.30 | 4911.00 | 5054.40 | 5054.40 | 5054.40 | 5054.40 | 5054.40 | 5054.40 |
| Jan-04 | | | | 4027.20 | 4220.10 | 4431.60 | 4568.70 | 4794.30 | 4984.20 | 5092.80 | 5241.30 | 5241.30 | 5241.30 | 5241.30 | 5241.30 | 5241.30 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-2E

## (Commissioned Officers with Over 4 Years of Active Service as Enlisted Members or Warrant Officers)

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jun-58 | | | | 369.90 | 380.10 | 395.10 | 414.90 | 435.00 | 450.00 | 450.00 | 450.00 | 450.00 | 450.00 | 450.00 | 450.00 | 450.00 |
| Oct-63 | | | | 465.00 | 474.90 | 489.90 | 515.10 | 534.90 | 549.90 | 549.90 | 549.90 | 549.90 | 549.90 | 549.90 | 549.90 | 549.90 |
| Sep-64 | | | | 476.70 | 486.90 | 502.20 | 528.00 | 548.40 | 563.70 | 563.70 | 563.70 | 563.70 | 563.70 | 563.70 | 563.70 | 563.70 |
| Sep-65 | | | | 505.20 | 516.00 | 532.20 | 559.80 | 581.40 | 597.60 | 597.60 | 597.60 | 597.60 | 597.60 | 597.60 | 597.60 | 597.60 |
| Jul-66 | | | | 521.40 | 532.50 | 549.30 | 577.80 | 600.00 | 616.80 | 616.80 | 616.80 | 616.80 | 616.80 | 616.80 | 616.80 | 616.80 |
| Oct-67 | | | | 550.50 | 562.20 | 580.20 | 610.20 | 633.60 | 651.30 | 651.30 | 651.30 | 651.30 | 651.30 | 651.30 | 651.30 | 651.30 |
| Jul-68 | | | | 588.60 | 600.90 | 620.10 | 652.20 | 677.40 | 696.30 | 696.30 | 696.30 | 696.30 | 696.30 | 696.30 | 696.30 | 696.30 |
| Jul-69 | | | | 662.70 | 676.50 | 698.10 | 734.40 | 762.90 | 783.90 | 783.90 | 783.90 | 783.90 | 783.90 | 783.90 | 783.90 | 783.90 |
| Jan-70 | | | | 716.40 | 731.40 | 754.50 | 793.80 | 824.70 | 847.50 | 847.50 | 847.50 | 847.50 | 847.50 | 847.50 | 847.50 | 847.50 |
| Jan-71 | | | | 773.10 | 789.30 | 814.20 | 856.50 | 889.80 | 914.40 | 914.40 | 914.40 | 914.40 | 914.40 | 914.40 | 914.40 | 914.40 |
| Nov-71 | | | | 773.10 | 789.30 | 814.20 | 856.50 | 889.80 | 914.40 | 914.40 | 914.40 | 914.40 | 914.40 | 914.40 | 914.40 | 914.40 |
| Jan-72 | | | | 828.90 | 846.30 | 873.00 | 918.30 | 954.00 | 980.40 | 980.40 | 980.40 | 980.40 | 980.40 | 980.40 | 980.40 | 980.40 |
| Oct-72 | | | | 884.40 | 903.00 | 931.50 | 979.80 | 1017.90 | 1046.10 | 1046.10 | 1046.10 | 1046.10 | 1046.10 | 1046.10 | 1046.10 | 1046.10 |
| Oct-73 | | | | 939.00 | 958.80 | 989.10 | 1040.40 | 1080.60 | 1110.60 | 1110.60 | 1110.60 | 1110.60 | 1110.60 | 1110.60 | 1110.60 | 1110.60 |
| Oct-74 | | | | 990.90 | 1011.60 | 1043.70 | 1097.70 | 1140.30 | 1171.80 | 1171.80 | 1171.80 | 1171.80 | 1171.80 | 1171.80 | 1171.80 | 1171.80 |
| Oct-75 | | | | 1040.40 | 1062.30 | 1095.90 | 1152.60 | 1197.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 |
| Oct-76 | | | | 1078.20 | 1100.70 | 1135.50 | 1194.30 | 1240.50 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 |
| Oct-77 | | | | 1145.10 | 1168.80 | 1206.00 | 1268.40 | 1317.30 | 1353.60 | 1353.60 | 1353.60 | 1353.60 | 1353.60 | 1353.60 | 1353.60 | 1353.60 |
| Oct-78 | | | | 1208.10 | 1233.00 | 1272.30 | 1338.30 | 1389.90 | 1428.00 | 1428.00 | 1428.00 | 1428.00 | 1428.00 | 1428.00 | 1428.00 | 1428.00 |
| Oct-79 | | | | 1293.00 | 1319.70 | 1361.70 | 1432.70 | 1487.40 | 1528.20 | 1528.20 | 1528.20 | 1528.20 | 1528.20 | 1528.20 | 1528.20 | 1528.20 |
| Oct-80 | | | | 1444.20 | 1474.20 | 1521.00 | 1599.90 | 1661.40 | 1707.00 | 1707.00 | 1707.00 | 1707.00 | 1707.00 | 1707.00 | 1707.00 | 1707.00 |
| Oct-81 | | | | 1650.60 | 1685.10 | 1738.50 | 1828.80 | 1899.00 | 1951.20 | 1951.20 | 1951.20 | 1951.20 | 1951.20 | 1951.20 | 1951.20 | 1951.20 |
| Oct-82 | | | | 1716.60 | 1752.60 | 1808.10 | 1902.00 | 1974.90 | 2029.20 | 2029.20 | 2029.20 | 2029.20 | 2029.20 | 2029.20 | 2029.20 | 2029.20 |
| Jan-84 | | | | 1785.30 | 1822.80 | 1880.40 | 1978.20 | 2053.80 | 2110.50 | 2110.50 | 2110.50 | 2110.50 | 2110.50 | 2110.50 | 2110.50 | 2110.50 |
| Jan-85 | | | | 1856.70 | 1895.70 | 1955.70 | 2057.40 | 2136.00 | 2194.80 | 2194.80 | 2194.80 | 2194.80 | 2194.80 | 2194.80 | 2194.80 | 2194.80 |
| Oct-85 | | | | 1912.50 | 1952.70 | 2014.50 | 2119.20 | 2200.20 | 2260.50 | 2260.50 | 2260.50 | 2260.50 | 2260.50 | 2260.50 | 2260.50 | 2260.50 |
| Jan-87 | | | | 1969.80 | 2011.20 | 2074.80 | 2182.80 | 2266.20 | 2328.30 | 2328.30 | 2328.30 | 2328.30 | 2328.30 | 2328.30 | 2328.30 | 2328.30 |
| Jan-88 | | | | 2009.10 | 2051.40 | 2116.20 | 2226.60 | 2311.50 | 2374.80 | 2374.80 | 2374.80 | 2374.80 | 2374.80 | 2374.80 | 2374.80 | 2374.80 |
| Jan-89 | | | | 2091.60 | 2135.40 | 2202.90 | 2317.80 | 2406.30 | 2472.30 | 2472.30 | 2472.30 | 2472.30 | 2472.30 | 2472.30 | 2472.30 | 2472.30 |
| Jan-90 | | | | 2166.90 | 2212.20 | 2282.10 | 2401.20 | 2493.00 | 2561.40 | 2561.40 | 2561.40 | 2561.40 | 2561.40 | 2561.40 | 2561.40 | 2561.40 |
| Jan-91 | | | | 2255.70 | 2302.80 | 2375.70 | 2499.60 | 2595.30 | 2666.40 | 2666.40 | 2666.40 | 2666.40 | 2666.40 | 2666.40 | 2666.40 | 2666.40 |
| Jan-92 | | | | 2350.50 | 2399.40 | 2475.60 | 2604.60 | 2704.20 | 2778.30 | 2778.30 | 2778.30 | 2778.30 | 2778.30 | 2778.30 | 2778.30 | 2778.30 |
| Jan-93 | | | | 2437.50 | 2488.20 | 2567.10 | 2700.90 | 2804.40 | 2881.20 | 2881.20 | 2881.20 | 2881.20 | 2881.20 | 2881.20 | 2881.20 | 2881.20 |
| Jan-94 | | | | 2491.20 | 2542.80 | 2623.50 | 2760.30 | 2866.20 | 2944.50 | 2944.50 | 2944.50 | 2944.50 | 2944.50 | 2944.50 | 2944.50 | 2944.50 |
| Jan-95 | | | | 2556.00 | 2608.80 | 2691.60 | 2832.00 | 2940.60 | 3021.00 | 3021.00 | 3021.00 | 3021.00 | 3021.00 | 3021.00 | 3021.00 | 3021.00 |
| Jan-96 | | | | 2617.20 | 2671.50 | 2756.10 | 2900.10 | 3011.10 | 3093.60 | 3093.60 | 3093.60 | 3093.60 | 3093.60 | 3093.60 | 3093.60 | 3093.60 |
| Jan-97 | | | | 2695.80 | 2751.60 | 2838.90 | 2987.10 | 3101.40 | 3186.30 | 3186.30 | 3186.30 | 3186.30 | 3186.30 | 3186.30 | 3186.30 | 3186.30 |
| Jan-98 | | | | 2771.40 | 2828.70 | 2918.40 | 3070.80 | 3188.10 | 3275.40 | 3275.40 | 3275.40 | 3275.40 | 3275.40 | 3275.40 | 3275.40 | 3275.40 |
| Jan-99 | | | | 2871.30 | 2930.40 | 3023.40 | 3181.20 | 3303.00 | 3393.30 | 3393.30 | 3393.30 | 3393.30 | 3393.30 | 3393.30 | 3393.30 | 3393.30 |
| Jan-00 | | | | 3009.00 | 3071.10 | 3168.60 | 3333.90 | 3461.40 | 3556.20 | 3556.20 | 3556.20 | 3556.20 | 3556.20 | 3556.20 | 3556.20 | 3556.20 |
| Jan-01 | | | | 3120.30 | 3184.80 | 3285.90 | 3457.20 | 3589.50 | 3687.90 | 3687.90 | 3687.90 | 3687.90 | 3687.90 | 3687.90 | 3687.90 | 3687.90 |
| Jan-02 | | | | 3276.30 | 3344.10 | 3450.30 | 3630.00 | 3768.90 | 3872.40 | 3872.40 | 3872.40 | 3872.40 | 3872.40 | 3872.40 | 3872.40 | 3872.40 |
| Jan-03 | | | | 3410.70 | 3481.20 | 3591.90 | 3778.80 | 3923.40 | 4031.10 | 4031.10 | 4031.10 | 4031.10 | 4031.10 | 4031.10 | 4031.10 | 4031.10 |
| Jan-04 | | | | 3537.00 | 3609.90 | 3724.80 | 3918.60 | 4068.60 | 4180.20 | 4180.20 | 4180.20 | 4180.20 | 4180.20 | 4180.20 | 4180.20 | 4180.20 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-1E

## (Commissioned Officers with Over 4 Years of Active Service as Enlisted Members or Warrant Officers)

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-58 | | | | 314.10 | 335.10 | 350.10 | 365.10 | 380.10 | 399.90 | 399.90 | 399.90 | 399.90 | 399.90 | 399.90 | 399.90 | 399.90 |
| Oct-63 | | | | 375.00 | 399.90 | 414.90 | 429.90 | 444.90 | 465.00 | 465.00 | 465.00 | 465.00 | 465.00 | 465.00 | 465.00 | 465.00 |
| Sep-64 | | | | 384.30 | 410.10 | 425.40 | 440.70 | 456.00 | 476.70 | 476.70 | 476.70 | 476.70 | 476.70 | 476.70 | 476.70 | 476.70 |
| Sep-65 | | | | 407.40 | 434.70 | 450.90 | 467.10 | 483.30 | 505.20 | 505.20 | 505.20 | 505.20 | 505.20 | 505.20 | 505.20 | 505.20 |
| Jul-66 | | | | 420.30 | 448.50 | 465.30 | 482.10 | 498.90 | 521.40 | 521.40 | 521.40 | 521.40 | 521.40 | 521.40 | 521.40 | 521.40 |
| Oct-67 | | | | 443.70 | 473.70 | 491.40 | 509.10 | 526.80 | 550.50 | 550.50 | 550.50 | 550.50 | 550.50 | 550.50 | 550.50 | 550.50 |
| Jul-68 | | | | 474.30 | 506.40 | 525.30 | 544.20 | 563.10 | 588.60 | 588.60 | 588.60 | 588.60 | 588.60 | 588.60 | 588.60 | 588.60 |
| Jul-69 | | | | 534.00 | 570.30 | 591.60 | 612.90 | 634.20 | 662.70 | 662.70 | 662.70 | 662.70 | 662.70 | 662.70 | 662.70 | 662.70 |
| Jan-70 | | | | 577.20 | 616.50 | 639.60 | 662.40 | 685.50 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 |
| Jan-71 | | | | 622.80 | 665.10 | 690.00 | 714.60 | 739.80 | 773.10 | 773.10 | 773.10 | 773.10 | 773.10 | 773.10 | 773.10 | 773.10 |
| Nov-71 | | | | 622.80 | 665 .10 | 690.00 | 714.60 | 739.80 | 773.10 | 773.10 | 773.10 | 773.10 | 773.10 | 773.10 | 773.10 | 773.10 |
| Jan-72 | | | | 667.80 | 713.10 | 739.80 | 766.20 | 793.20 | 828.90 | 828.90 | 828.90 | 828.90 | 828.90 | 828.90 | 828.90 | 828.90 |
| Oct-72 | | | | 712.50 | 760.80 | 789.30 | 817.50 | 846.30 | 884.40 | 884.40 | 884.40 | 884.40 | 884.40 | 884.40 | 884.40 | 884.40 |
| Oct-73 | | | | 756.60 | 807.60 | 837.90 | 867.90 | 898.50 | 939.00 | 939.00 | 939.00 | 939.00 | 939.00 | 939.00 | 939.00 | 939.00 |
| Oct-74 | | | | 798.30 | 852.30 | 884.10 | 915.90 | 948.00 | 990.90 | 990.90 | 990.90 | 990.90 | 990.90 | 990.90 | 990.90 | 990.90 |
| Oct-75 | | | | 838.20 | 894.90 | 928.20 | 961.80 | 995.40 | 1040.40 | 1040.40 | 1040.40 | 1040.40 | 1040.40 | 1040.40 | 1040.40 | 1040.40 |
| Oct-76 | | | | 868.50 | 927.30 | 961.80 | 996.60 | 1031.40 | 1078.20 | 1078.20 | 1078.20 | 1078.20 | 1078.20 | 1078.20 | 1078.20 | 1078.20 |
| Oct-77 | | | | 922.20 | 984.90 | 1021.50 | 1058.40 | 1095.30 | 1145.10 | 1145.10 | 1145.10 | 1145.10 | 1145.10 | 1145.10 | 1145.10 | 1145.10 |
| Oct-78 | | | | 972.90 | 1039.20 | 1077.60 | 1116.60 | 1155.60 | 1208.10 | 1208.10 | 1208.10 | 1208.10 | 1208.10 | 1208.10 | 1208.10 | 1208.10 |
| Oct-79 | | | | 1041.30 | 1112.10 | 1153.20 | 1194.90 | 1236.90 | 1293.00 | 1293.00 | 1293.00 | 1293.00 | 1293.00 | 1293.00 | 1293.00 | 1293.00 |
| Oct-80 | | | | 1163.10 | 1242.30 | 1288.20 | 1334.70 | 1381.20 | 1444.20 | 1444.20 | 1444.20 | 1444.20 | 1444.20 | 1444.20 | 1444.20 | 1444.20 |
| Oct-81 | | | | 1329.30 | 1419.90 | 1472.40 | 1525.50 | 1578.60 | 1650.60 | 1650.60 | 1650.60 | 1650.60 | 1650.60 | 1650.60 | 1650.60 | 1650.60 |
| Oct-82 | | | | 1382.40 | 1476.60 | 1531.20 | 1586.40 | 1641.60 | 1716.60 | 1716.60 | 1716.60 | 1716.60 | 1716.60 | 1716.60 | 1716.60 | 1716.60 |
| Jan-84 | | | | 1437.60 | 1535.70 | 1592.40 | 1650.00 | 1707.30 | 1785.30 | 1785.30 | 1785.30 | 1785.30 | 1785.30 | 1785.30 | 1785.30 | 1785.30 |
| Jan-85 | | | | 1495.20 | 1597.20 | 1656.00 | 1716.00 | 1775.70 | 1856.70 | 1856.70 | 1856.70 | 1856.70 | 1856.70 | 1856.70 | 1856.70 | 1856.70 |
| Oct-85 | | | | 1540.20 | 1645.20 | 1705.80 | 1767.60 | 1829.10 | 1912.50 | 1912.50 | 1912.50 | 1912.50 | 1912.50 | 1912.50 | 1912.50 | 1912.50 |
| Jan-87 | | | | 1586.40 | 1694.70 | 1757.10 | 1820.70 | 1884.00 | 1969.80 | 1969.80 | 1969.80 | 1969.80 | 1969.80 | 1969.80 | 1969.80 | 1969.80 |
| Jan-88 | | | | 1618.20 | 1728.60 | 1792.20 | 1857.00 | 1921.80 | 2009.10 | 2009.10 | 2009.10 | 2009.10 | 2009.10 | 2009.10 | 2009.10 | 2009.10 |
| Jan-89 | | | | 1684.50 | 1799.40 | 1865.70 | 1933.20 | 2000.70 | 2091.60 | 2091.60 | 2091.60 | 2091.60 | 2091.60 | 2091.60 | 2091.60 | 2091.60 |
| Jan-90 | | | | 1745.10 | 1864.20 | 1932.90 | 2002.80 | 2072.70 | 2166.90 | 2166.90 | 2166.90 | 2166.90 | 2166.90 | 2166.90 | 2166.90 | 2166.90 |
| Jan-91 | | | | 1816.50 | 1940.70 | 2012.10 | 2085.00 | 2157.60 | 2255.70 | 2255.70 | 2255.70 | 2255.70 | 2255.70 | 2255.70 | 2255.70 | 2255.70 |
| Jan-92 | | | | 1892.70 | 2022.30 | 2096.70 | 2172.60 | 2248.20 | 2350.50 | 2350.50 | 2350.50 | 2350.50 | 2350.50 | 2350.50 | 2350.50 | 2350.50 |
| Jan-93 | | | | 1962.60 | 2097.00 | 2174.40 | 2253.00 | 2331.30 | 2437.50 | 2437.50 | 2437.50 | 2437.50 | 2437.50 | 2437.50 | 2437.50 | 2437.50 |
| Jan-94 | | | | 2005.80 | 2143.20 | 2222.10 | 2302.50 | 2382.60 | 2491.20 | 2491.20 | 2491.20 | 2491.20 | 2491.20 | 2491.20 | 2491.20 | 2491.20 |
| Jan-95 | | | | 2058.00 | 2199.00 | 2280.00 | 2362.50 | 2444.40 | 2556.00 | 2556.00 | 2556.00 | 2556.00 | 2556.00 | 2556.00 | 2556.00 | 2556.00 |
| Jan-96 | | | | 2107.50 | 2251.80 | 2334.60 | 2419.20 | 2503.20 | 2617.20 | 2617.20 | 2617.20 | 2617.20 | 2617.20 | 2617.20 | 2617.20 | 2617.20 |
| Jan-97 | | | | 2170.80 | 2319.30 | 2404.50 | 2491.80 | 2578.20 | 2695.80 | 2695.80 | 2695.80 | 2695.80 | 2695.80 | 2695.80 | 2695.80 | 2695.80 |
| Jan-98 | | | | 2231.70 | 2384.10 | 2471.70 | 2561.70 | 2650.50 | 2771.40 | 2771.40 | 2771.40 | 2771.40 | 2771.40 | 2771.40 | 2771.40 | 2771.40 |
| Jan-99 | | | | 2312.10 | 2469.90 | 2560.80 | 2653.80 | 2745.90 | 2871.30 | 2871.30 | 2871.30 | 2871.30 | 2871.30 | 2871.30 | 2871.30 | 2871.30 |
| Jan-00 | | | | 2423.10 | 2588.40 | 2683.80 | 2781.30 | 2877.60 | 3009.00 | 3009.00 | 3009.00 | 3009.00 | 3009.00 | 3009.00 | 3009.00 | 3009.00 |
| Jan-01 | | | | 2512.80 | 2684.10 | 2783.10 | 2884.20 | 2984.10 | 3120.30 | 3120.30 | 3120.30 | 3120.30 | 3120.30 | 3120.30 | 3120.30 | 3120.30 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade O-1E

## (Commissioned Officers with Over 4 Years of Active Service as Enlisted Members or Warrant Officers)

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-02 | | | | 2638.50 | 2818.20 | 2922.30 | 3028.50 | 3133.20 | 3276.30 | 3276.30 | 3276.30 | 3276.30 | 3276.30 | 3276.30 | 3276.30 | 3276.30 |
| Jan-03 | | | | 2746.80 | 2933.70 | 3042.00 | 3152.70 | 3261.60 | 3410.70 | 3410.70 | 3410.70 | 3410.70 | 3410.70 | 3410.70 | 3410.70 | 3410.70 |
| Jan-04 | | | | 2848.50 | 3042.30 | 3154.50 | 3269.40 | 3382.20 | 3537.00 | 3537.00 | 3537.00 | 3537.00 | 3537.00 | 3537.00 | 3537.00 | 3537.00 |

Note 1: Notwithstanding the basic pay rates specified in this table, the actual rate of basic pay for commissioned officers in pay grades O-7 through O-10 may not exceed the rate of pay for level III of the Executive Schedule ($12,133.20 in 2004), and the actual rate of basic pay for all other officers may not exceed the rate of pay for level V of the Executive Schedule ($10,683.30 in 2004).

Note 2: In fiscal year 2004, the monthly rate of basic pay for an officer serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command, as defined in section 161(c) of Title 10, U.S. Code, was $14,634.20 regardless of cumulative years of service computed under section 205 of Title 37, U.S. Code.

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade W-5

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Feb-92 | | | | | | | | | | | | 3455.70 | 3587.10 | 3587.10 | 3846.30 | 3846.30 |
| Jan-93 | | | | | | | | | | | | 3583.80 | 3719.70 | 3827.30 | 3988.50 | 3988.50 |
| Jan-94 | | | | | | | | | | | | 3662.70 | 3801.60 | 3911.40 | 4076.10 | 4076.10 |
| Jan-95 | | | | | | | | | | | | 3757.80 | 3900.30 | 4013.10 | 4182.00 | 4182.00 |
| Jan-96 | | | | | | | | | | | | 3848.10 | 3993.90 | 4109.40 | 4282.50 | 4282.50 |
| Jan-97 | | | | | | | | | | | | 3963.60 | 4113.60 | 4232.70 | 4410.90 | 4410.90 |
| Jan-98 | | | | | | | | | | | | 4074.60 | 4228.80 | 4351.20 | 4534.50 | 4534.50 |
| Jan-99 | | | | | | | | | | | | 4221.30 | 4380.90 | 4507.80 | 4697.70 | 4697.70 |
| Jan-00 | | | | | | | | | | | | 4423.80 | 4591.20 | 4724.10 | 4923.30 | 4923.30 |
| Jul-00 | | | | | | | | | | | | 4475.10 | 4628.70 | 4782.90 | 4937.40 | 4937.40 |
| Jan-01 | | | | | | | | | | | | 4640.70 | 4800.00 | 4959.90 | 5120.10 | 5120.10 |
| Jan-02 | | | | | | | | | | | | 4965.60 | 5136.00 | 5307.00 | 5478.60 | 5478.60 |
| Jan-03 | | | | | | | | | | | | 5169.30 | 5346.60 | 5524.50 | 5703.30 | 5703.30 |
| Jan-04 | | | | | | | | | | | | 5360.70 | 5544.30 | 5728.80 | 5914.20 | 5914.20 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade W-4

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Oct-49 | 320.10 | 320.10 | 320.10 | 320.10 | 334.65 | 349.20 | 363.75 | 378.30 | 392.85 | 407.40 | 421.95 | 421.95 | 436.50 | 436.50 | 451.05 | 465.60 |
| May-52 | 332.90 | 332.90 | 332.90 | 332.90 | 348.04 | 363.17 | 378.30 | 393.43 | 408.56 | 423.70 | 438.83 | 438.83 | 453.96 | 453.96 | 469.09 | 484.22 |
| Apr-55 | 332.90 | 354.90 | 354.90 | 354.90 | 370.50 | 386.10 | 401.70 | 421.20 | 452.40 | 468.00 | 483.60 | 483.60 | 499.20 | 499.20 | 514.80 | 530.40 |
| Jun-58 | 332.90 | 376.00 | 376.00 | 383.00 | 399.00 | 416.00 | 435.00 | 465.00 | 486.00 | 504.00 | 516.00 | 528.00 | 543.00 | 543.00 | 575.00 | 595.00 |
| Oct-63 | 332.90 | 430.00 | 430.00 | 440.00 | 460.00 | 480.00 | 500.00 | 535.00 | 560.00 | 580.00 | 595.00 | 615.00 | 635.00 | 635.00 | 685.00 | 685.00 |
| Sep-64 | 361.20 | 440.70 | 440.70 | 450.90 | 471.60 | 492.00 | 512.40 | 548.40 | 573.90 | 594.60 | 609.90 | 630.30 | 651.00 | 651.00 | 702.00 | 702.00 |
| Sep-65 | 435.60 | 467.10 | 467.10 | 477.90 | 499.80 | 521.40 | 543.00 | 581.40 | 608.40 | 630.30 | 646.50 | 668.10 | 690.00 | 690.00 | 744.00 | 744.00 |
| Jul-66 | 449.40 | 482.10 | 482.10 | 493.20 | 515.70 | 538.20 | 560.40 | 600.00 | 627.90 | 650.40 | 667.20 | 689.40 | 712.20 | 712.20 | 767.70 | 767.60 |
| Oct-67 | 474.60 | 509.10 | 509.10 | 520.80 | 544.50 | 568.20 | 591.90 | 633.60 | 663.00 | 686.70 | 704.70 | 728.10 | 752.10 | 752.10 | 810.60 | 810.60 |
| Jul-68 | 507.30 | 544.20 | 544.20 | 556.80 | 582.00 | 607.50 | 632.70 | 677.40 | 708.60 | 734.10 | 753.30 | 778.20 | 804.00 | 804.00 | 866.40 | 866.40 |
| Jul-69 | 571.20 | 612.90 | 612.90 | 627.00 | 655.20 | 684.00 | 712.50 | 762.90 | 798.00 | 826.50 | 848.10 | 876.30 | 905.40 | 905.40 | 975.60 | 975.60 |
| Jan-70 | 617.40 | 662.40 | 662.40 | 677.70 | 708.30 | 739.50 | 770.10 | 824.70 | 862.50 | 893.40 | 916.80 | 947.40 | 978.60 | 978.60 | 1054.50 | 1054.50 |
| Jan-71 | 666.30 | 714.60 | 714.60 | 731.10 | 764.40 | 798.00 | 831.00 | 889.80 | 930.60 | 963.90 | 989.10 | 1022.10 | 1056.00 | 1056.00 | 1137.90 | 1137.90 |
| Nov-71 | 666.30 | 714.60 | 714.60 | 731.10 | 764.40 | 798.00 | 831.00 | 889.80 | 930.60 | 963.90 | 989.10 | 1022.10 | 1056.00 | 1056.00 | 1137.90 | 1137.90 |
| Jan-72 | 714.30 | 766.20 | 766.20 | 783.90 | 819.60 | 855.60 | 891.00 | 954.00 | 997.80 | 1033.50 | 1060.50 | 1095.90 | 1132.20 | 1132.20 | 1219.80 | 1219.80 |
| Oct-72 | 762.00 | 817.50 | 817.50 | 836.40 | 874.50 | 912.90 | 950.70 | 1017.90 | 1064.70 | 1102.50 | 1131.30 | 1169.10 | 1207.80 | 1207.80 | 1301.40 | 1301.40 |
| Oct-73 | 809.10 | 867.90 | 867.90 | 888.00 | 928.50 | 969.30 | 1009.50 | 1080.60 | 1130.40 | 1170.60 | 1201.20 | 1241.10 | 1282.20 | 1282.20 | 1381.80 | 1381.80 |
| Oct-74 | 853.80 | 915.90 | 915.90 | 936.90 | 979.80 | 1022.70 | 1065.30 | 1140.30 | 1192.80 | 1235.10 | 1267.50 | 1309.50 | 1353.00 | 1353.00 | 1458.00 | 1458.00 |
| Oct-75 | 896.40 | 961.80 | 961.80 | 983.70 | 1028.70 | 1073.70 | 1118.70 | 1197.30 | 1252.50 | 1296.90 | 1330.80 | 1374.90 | 1420.80 | 1420.80 | 1530.90 | 1530.90 |
| Oct-76 | 982.80 | 996.60 | 996.60 | 1019.40 | 1065.90 | 1112.70 | 1159.20 | 1240.50 | 1297.80 | 1343.70 | 1379.10 | 1424.70 | 1472.10 | 1472.10 | 1586.40 | 1586.40 |
| Oct-77 | 986.40 | 1058.40 | 1058.40 | 1082.70 | 1131.90 | 1181.70 | 1231.20 | 1317.30 | 1378.20 | 1427.10 | 1464.60 | 1512.90 | 1563.30 | 1563.30 | 1684.80 | 1684.80 |
| Oct-78 | 1040.70 | 1116.60 | 1116.60 | 1142.10 | 1194.30 | 1246.80 | 1299.00 | 1389.90 | 1454.10 | 1505.70 | 1545.30 | 1596.00 | 1649.40 | 1649.40 | 1777.50 | 1777.50 |
| Oct-79 | 1113.90 | 1194.90 | 1194.90 | 1222.20 | 1278.00 | 1334.40 | 1390.20 | 1487.40 | 1556.10 | 1611.30 | 1653.90 | 1707.90 | 1765.20 | 1765.20 | 1902.30 | 1902.30 |
| Oct-80 | 1244.10 | 1334.70 | 1344.70 | 1365.30 | 1427.40 | 1490.40 | 1552.80 | 1661.40 | 1738.20 | 1799.10 | 1847.60 | 1907.70 | 1971.60 | 1971.60 | 2124.90 | 2124.90 |
| Oct-81 | 1422.00 | 1524.50 | 1525.50 | 1560.60 | 1631.40 | 1703.40 | 1774.80 | 1899.00 | 1986.90 | 2057.10 | 2111.70 | 2180.40 | 2253.60 | 2253.60 | 2428.80 | 2428.80 |
| Oct-82 | 1479.00 | 1586.40 | 1586.40 | 1623.00 | 1696.80 | 1771.50 | 1845.90 | 1974.90 | 2066.40 | 2139.30 | 2196.30 | 2267.70 | 2343.60 | 2343.60 | 2526.00 | 2526.00 |
| Jan-84 | 1538.10 | 1650.00 | 1650.00 | 1687.80 | 1764.60 | 1842.30 | 1919.70 | 2053.80 | 2149.20 | 2224.80 | 2284.20 | 2358.30 | 2437.20 | 2437.20 | 2627.10 | 2627.10 |
| Jan-85 | 1599.60 | 1716.00 | 1716.00 | 1755.30 | 1835.10 | 1916.10 | 1996.50 | 2136.00 | 2235.30 | 2313.90 | 2375.70 | 2452.50 | 2534.70 | 2534.70 | 2732.10 | 2732.10 |
| Oct-85 | 1647.60 | 1767.60 | 1767.60 | 1808.10 | 1890.30 | 1973.70 | 2056.50 | 2200.20 | 2302.50 | 2383.20 | 2447.10 | 2526.00 | 2610.60 | 2610.60 | 2814.00 | 2814.00 |
| Jan-87 | 1697.10 | 1820.70 | 1820.70 | 1862.40 | 1947.00 | 2032.80 | 2118.30 | 2266.20 | 2371.50 | 2454.60 | 2520.60 | 2601.90 | 2688.90 | 2688.90 | 2898.30 | 2898.30 |
| Jan-88 | 1731.00 | 1857.00 | 1857.00 | 1899.60 | 1986.00 | 2073.60 | 2160.60 | 2311.50 | 2418.90 | 2503.80 | 2571.00 | 2653.80 | 2742.60 | 2742.60 | 2956.20 | 2956.20 |
| Jan-89 | 1802.10 | 1933.20 | 1933.20 | 1977.60 | 2067.30 | 2158.50 | 2249.10 | 2406.30 | 2518.20 | 2606.40 | 2676.30 | 2762.70 | 2855.10 | 2855.10 | 3077.40 | 3077.40 |
| Jan-90 | 1866.90 | 2002.80 | 2002.80 | 2048.70 | 2141.70 | 2236.20 | 2330.10 | 2493.00 | 2608.80 | 2700.30 | 2772.60 | 2862.30 | 2958.00 | 2958.00 | 3188.10 | 3188.10 |
| Jan-91 | 1943.40 | 2085.00 | 2085.00 | 2132.70 | 2229.60 | 2328.00 | 2425.50 | 2595.30 | 2715.90 | 2811.00 | 2886.30 | 2979.60 | 3079.20 | 3079.20 | 3318.90 | 3318.90 |
| Jan-92 | 2025.00 | 2172.60 | 2172.60 | 2222.40 | 2323.20 | 2425.80 | 2527.50 | 2704.20 | 2829.90 | 2929.20 | 3007.50 | 3104.70 | 3208.50 | 3208.50 | 3458.40 | 3458.40 |
| Jan-93 | 2100.00 | 2253.00 | 2253.00 | 2304.60 | 2409.30 | 2515.50 | 2621.10 | 2804.40 | 2934.60 | 3037.50 | 3118.80 | 3219.60 | 3327.30 | 3430.90 | 3586.50 | 3586.50 |
| Jan-94 | 2146.20 | 2302.50 | 2302.50 | 2355.30 | 2462.40 | 2570.70 | 2678.70 | 2866.20 | 2999.10 | 3104.40 | 3187.50 | 3290.40 | 3400.50 | 3506.40 | 3665.40 | 3665.40 |
| Jan-95 | 2202.00 | 2362.50 | 2362.50 | 2416.50 | 2526.30 | 2637.60 | 2748.30 | 2940.60 | 3077.10 | 3185.10 | 3270.30 | 3375.90 | 3489.00 | 3597.60 | 3760.80 | 3760.80 |
| Jan-96 | 2254.80 | 2419.20 | 2419.20 | 2474.40 | 2586.90 | 2700.90 | 2814.30 | 3011.10 | 3150.90 | 3261.60 | 3348.90 | 3456.90 | 3572.70 | 3684.00 | 3851.10 | 3851.10 |
| Jan-97 | 2322.30 | 2491.80 | 2491.80 | 2548.50 | 2664.60 | 2781.90 | 2898.60 | 3101.40 | 3245.40 | 3359.40 | 3449.40 | 3560.70 | 3679.80 | 3794.40 | 3966.60 | 3966.60 |
| Jan-98 | 2387.40 | 2561.70 | 2561.70 | 2619.90 | 2739.30 | 2859.90 | 2979.90 | 3188.10 | 3336.30 | 3453.60 | 3546.00 | 3660.30 | 3782.70 | 3900.60 | 4077.60 | 4077.60 |
| Jan-99 | 2473.20 | 2653.80 | 2653.80 | 2714.10 | 2838.00 | 2962.80 | 3087.30 | 3303.00 | 3456.30 | 3577.80 | 3673.80 | 3792.00 | 3918.90 | 4041.00 | 4224.30 | 4224.30 |
| Jan-00 | 2592.00 | 2781.30 | 2781.30 | 2844.30 | 2974.20 | 3105.00 | 3235.50 | 3461.40 | 3622.20 | 3749.40 | 3850.20 | 3974.10 | 4107.00 | 4235.10 | 4427.10 | 4427.10 |
| Jul-00 | 2592.00 | 2788.50 | 2868.60 | 2947.50 | 3083.40 | 3217.20 | 3352.80 | 3485.10 | 3622.20 | 3753.60 | 3888.00 | 4019.40 | 4155.60 | 4289.70 | 4427.10 | 4427.10 |
| Jan-01 | 2688.00 | 2891.70 | 2974.80 | 3056.70 | 3197.40 | 3336.30 | 3477.00 | 3614.10 | 3756.30 | 3892.50 | 4032.00 | 4168.20 | 4309.50 | 4448.40 | 4590.90 | 4590.90 |
| Jan-02 | 2889.60 | 3108.60 | 3198.00 | 3285.90 | 3437.10 | 3586.50 | 3737.70 | 3885.30 | 4038.00 | 4184.40 | 4334.40 | 4480.80 | 4632.60 | 4782.00 | 4935.30 | 4935.30 |
| Jan-03 | 3008.10 | 3236.10 | 3329.10 | 3420.60 | 3578.10 | 3733.50 | 3891.00 | 4044.60 | 4203.60 | 4356.00 | 4512.00 | 4664.40 | 4822.50 | 4978.20 | 5137.50 | 5137.50 |
| Jan-04 | 3119.40 | 3355.80 | 3452.40 | 3547.20 | 3710.40 | 3871.50 | 4035.00 | 4194.30 | 4359.00 | 4617.30 | 4782.60 | 4944.30 | 5112.00 | 5277.00 | 5445.90 | 5445.90 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade W-3

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Oct-49 | 291.00 | 291.00 | 291.00 | 291.00 | 298.28 | 305.55 | 312.83 | 320.10 | 327.38 | 334.65 | 349.20 | 349.20 | 363.75 | 363.75 | 378.30 | 392.85 |
| May-52 | 302.64 | 302.64 | 302.64 | 302.64 | 310.21 | 317.77 | 325.34 | 332.90 | 340.48 | 348.04 | 363.17 | 363.17 | 378.30 | 378.30 | 393.43 | 408.56 |
| Apr-55 | 302.64 | 323.70 | 323.70 | 323.70 | 331.50 | 339.30 | 347.10 | 358.80 | 374.40 | 382.20 | 405.60 | 405.60 | 428.00 | 428.00 | 443.60 | 459.20 |
| Jun-58 | 302.64 | 343.00 | 343.00 | 348.00 | 353.00 | 380.00 | 398.00 | 412.00 | 427.00 | 441.00 | 458.00 | 470.00 | 487.00 | 487.00 | 506.00 | 506.00 |
| Oct-63 | 302.64 | 395.00 | 395.00 | 400.00 | 405.00 | 435.00 | 460.00 | 475.00 | 490.00 | 505.00 | 520.00 | 540.00 | 560.00 | 560.00 | 580.00 | 580.00 |
| Sep-64 | 328.50 | 405.00 | 405.00 | 410.10 | 415.20 | 445.80 | 471.60 | 486.90 | 502.20 | 517.50 | 533.10 | 533.50 | 573.90 | 573.90 | 594.60 | 594.60 |
| Sep-65 | 396.00 | 429.30 | 429.30 | 434.70 | 440.10 | 472.50 | 499.80 | 516.00 | 532.20 | 548.40 | 565.20 | 586.80 | 608.40 | 608.40 | 630.30 | 630.30 |
| Jul-66 | 408.60 | 443.10 | 443.10 | 448.50 | 454.20 | 487.50 | 515.70 | 532.50 | 549.30 | 565.80 | 583.20 | 605.70 | 627.90 | 627.90 | 650.40 | 650.40 |
| Oct-67 | 431.40 | 468.00 | 468.00 | 473.70 | 479.70 | 514.80 | 554.50 | 562.20 | 580.20 | 597.60 | 615.90 | 639.60 | 663.00 | 663.00 | 686.70 | 686.70 |
| Jul-68 | 461.10 | 500.40 | 500.40 | 506.40 | 512.70 | 550.20 | 582.00 | 600.90 | 620.10 | 638.70 | 658.50 | 683.70 | 708.60 | 708.60 | 734.10 | 734.10 |
| Jul-69 | 519.30 | 563.40 | 563.40 | 570.30 | 577.20 | 619.50 | 655.20 | 676.50 | 698.10 | 719.10 | 741.60 | 769.80 | 798.00 | 798.00 | 826.50 | 826.50 |
| Jan-70 | 561.30 | 609.00 | 609.00 | 616.50 | 624.00 | 669.60 | 708.30 | 731.40 | 754.50 | 777.30 | 801.60 | 832.20 | 862.50 | 862.50 | 893.40 | 893.40 |
| Jan-71 | 605.70 | 657.00 | 657.00 | 665.10 | 673.20 | 722.40 | 764.40 | 789.80 | 814.20 | 838.80 | 864.90 | 897.90 | 930.60 | 930.60 | 963.90 | 963.90 |
| Nov-71 | 605.70 | 657.00 | 657.00 | 665.10 | 673.20 | 722.40 | 764.40 | 789.80 | 814.20 | 838.80 | 864.90 | 897.90 | 930.60 | 930.60 | 963.90 | 963.90 |
| Jan-72 | 649.50 | 704.40 | 704.40 | 713.10 | 721.80 | 774.60 | 819.60 | 846.30 | 873.00 | 899.40 | 927.30 | 962.70 | 997.80 | 997.80 | 1033.50 | 1033.50 |
| Oct-72 | 693.00 | 751.50 | 751.50 | 760.80 | 770.10 | 826.50 | 874.50 | 903.00 | 931.50 | 959.70 | 989.40 | 1027.20 | 1064.70 | 1064.70 | 1102.50 | 1102.50 |
| Oct-73 | 735.90 | 798.00 | 798.00 | 807.60 | 817.50 | 877.50 | 928.50 | 958.80 | 989.10 | 1018.80 | 1050.30 | 1090.50 | 1130.40 | 1130.40 | 1170.60 | 1170.60 |
| Oct-74 | 776.40 | 842.10 | 842.10 | 852.30 | 862.50 | 925.80 | 979.80 | 1011.60 | 1043.70 | 1074.90 | 1108.20 | 1150.80 | 1192.80 | 1192.80 | 1235.10 | 1235.10 |
| Oct-75 | 815.10 | 884.10 | 884.10 | 894.90 | 905.70 | 972.00 | 1028.70 | 1062.30 | 1095.90 | 1128.60 | 1163.70 | 1208.40 | 1252.50 | 1252.50 | 1296.90 | 1296.90 |
| Oct-76 | 844.50 | 916.20 | 916.20 | 927.30 | 938.40 | 1007.10 | 1065.90 | 1100.70 | 1135.50 | 1169.40 | 1205.70 | 1252.20 | 1297.80 | 1297.80 | 1343.70 | 1343.70 |
| Oct-77 | 897.00 | 927.90 | 972.90 | 984.90 | 996.60 | 1059.50 | 1131.90 | 1168.80 | 1206.00 | 1242.00 | 1280.40 | 1329.90 | 1378.20 | 1378.20 | 1427.10 | 1427.10 |
| Oct-78 | 946.20 | 1026.30 | 1026.30 | 1039.20 | 1051.50 | 1128.30 | 1194.30 | 1233.00 | 1272.30 | 1310.40 | 1350.90 | 1403.10 | 1454.10 | 1454.10 | 1505.70 | 1505.70 |
| Oct-79 | 1012.50 | 1098.30 | 1098.30 | 1112.10 | 1125.30 | 1207.50 | 1278.00 | 1319.70 | 1361.70 | 1402.50 | 1445.70 | 1501.50 | 1556.10 | 1556.10 | 1611.30 | 1611.30 |
| Oct-80 | 1131.00 | 1226.70 | 1226.70 | 1242.30 | 1257.00 | 1348.80 | 1427.40 | 1474.20 | 1521.00 | 1566.60 | 1614.90 | 1677.30 | 1738.20 | 1738.20 | 1799.70 | 1799.70 |
| Oct-81 | 1292.70 | 1402.20 | 1402.20 | 1419.90 | 1436.70 | 1541.70 | 1631.40 | 1685.10 | 1738.50 | 1790.70 | 1845.90 | 1917.30 | 1986.90 | 1986.90 | 2057.10 | 2057.10 |
| Oct-82 | 1344.30 | 1458.30 | 1458.30 | 1476.60 | 1494.30 | 1603.50 | 1696.80 | 1752.60 | 1808.10 | 1862.40 | 1919.70 | 1994.10 | 2066.40 | 2066.40 | 2139.30 | 2139.30 |
| Jan-84 | 1398.00 | 1516.50 | 1516.50 | 1535.70 | 1554.00 | 1667.70 | 1764.60 | 1822.80 | 1880.40 | 1936.80 | 1996.50 | 2073.90 | 2149.20 | 2149.20 | 2224.80 | 2224.80 |
| Jan-85 | 1453.80 | 1577.10 | 1577.10 | 1597.20 | 1616.10 | 1734.30 | 1835.10 | 1895.70 | 1955.70 | 2014.20 | 2076.30 | 2157.00 | 2235.30 | 2235.30 | 2313.90 | 2313.90 |
| Oct-85 | 1497.30 | 1624.50 | 1624.50 | 1645.20 | 1664.70 | 1786.20 | 1890.30 | 1952.70 | 2014.50 | 2074.50 | 2138.70 | 2221.80 | 2302.50 | 2302.50 | 2383.20 | 2383.20 |
| Jan-87 | 1542.30 | 1673.10 | 1673.10 | 1694.70 | 1714.50 | 1839.90 | 1947.00 | 2011.20 | 2074.80 | 2136.60 | 2202.90 | 2288.40 | 2371.50 | 2371.50 | 2454.60 | 2454.60 |
| Jan-88 | 1573.20 | 1706.70 | 1706.70 | 1728.60 | 1748.70 | 1876.80 | 1986.00 | 2051.40 | 2116.20 | 2179.20 | 2247.00 | 2334.30 | 2418.90 | 2418.90 | 2503.80 | 2503.80 |
| Jan-89 | 1637.70 | 1776.60 | 1776.60 | 1799.40 | 1820.40 | 1953.60 | 2067.30 | 2135.40 | 2202.90 | 2268.60 | 2339.10 | 2430.00 | 2518.20 | 2518.20 | 2606.40 | 2606.40 |
| Jan-90 | 1696.80 | 1840.50 | 1840.50 | 1864.20 | 1885.80 | 2023.80 | 2141.70 | 2212.20 | 2282.10 | 2350.20 | 2423.40 | 2517.60 | 2608.80 | 2608.80 | 2700.30 | 2700.30 |
| Jan-91 | 1766.40 | 1916.10 | 1916.10 | 1940.70 | 1963.20 | 2106.90 | 2229.60 | 2302.80 | 2375.70 | 2446.50 | 2522.70 | 2620.80 | 2715.90 | 2715.90 | 2811.00 | 2811.00 |
| Jan-92 | 1840.50 | 1996.50 | 1996.50 | 2022.30 | 2045.70 | 2195.40 | 2323.20 | 2399.40 | 2475.60 | 2549.40 | 2628.60 | 2730.90 | 2829.90 | 2829.90 | 2929.20 | 2929.20 |
| Jan-93 | 1908.60 | 2070.30 | 2070.30 | 2097.00 | 2121.30 | 2276.70 | 2409.30 | 2488.20 | 2567.10 | 2643.60 | 2725.80 | 2832.00 | 2934.60 | 2934.60 | 3037.50 | 3037.50 |
| Jan-94 | 1950.60 | 2115.90 | 2115.90 | 2143.20 | 2168.10 | 2326.80 | 2462.40 | 2542.80 | 2623.50 | 2701.80 | 2785.80 | 2894.40 | 2999.10 | 2999.10 | 3104.40 | 3104.40 |
| Jan-95 | 2001.30 | 2170.80 | 2170.80 | 2199.00 | 2224.50 | 2387.40 | 2526.30 | 2608.80 | 2691.60 | 2772.00 | 2858.10 | 2969.70 | 3077.10 | 3077.10 | 3185.10 | 3185.10 |
| Jan-96 | 2049.30 | 2223.00 | 2223.00 | 2251.80 | 2277.90 | 2444.70 | 2586.90 | 2671.50 | 2756.10 | 2838.60 | 2926.80 | 3041.10 | 3150.90 | 3150.90 | 3261.60 | 3261.60 |
| Jan-97 | 2110.80 | 2289.60 | 2289.60 | 2319.30 | 2346.30 | 2517.90 | 2664.60 | 2751.60 | 2838.90 | 2923.80 | 3014.70 | 3132.30 | 3245.40 | 3245.40 | 3359.40 | 3359.40 |
| Jan-98 | 2196.90 | 2353.80 | 2353.80 | 2384.10 | 2412.00 | 2588.40 | 2739.30 | 2828.70 | 2918.40 | 3005.70 | 3099.00 | 3219.90 | 3336.30 | 3336.30 | 3453.60 | 3453.60 |
| Jan-99 | 2247.90 | 2438.40 | 2438.40 | 2469.90 | 2498.70 | 2681.70 | 2838.00 | 2930.40 | 3023.40 | 3114.00 | 3210.60 | 3335.70 | 3456.30 | 3456.30 | 3577.80 | 3577.80 |
| Jan-00 | 2355.90 | 2555.40 | 2555.40 | 2588.40 | 2618.70 | 2810.40 | 2974.20 | 3071.10 | 3168.60 | 3263.40 | 3364.80 | 3495.90 | 3622.20 | 3622.20 | 3749.40 | 3749.40 |
| Jul-00 | 2355.90 | 2555.40 | 2555.40 | 2588.40 | 2694.30 | 2814.90 | 2974.20 | 3071.10 | 3177.00 | 3298.20 | 3418.50 | 3539.10 | 3659.40 | 3780.00 | 3900.90 | 3900.90 |
| Jan-01 | 2443.20 | 2649.90 | 2649.90 | 2684.10 | 2793.90 | 2919.00 | 3084.30 | 3184.80 | 3294.60 | 3420.30 | 3545.10 | 3669.90 | 3794.70 | 3919.80 | 4045.20 | 4045.20 |
| Jan-02 | 2638.80 | 2862.00 | 2862.00 | 2898.90 | 3017.40 | 3152.40 | 3330.90 | 3439.50 | 3558.30 | 3693.90 | 3828.60 | 3963.60 | 4098.30 | 4233.30 | 4368.90 | 4368.90 |
| Jan-03 | 2747.10 | 2862.00 | 2979.30 | 3017.70 | 3141.00 | 3281.70 | 3467.40 | 3580.50 | 3771.90 | 3915.60 | 4058.40 | 4201.50 | 4266.30 | 4407.00 | 4548.00 | 4548.00 |
| Jan-04 | 2848.80 | 2967.90 | 3089.40 | 3129.30 | 3257.10 | 3403.20 | 3595.80 | 3786.30 | 3988.80 | 4140.60 | 4291.80 | 4356.90 | 4424.10 | 4570.20 | 4716.30 | 4716.30 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade W-2

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Oct-49 | 254.63 | 254.63 | 254.63 | 254.63 | 254.63 | 261.90 | 269.18 | 276.45 | 283.73 | 291.00 | 305.55 | 305.55 | 320.10 | 320.10 | 334.65 | 349.20 |
| May-52 | 264.82 | 264.82 | 264.82 | 264.82 | 264.82 | 272.38 | 279.95 | 287.51 | 295.08 | 302.64 | 317.77 | 317.77 | 332.90 | 332.90 | 348.04 | 363.17 |
| Apr-55 | 264.82 | 280.80 | 280.80 | 280.80 | 288.60 | 304.20 | 319.80 | 335.40 | 350.00 | 357.80 | 373.40 | 373.40 | 389.00 | 389.00 | 404.60 | 420.20 |
| Jun-58 | 264.82 | 298.00 | 298.00 | 307.00 | 328.00 | 342.00 | 355.00 | 369.00 | 381.00 | 393.00 | 406.00 | 417.00 | 440.00 | 440.00 | 440.00 | 440.00 |
| Oct-63 | 264.82 | 345.00 | 345.00 | 355.00 | 375.00 | 395.00 | 410.00 | 425.00 | 440.00 | 455.00 | 470.00 | 485.00 | 505.00 | 505.00 | 505.00 | 505.00 |
| Sep-64 | 287.40 | 353.70 | 353.70 | 363.90 | 384.30 | 405.00 | 420.30 | 435.60 | 450.90 | 466.50 | 481.80 | 497.10 | 517.50 | 517.50 | 517.50 | 517.50 |
| Sep-65 | 346.50 | 375.00 | 375.00 | 385.80 | 407.40 | 429.30 | 445.50 | 461.70 | 477.90 | 494.40 | 510.60 | 526.80 | 548.40 | 548.40 | 548.40 | 548.40 |
| Jul-66 | 357.60 | 387.00 | 387.00 | 398.10 | 420.30 | 443.10 | 459.90 | 476.40 | 493.20 | 510.30 | 526.80 | 543.60 | 565.80 | 565.80 | 565.80 | 565.80 |
| Oct-67 | 377.70 | 408.60 | 408.60 | 420.30 | 443.70 | 468.00 | 485.70 | 503.10 | 520.80 | 538.80 | 556.20 | 573.90 | 597.60 | 597.60 | 597.60 | 597.60 |
| Jul-68 | 403.80 | 436.80 | 436.80 | 449.40 | 474.30 | 500.40 | 519.30 | 537.90 | 556.80 | 576.00 | 594.60 | 613.50 | 638.70 | 638.70 | 638.70 | 638.70 |
| Jul-69 | 454.80 | 491.70 | 491.70 | 506.10 | 534.00 | 563.40 | 584.70 | 605.70 | 627.00 | 648.60 | 669.60 | 690.90 | 719.10 | 719.10 | 719.10 | 719.10 |
| Jan-70 | 491.70 | 531.60 | 531.60 | 547.20 | 577.20 | 609.00 | 632.10 | 654.90 | 677.70 | 701.10 | 723.90 | 747.00 | 777.30 | 777.30 | 777.30 | 777.30 |
| Jan-71 | 530.40 | 573.60 | 573.60 | 590.40 | 622.80 | 657.00 | 681.90 | 706.50 | 731.10 | 756.60 | 781.20 | 806.10 | 838.80 | 838.80 | 838.80 | 838.80 |
| Nov-71 | 530.40 | 573.60 | 573.60 | 590.40 | 622.80 | 657.00 | 681.90 | 706.50 | 731.10 | 756.60 | 781.20 | 806.10 | 838.80 | 838.80 | 838.80 | 838.80 |
| Jan-72 | 568.50 | 615.00 | 615.00 | 633.00 | 667.80 | 704.40 | 731.10 | 757.50 | 783.90 | 811.20 | 837.60 | 864.30 | 899.40 | 899.40 | 899.40 | 899.40 |
| Oct-72 | 606.60 | 656.10 | 656.10 | 675.30 | 712.50 | 751.50 | 780.00 | 808.20 | 836.40 | 865.50 | 893.70 | 922.20 | 959.70 | 959.70 | 959.70 | 959.70 |
| Oct-73 | 644.10 | 696.60 | 696.60 | 717.00 | 756.60 | 798.00 | 828.00 | 858.00 | 888.00 | 918.90 | 948.90 | 979.20 | 1018.80 | 1018.80 | 1018.80 | 1018.80 |
| Oct-74 | 679.80 | 735.00 | 735.00 | 756.60 | 798.30 | 842.10 | 873.60 | 905.40 | 936.90 | 969.60 | 1001.40 | 1033.20 | 1074.90 | 1074.90 | 1074.90 | 1074.90 |
| Oct-75 | 713.70 | 771.90 | 771.90 | 794.40 | 838.20 | 884.10 | 917.40 | 950.70 | 983.70 | 1018.20 | 1051.50 | 1084.80 | 1128.60 | 1128.60 | 1128.60 | 1128.60 |
| Oct-76 | 739.50 | 799.80 | 799.80 | 823.20 | 868.50 | 916.20 | 950.70 | 985.20 | 1019.40 | 1055.10 | 1089.60 | 1124.10 | 1169.40 | 1169.40 | 1169.40 | 1169.40 |
| Oct-77 | 785.40 | 849.30 | 849.30 | 874.20 | 922.20 | 972.90 | 1009.50 | 1046.40 | 1082.70 | 1120.50 | 1157.10 | 1193.70 | 1242.00 | 1242.00 | 1242.00 | 1242.00 |
| Oct-78 | 828.60 | 896.10 | 896.10 | 922.20 | 972.90 | 1026.30 | 1065.00 | 1104.00 | 1142.10 | 1182.00 | 1220.70 | 1259.40 | 1310.40 | 1310.40 | 1310.40 | 1310.40 |
| Oct-79 | 886.80 | 959.10 | 959.10 | 987.00 | 1041.30 | 1098.30 | 1139.70 | 1181.40 | 1222.20 | 1265.10 | 1306.50 | 1347.90 | 1402.50 | 1402.50 | 1402.50 | 1402.50 |
| Oct-80 | 990.60 | 1071.30 | 1071.30 | 1102.50 | 1163.10 | 1226.70 | 1272.90 | 1319.70 | 1365.30 | 1413.00 | 1459.50 | 1505.70 | 1566.60 | 1566.60 | 1566.60 | 1566.60 |
| Oct-81 | 1132.20 | 1224.60 | 1224.60 | 1260.30 | 1329.30 | 1402.20 | 1455.00 | 1508.40 | 1560.60 | 1615.20 | 1668.30 | 1721.10 | 1790.70 | 1790.70 | 1790.70 | 1790.70 |
| Oct-82 | 1177.50 | 1273.50 | 1273.50 | 1310.70 | 1382.40 | 1458.30 | 1513.20 | 1568.70 | 1623.00 | 1679.70 | 1734.90 | 1789.80 | 1862.40 | 1862.40 | 1862.40 | 1862.40 |
| Jan-84 | 1224.60 | 1324.50 | 1324.50 | 1363.20 | 1437.60 | 1516.50 | 1573.80 | 1631.40 | 1687.80 | 1746.90 | 1804.20 | 1861.50 | 1936.80 | 1936.80 | 1936.80 | 1936.80 |
| Jan-85 | 1273.50 | 1377.60 | 1377.60 | 1417.80 | 1495.20 | 1577.10 | 1636.80 | 1696.80 | 1755.30 | 1816.80 | 1876.50 | 1935.90 | 2014.20 | 2014.20 | 2014.20 | 2014.20 |
| Oct-85 | 1311.60 | 1419.00 | 1419.00 | 1460.40 | 1540.20 | 1624.50 | 1686.00 | 1747.80 | 1808.10 | 1871.40 | 1932.90 | 1994.10 | 2074.50 | 2074.50 | 2074.50 | 2074.50 |
| Jan-87 | 1350.90 | 1461.60 | 1461.60 | 1504.20 | 1586.40 | 1673.10 | 1736.70 | 1800.30 | 1862.40 | 1927.50 | 1990.80 | 2053.80 | 2136.60 | 2136.60 | 2136.60 | 2136.60 |
| Jan-88 | 1377.90 | 1490.70 | 1490.70 | 1534.20 | 1618.20 | 1706.70 | 1771.50 | 1836.30 | 1899.60 | 1966.20 | 2030.70 | 2094.90 | 2179.20 | 2179.20 | 2179.20 | 2179.20 |
| Jan-89 | 1434.30 | 1551.90 | 1551.90 | 1597.20 | 1684.50 | 1776.60 | 1844.10 | 1911.60 | 1977.60 | 2046.90 | 2114.10 | 2180.70 | 2268.60 | 2268.60 | 2268.60 | 2268.60 |
| Jan-90 | 1485.90 | 1607.70 | 1607.70 | 1654.80 | 1745.10 | 1840.50 | 1910.40 | 1980.30 | 2048.70 | 2120.70 | 2190.30 | 2259.30 | 2350.20 | 2350.20 | 2350.20 | 2350.20 |
| Jan-91 | 1546.80 | 1673.70 | 1673.70 | 1722.60 | 1816.50 | 1916.10 | 1988.70 | 2061.60 | 2132.70 | 2207.70 | 2280.00 | 2352.00 | 2446.50 | 2446.50 | 2446.50 | 2446.50 |
| Jan-92 | 1611.90 | 1743.90 | 1743.90 | 1794.90 | 1892.70 | 1996.50 | 2072.10 | 2148.30 | 2222.40 | 2300.40 | 2375.70 | 2450.70 | 2549.40 | 2549.40 | 2549.40 | 2549.40 |
| Jan-93 | 1671.60 | 1808.40 | 1808.40 | 1861.20 | 1962.60 | 2070.30 | 2148.90 | 2227.80 | 2304.60 | 2385.60 | 2463.60 | 2541.30 | 2643.60 | 2643.60 | 2643.60 | 2643.60 |
| Jan-94 | 1708.50 | 1848.30 | 1848.30 | 1902.00 | 2005.80 | 2115.90 | 2196.30 | 2276.70 | 2355.30 | 2438.10 | 2517.90 | 2597.10 | 2701.80 | 2701.80 | 2701.80 | 2701.80 |
| Jan-95 | 1752.90 | 1896.30 | 1896.30 | 1951.50 | 2058.00 | 2170.80 | 2253.30 | 2335.80 | 2416.50 | 2501.40 | 2583.30 | 2664.60 | 2772.00 | 2772.00 | 2772.00 | 2772.00 |
| Jan-96 | 1794.90 | 1941.90 | 1941.90 | 1998.30 | 2107.50 | 2223.00 | 2307.30 | 2391.90 | 2474.40 | 2561.40 | 2645.40 | 2728.50 | 2838.60 | 2838.60 | 2838.60 | 2838.60 |
| Jan-97 | 1848.60 | 2000.10 | 2000.10 | 2058.30 | 2170.80 | 2289.60 | 2376.60 | 2463.60 | 2548.50 | 2638.20 | 2724.90 | 2810.40 | 2923.80 | 2923.80 | 2923.80 | 2923.80 |
| Jan-98 | 1900.50 | 2056.20 | 2056.20 | 2115.90 | 2231.70 | 2353.80 | 2443.20 | 2532.60 | 2619.90 | 2712.00 | 2801.10 | 2889.00 | 3005.70 | 3005.70 | 3005.70 | 3005.70 |
| Jan-99 | 1968.90 | 2130.30 | 2130.30 | 2192.10 | 2312.10 | 2438.40 | 2531.10 | 2623.80 | 2714.10 | 2809.50 | 2901.90 | 2993.10 | 3114.00 | 3114.00 | 3114.00 | 3114.00 |
| Jan-00 | 2063.40 | 2232.60 | 2232.60 | 2297.40 | 2423.10 | 2555.40 | 2652.60 | 2749.80 | 2844.30 | 2944.50 | 3041.10 | 3136.80 | 3263.40 | 3263.40 | 3263.40 | 3263.40 |
| Jul-00 | 2063.40 | 2232.60 | 2232.60 | 2305.80 | 2423.10 | 2555.40 | 2652.60 | 2749.80 | 2844.30 | 2949.00 | 3056.40 | 3163.80 | 3270.90 | 3378.30 | 3378.30 | 3378.30 |
| Jan-01 | 2139.60 | 2315.10 | 2315.10 | 2391.00 | 2512.80 | 2649.90 | 2750.70 | 2851.50 | 2949.60 | 3058.20 | 3169.50 | 3280.80 | 3391.80 | 3503.40 | 3503.40 | 3503.40 |
| Jan-02 | 2321.40 | 2454.00 | 2569.80 | 2654.10 | 2726.40 | 2875.20 | 2984.40 | 3093.90 | 3200.40 | 3318.00 | 3438.90 | 3559.80 | 3680.10 | 3801.30 | 3801.30 | 3801.30 |
| Jan-03 | 2416.50 | 2554.50 | 2675.10 | 2763.00 | 2838.30 | 2993.10 | 3148.50 | 3264.00 | 3376.50 | 3453.90 | 3579.90 | 3705.90 | 3831.00 | 3957.30 | 3957.30 | 3957.30 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade W-2

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-04 | 2505.90 | 2694.00 | 2774.10 | 2865.30 | 2943.30 | 3157.80 | 3321.60 | 3443.40 | 3562.20 | 3643.80 | 3712.50 | 3843.00 | 3972.60 | 4103.70 | 4103.70 | 4103.70 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade W-1

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Oct-49 | 210.98 | 210.98 | 210.98 | 210.98 | 218.25 | 225.53 | 232.80 | 240.08 | 247.35 | 254.63 | 269.18 | 269.18 | 283.73 | 283.73 | 298.28 | 298.28 |
| May-52 | 219.42 | 219.42 | 219.42 | 219.42 | 226.98 | 234.55 | 242.11 | 249.68 | 257.24 | 264.82 | 279.95 | 279.95 | 295.08 | 295.08 | 310.21 | 310.21 |
| Apr-55 | 219.42 | 251.20 | 251.20 | 251.20 | 266.80 | 286.30 | 294.10 | 305.80 | 313.60 | 321.40 | 337.00 | 337.00 | 352.60 | 352.60 | 368.20 | 368.20 |
| Jun-58 | 219.42 | 266.00 | 266.00 | 285.00 | 299.00 | 313.00 | 334.00 | 345.00 | 354.00 | 364.00 | 375.00 | 390.00 | 390.00 | 390.00 | 390.00 | 390.00 |
| Oct-63 | 219.42 | 305.00 | 305.00 | 330.00 | 345.00 | 360.00 | 375.00 | 390.00 | 405.00 | 420.00 | 435.00 | 450.00 | 450.00 | 450.00 | 450.00 | 450.00 |
| Sep-64 | 238.20 | 312.60 | 312.60 | 338.40 | 353.70 | 369.00 | 384.30 | 399.90 | 415.20 | 430.50 | 445.80 | 461.40 | 461.40 | 461.40 | 461.40 | 461.40 |
| Sep-65 | 288.90 | 331.50 | 331.50 | 358.80 | 375.00 | 391.20 | 407.40 | 423.90 | 440.10 | 456.30 | 472.50 | 489.00 | 489.00 | 489.00 | 489.00 | 489.00 |
| Jul-66 | 298.20 | 342.00 | 342.00 | 370.20 | 387.00 | 403.80 | 420.30 | 437.40 | 454.20 | 471.00 | 487.50 | 504.60 | 504.60 | 504.60 | 504.60 | 504.60 |
| Oct-67 | 315.00 | 361.20 | 361.20 | 390.90 | 408.60 | 426.30 | 443.70 | 462.00 | 479.70 | 497.40 | 514.80 | 532.80 | 532.80 | 532.80 | 532.80 | 532.80 |
| Jul-68 | 336.60 | 386.10 | 386.10 | 417.90 | 436.80 | 455.70 | 474.30 | 493.80 | 512.70 | 531.60 | 550.20 | 569.70 | 569.70 | 569.70 | 569.70 | 569.70 |
| Jul-69 | 378.90 | 434.70 | 434.70 | 470.70 | 491.70 | 513.00 | 534.00 | 555.90 | 577.20 | 598.50 | 619.50 | 641.40 | 641.40 | 641.40 | 641.40 | 641.40 |
| Jan-70 | 409.50 | 469.80 | 469.80 | 508.80 | 531.60 | 554.70 | 577.20 | 600.90 | 624.00 | 647.10 | 669.60 | 693.30 | 693.30 | 693.30 | 693.30 | 693.30 |
| Jan-71 | 441.90 | 507.00 | 507.00 | 549.00 | 573.60 | 598.50 | 622.80 | 648.30 | 673.20 | 698.10 | 722.40 | 748.20 | 748.20 | 748.20 | 748.20 | 748.20 |
| Nov-71 | 441.90 | 507.00 | 507.00 | 549.00 | 573.60 | 598.50 | 622.80 | 648.30 | 673.20 | 698.10 | 722.40 | 748.20 | 748.20 | 748.20 | 748.20 | 748.20 |
| Jan-72 | 473.70 | 543.60 | 543.60 | 588.60 | 615.00 | 641.70 | 667.80 | 695.10 | 721.80 | 748.50 | 774.60 | 802.20 | 802.20 | 802.20 | 802.20 | 802.20 |
| Oct-72 | 505.50 | 579.90 | 579.90 | 627.90 | 656.10 | 684.60 | 712.50 | 741.60 | 770.10 | 798.60 | 826.50 | 855.90 | 855.90 | 855.90 | 855.90 | 855.90 |
| Oct-73 | 536.70 | 615.60 | 615.60 | 666.60 | 696.60 | 726.90 | 756.60 | 787.50 | 817.50 | 847.80 | 877.50 | 908.70 | 908.70 | 908.70 | 908.70 | 908.70 |
| Oct-74 | 566.40 | 649.50 | 649.50 | 703.50 | 735.00 | 767.10 | 798.30 | 831.00 | 862.50 | 894.60 | 925.80 | 958.80 | 958.80 | 958.80 | 958.80 | 958.80 |
| Oct-75 | 594.60 | 681.90 | 681.90 | 738.60 | 771.90 | 805.50 | 838.20 | 872.70 | 905.70 | 939.30 | 972.00 | 1006.80 | 1006.80 | 1006.80 | 1006.80 | 1006.80 |
| Oct-76 | 616.20 | 706.50 | 706.50 | 765.30 | 799.80 | 834.60 | 868.50 | 904.20 | 938.40 | 973.20 | 1007.10 | 1043.10 | 1043.10 | 1043.10 | 1043.10 | 1043.10 |
| Oct-77 | 654.30 | 750.30 | 750.30 | 812.70 | 849.30 | 886.20 | 922.20 | 960.30 | 996.60 | 1033.50 | 1069.50 | 1107.90 | 1107.90 | 1107.90 | 1107.90 | 1107.90 |
| Oct-78 | 690.30 | 791.70 | 791.70 | 857.40 | 896.10 | 934.80 | 972.90 | 1013.10 | 1051.50 | 1090.20 | 1128.30 | 1168.80 | 1168.80 | 1168.80 | 1168.80 | 1168.80 |
| Oct-79 | 738.90 | 847.20 | 847.20 | 917.70 | 959.10 | 1000.50 | 1041.30 | 1084.20 | 1125.30 | 1166.70 | 1207.50 | 1250.70 | 1250.70 | 1250.70 | 1250.70 | 1250.70 |
| Oct-80 | 825.30 | 946.20 | 946.20 | 1025.10 | 1071.30 | 1117.50 | 1163.10 | 1211.10 | 1257.00 | 1303.20 | 1348.80 | 1397.10 | 1397.10 | 1397.10 | 1397.10 | 1397.10 |
| Oct-81 | 943.20 | 1081.50 | 1081.50 | 1171.80 | 1224.60 | 1277.40 | 1329.30 | 1384.20 | 1436.70 | 1489.50 | 1541.70 | 1596.90 | 1596.90 | 1596.90 | 1596.90 | 1596.90 |
| Oct-82 | 981.00 | 1224.70 | 1124.70 | 1218.60 | 1273.50 | 1328.40 | 1382.40 | 1439.70 | 1494.30 | 1549.20 | 1603.50 | 1660.80 | 1660.80 | 1660.80 | 1660.80 | 1660.80 |
| Jan-84 | 1020.30 | 1169.70 | 1169.70 | 1267.20 | 1324.50 | 1381.50 | 1437.60 | 1497.30 | 1554.00 | 1611.30 | 1667.70 | 1727.10 | 1727.10 | 1727.10 | 1727.10 | 1727.10 |
| Jan-85 | 1061.10 | 1216.50 | 1216.50 | 1317.90 | 1377.60 | 1436.70 | 1495.20 | 1557.30 | 1616.10 | 1675.80 | 1734.30 | 1796.10 | 1796.10 | 1796.10 | 1796.10 | 1796.10 |
| Oct-85 | 1092.90 | 1253.10 | 1253.10 | 1357.50 | 1419.00 | 1479.90 | 1540.20 | 1604.10 | 1664.70 | 1726.20 | 1786.20 | 1850.10 | 1850.10 | 1850.10 | 1850.10 | 1850.10 |
| Jan-87 | 1125.60 | 1290.60 | 1290.60 | 1398.30 | 1461.60 | 1524.30 | 1586.40 | 1652.10 | 1714.50 | 1778.10 | 1839.90 | 1905.60 | 1905.60 | 1905.60 | 1905.60 | 1905.60 |
| Jan-88 | 1148.10 | 1316.40 | 1316.40 | 1426.20 | 1490.70 | 1554.90 | 1618.20 | 1685.10 | 1748.70 | 1813.80 | 1876.80 | 1943.70 | 1943.70 | 1943.70 | 1943.70 | 1943.70 |
| Jan-89 | 1195.20 | 1370.40 | 1370.40 | 1484.70 | 1551.90 | 1618.80 | 1684.50 | 1754.10 | 1820.40 | 1888.20 | 1953.60 | 2023.50 | 2023.50 | 2023.50 | 2023.50 | 2023.50 |
| Jan-90 | 1238.10 | 1419.60 | 1419.60 | 1538.10 | 167.70 | 1677.00 | 1745.10 | 1817.10 | 1885.80 | 1956.30 | 2023.80 | 2096.40 | 2096.40 | 2096.40 | 2096.40 | 2096.40 |
| Jan-91 | 1288.80 | 1477.80 | 1477.80 | 1601.10 | 1673.70 | 1745.70 | 1816.50 | 1891.50 | 1963.20 | 2036.40 | 2106.90 | 2182.50 | 2182.50 | 2182.50 | 2182.50 | 2182.50 |
| Jan-92 | 1342.80 | 1539.90 | 1539.90 | 1668.30 | 1743.90 | 1818.90 | 1892.70 | 1971.00 | 2045.70 | 2121.90 | 2195.40 | 2274.30 | 2274.30 | 2274.30 | 2274.30 | 2274.30 |
| Jan-93 | 1392.60 | 1596.90 | 1596.90 | 1730.10 | 1808.40 | 1886.10 | 1962.60 | 2043.90 | 2121.30 | 2200.50 | 2276.70 | 2358.30 | 2358.30 | 2358.30 | 2358.30 | 2358.30 |
| Jan-94 | 1423.20 | 1632.00 | 1632.00 | 1768.20 | 1848.30 | 1927.50 | 2005.80 | 2088.90 | 2168.10 | 2248.80 | 2326.80 | 2410.20 | 2410.20 | 2410.20 | 2410.20 | 2410.20 |
| Jan-95 | 1460.10 | 1674.30 | 1674.30 | 1814.10 | 1896.30 | 1977.60 | 2058.00 | 2143.20 | 2224.50 | 2307.30 | 2387.40 | 2472.90 | 2472.90 | 2472.90 | 2472.90 | 2472.90 |
| Jan-96 | 1495.20 | 1714.50 | 1714.50 | 1857.60 | 1941.90 | 2025.00 | 2107.50 | 2194.50 | 2277.90 | 2362.80 | 2444.70 | 2532.30 | 2532.30 | 2532.30 | 2532.30 | 2532.30 |
| Jan-97 | 1540.20 | 1765.80 | 1765.80 | 1913.40 | 2000.10 | 2085.90 | 2170.80 | 2260.20 | 2346.30 | 2433.60 | 2517.90 | 2608.20 | 2608.20 | 2608.20 | 2608.20 | 2608.20 |
| Jan-98 | 1583.40 | 1815.30 | 1815.30 | 1967.10 | 2056.20 | 2144.40 | 2231.70 | 2323.50 | 2412.00 | 2501.70 | 2588.40 | 2681.10 | 2681.10 | 2681.10 | 2681.10 | 2681.10 |
| Jan-99 | 1640.40 | 1880.70 | 1880.70 | 2037.90 | 2130.30 | 2221.50 | 2312.10 | 2407.20 | 2498.70 | 2591.70 | 2681.70 | 2777.70 | 2777.70 | 2777.70 | 2777.70 | 2777.70 |
| Jan-00 | 1719.00 | 1971.00 | 1971.00 | 2135.70 | 2232.60 | 2328.00 | 2423.10 | 2522.70 | 2618.70 | 2716.20 | 2810.40 | 2910.90 | 2910.90 | 2910.90 | 2910.90 | 2910.90 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade W-1

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-00 | 1719.00 | 1971.00 | 1971.00 | 2135.70 | 2232.60 | 2332.80 | 2433.30 | 2533.20 | 2634.00 | 2734.80 | 2835.00 | 2910.90 | 2910.90 | 2910.90 | 2910.90 | 2910.90 |
| Jan-01 | 1782.60 | 2043.90 | 2043.90 | 2214.60 | 2315.10 | 2419.20 | 2523.30 | 2626.80 | 2731.50 | 2835.90 | 2940.00 | 3018.60 | 3018.60 | 3018.60 | 3018.60 | 3018.60 |
| Jan-02 | 2049.90 | 2217.60 | 2330.10 | 2402.70 | 2511.90 | 2624.70 | 2737.80 | 2850.00 | 2963.70 | 3077.10 | 3189.90 | 3275.10 | 3275.10 | 3275.10 | 3275.10 | 3275.10 |
| Jan-03 | 2133.90 | 2308.50 | 2425.50 | 2501.10 | 2662.50 | 2782.20 | 2888.40 | 3006.90 | 3085.20 | 3203.40 | 3320.70 | 3409.50 | 3409.50 | 3409.50 | 3409.50 | 3409.50 |
| Jan-04 | 2212.80 | 2394.00 | 2515.20 | 2593.50 | 2802.30 | 2928.30 | 3039.90 | 3164.70 | 3247.20 | 3321.90 | 3443.70 | 3535.80 | 3535.80 | 3535.80 | 3535.80 | 3535.80 |

Note: Notwithstanding the basic pay rates specified in this table, the actual rate of basic pay for warrant officers may not exceed the rate of pay for level V of the Executive Schedule ($10,683.30 in 2004).

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-9

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jun-58 | | | | | | | 380.00 | 380.00 | 400.00 | 410.00 | 420.00 | 430.00 | 440.00 | 440.00 | 440.00 | 440.00 |
| Oct-63 | | | | | | | 435.00 | 445.00 | 455.00 | 465.00 | 475.00 | 485.00 | 510.00 | 510.00 | 560.00 | 560.00 |
| Sep-64 | | | | | | | 445.80 | 456.00 | 466.50 | 476.70 | 486.90 | 497.10 | 522.90 | 522.90 | 573.90 | 573.90 |
| Sep-65 | | | | | | | 494.70 | 506.10 | 517.80 | 529.20 | 540.60 | 551.70 | 580.50 | 580.50 | 636.90 | 636.90 |
| Jul-66 | | | | | | | 510.60 | 522.30 | 534.30 | 546.00 | 558.00 | 569.40 | 599.10 | 599.10 | 657.30 | 657.30 |
| Oct-67 | | | | | | | 539.10 | 551.40 | 564.30 | 576.60 | 589.20 | 601.20 | 632.70 | 632.70 | 694.20 | 694.20 |
| Jul-68 | | | | | | | 576.30 | 589.50 | 603.30 | 616.50 | 630.00 | 642.60 | 676.50 | 676.50 | 742.20 | 742.20 |
| Jul-69 | | | | | | | 648.90 | 663.90 | 679.20 | 694.20 | 709.50 | 723.60 | 761.70 | 761.70 | 835.80 | 835.80 |
| Jan-70 | | | | | | | 701.40 | 717.60 | 734.10 | 750.30 | 767.10 | 782.10 | 823.50 | 823.50 | 903.60 | 903.60 |
| Jan-71 | | | | | | | 756.90 | 774.30 | 792.00 | 809.70 | 827.70 | 843.90 | 888.60 | 888.60 | 975.00 | 975.00 |
| Nov-71 | | | | | | | 756.90 | 774.30 | 792.00 | 809.70 | 827.70 | 843.90 | 888.60 | 888.60 | 975.00 | 975.00 |
| Jan-72 | | | | | | | 811.50 | 830.10 | 849.00 | 868.20 | 887.40 | 904.80 | 952.80 | 952.80 | 1045.20 | 1045.20 |
| Oct-72 | | | | | | | 865.80 | 885.60 | 905.70 | 926.40 | 946.80 | 965.40 | 1016.40 | 1016.40 | 1115.10 | 1115.10 |
| Oct-73 | | | | | | | 919.20 | 940.20 | 961.50 | 983.70 | 1005.30 | 1025.10 | 1079.10 | 1079.10 | 1183.80 | 1183.80 |
| Oct-74 | | | | | | | 969.90 | 992.10 | 1014.60 | 1038.00 | 1060.80 | 1081.80 | 1138.80 | 1138.80 | 1249.20 | 1249.20 |
| Oct-75 | | | | | | | 1018.50 | 1041.60 | 1065.30 | 1089.90 | 1113.90 | 1135.80 | 1195.80 | 1195.80 | 1311.60 | 1311.60 |
| Oct-76 | | | | | | | 1055.40 | 1079.40 | 1104.00 | 1129.50 | 1154.10 | 1176.90 | 1239.00 | 1239.00 | 1359.00 | 1359.00 |
| Oct-77 | | | | | | | 1120.80 | 1146.30 | 1172.40 | 1199.40 | 1225.80 | 1249.80 | 1315.80 | 1315.80 | 1443.30 | 1443.30 |
| Oct-78 | | | | | | | 1182.30 | 1209.30 | 1236.90 | 1265.40 | 1293.30 | 1318.50 | 1388.10 | 1388.10 | 1522.80 | 1522.80 |
| Oct-79 | | | | | | | 1265.40 | 1294.20 | 1323.60 | 1354.20 | 1384.20 | 1411.20 | 1485.60 | 1485.60 | 1629.60 | 1629.60 |
| Oct-80 | | | | | | | 1413.60 | 1445.70 | 1478.40 | 1512.60 | 1546.20 | 1576.20 | 1659.30 | 1659.30 | 1829.40 | 1820.40 |
| Oct-81 | | | | | | | 1653.90 | 1691.40 | 1729.80 | 1769.70 | 1809.00 | 1844.10 | 1941.30 | 1941.30 | 2130.00 | 2130.00 |
| Oct-82 | | | | | | | 1720.20 | 1759.20 | 1799.10 | 1840.50 | 1881.30 | 1917.90 | 2019.00 | 2019.00 | 2215.20 | 2215.20 |
| Jan-84 | | | | | | | 1788.90 | 1829.70 | 1871.10 | 1914.00 | 1956.60 | 1994.70 | 2099.70 | 2099.70 | 2303.70 | 2303.70 |
| Jan-85 | | | | | | | 1860.60 | 1902.90 | 1945.80 | 1990.50 | 2034.90 | 2074.50 | 2183.70 | 2183.70 | 2395.80 | 2395.80 |
| Oct-85 | | | | | | | 1916.40 | 1959.90 | 2004.30 | 2050.20 | 2095.80 | 2136.60 | 2249.10 | 2249.10 | 2467.80 | 2467.80 |
| Jan-87 | | | | | | | 1974.00 | 2018.70 | 2064.30 | 2111.70 | 2158.80 | 2200.80 | 2316.60 | 2316.60 | 2541.90 | 2541.90 |
| Jan-88 | | | | | | | 2013.60 | 2059.20 | 2105.70 | 2154.00 | 2202.00 | 2244.90 | 2362.80 | 2362.80 | 2592.60 | 2592.60 |
| Jan-89 | | | | | | | 2096.10 | 2143.50 | 2192.10 | 2242.20 | 2292.30 | 2337.00 | 2459.70 | 2459.70 | 2698.80 | 2698.80 |
| Jan-90 | | | | | | | 2171.70 | 2220.60 | 2271.00 | 2322.90 | 2374.80 | 2421.00 | 2548.20 | 2548.20 | 2796.00 | 2796.00 |
| Jan-91 | | | | | | | 2260.80 | 2311.50 | 2364.00 | 2418.00 | 2472.30 | 2520.30 | 2652.60 | 2652.60 | 2910.60 | 2910.60 |
| Jan-92 | | | | | | | 2355.90 | 2408.70 | 2463.30 | 2519.70 | 2576.10 | 2626.20 | 2763.90 | 2763.90 | 3032.70 | 3032.70 |
| Jan-93 | | | | | | | 2443.20 | 2497.80 | 2554.50 | 2613.00 | 2671.50 | 2723.40 | 2866.20 | 2977.70 | 3144.90 | 3144.90 |
| Jan-94 | | | | | | | 2496.90 | 2552.70 | 2610.60 | 2670.60 | 2730.30 | 2783.40 | 2929.20 | 3043.20 | 3214.20 | 3214.20 |
| Jan-95 | | | | | | | 2561.70 | 2619.00 | 2678.40 | 2739.90 | 2801.40 | 2855.70 | 3005.40 | 3122.40 | 3297.90 | 3297.90 |
| Jan-96 | | | | | | | 2623.20 | 2682.00 | 2742.60 | 2805.60 | 2868.60 | 2924.10 | 3077.40 | 3197.40 | 3377.10 | 3377.10 |
| Jan-97 | | | | | | | 2701.80 | 2762.40 | 2824.80 | 2889.90 | 2954.70 | 3011.70 | 3169.80 | 3293.40 | 3478.50 | 3478.50 |
| Jan-98 | | | | | | | 2777.40 | 2839.80 | 2904.00 | 2970.90 | 3037.50 | 3096.00 | 3258.60 | 3385.50 | 3576.00 | 3576.00 |
| Jan-99 | | | | | | | 2877.30 | 2942.10 | 3008.40 | 3078.00 | 3147.00 | 3207.60 | 3375.90 | 3507.30 | 3704.70 | 3704.70 |
| Jan-00 | | | | | | | 3015.30 | 3083.40 | 3152.70 | 3225.60 | 3298.20 | 3361.50 | 3537.90 | 3675.60 | 3882.60 | 3882.60 |
| Jul-00 | | | | | | | 3015.30 | 3083.40 | 3169.80 | 3271.50 | 3373.20 | 3473.40 | 3609.30 | 3744.00 | 3915.90 | 3915.90 |
| Jan-01 | | | | | | | 3126.90 | 3197.40 | 3287.10 | 3392.40 | 3498.00 | 3601.80 | 3742.80 | 3882.60 | 4060.80 | 4060.80 |
| Jan-02 | | | | | | | 3423.90 | 3501.30 | 3599.40 | 3714.60 | 3830.40 | 3944.10 | 4098.30 | 4251.30 | 4467.00 | 4467.00 |
| Jan-03 | | | | | | | 3564.30 | 3645.00 | 3747.00 | 3867.00 | 3987.30 | 4180.80 | 4344.30 | 4506.30 | 4757.40 | 4757.40 |
| Jan-04 | | | | | | | 3769.20 | 3854.70 | 3962.40 | 4089.30 | 4216.50 | 4421.10 | 4594.20 | 4776.60 | 5054.70 | 5054.70 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-8

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jun-58 | | | | | | 310.00 | 320.00 | 330.00 | 340.00 | 350.00 | 360.00 | 370.00 | 380.00 | 380.00 | 380.00 | 380.00 |
| Oct-63 | | | | | | 365.00 | 375.00 | 385.00 | 395.00 | 405.00 | 415.00 | 425.00 | 450.00 | 450.00 | 500.00 | 500.00 |
| Sep-64 | | | | | | 374.10 | 384.30 | 394.50 | 405.00 | 415.20 | 425.40 | 435.60 | 461.40 | 461.40 | 512.40 | 512.40 |
| Sep-65 | | | | | | 415.20 | 426.60 | 438.00 | 449.40 | 460.80 | 472.20 | 483.60 | 512.10 | 512.10 | 568.80 | 568.80 |
| Jul-66 | | | | | | 428.40 | 440.40 | 452.10 | 463.80 | 475.50 | 487.20 | 499.20 | 528.60 | 528.60 | 587.10 | 587.10 |
| Oct-67 | | | | | | 452.40 | 465.00 | 477.30 | 489.90 | 502.20 | 514.50 | 527.10 | 558.30 | 558.30 | 620.10 | 620.10 |
| Jul-68 | | | | | | 483.60 | 497.10 | 510.30 | 523.80 | 537.00 | 549.90 | 563.40 | 596.70 | 596.70 | 663.00 | 663.00 |
| Jul-69 | | | | | | 544.50 | 559.80 | 574.50 | 589.80 | 604.80 | 619.20 | 634.50 | 672.00 | 672.00 | 746.40 | 746.40 |
| Jan-70 | | | | | | 588.60 | 605.10 | 621.00 | 637.50 | 653.70 | 669.30 | 685.80 | 726.30 | 726.30 | 807.00 | 807.00 |
| Jan-71 | | | | | | 635.10 | 652.80 | 670.20 | 687.90 | 705.30 | 722.10 | 740.10 | 783.60 | 783.60 | 870.90 | 870.90 |
| Nov-71 | | | | | | 635.10 | 652.80 | 670.20 | 687.90 | 705.30 | 722.10 | 740.10 | 783.60 | 783.60 | 870.90 | 870.90 |
| Jan-72 | | | | | | 681.00 | 699.90 | 718.50 | 737.40 | 756.30 | 774.30 | 793.50 | 840.00 | 840.00 | 933.60 | 933.60 |
| Oct-72 | | | | | | 726.60 | 746.70 | 766.50 | 786.60 | 807.00 | 826.20 | 846.60 | 896.10 | 896.10 | 996.00 | 996.00 |
| Oct-73 | | | | | | 771.30 | 792.90 | 813.90 | 835.20 | 856.80 | 877.20 | 898.80 | 951.30 | 951.30 | 1057.50 | 1057.50 |
| Oct-74 | | | | | | 813.90 | 836.70 | 858.90 | 881.40 | 904.20 | 925.50 | 948.30 | 1003.80 | 1003.80 | 1116.00 | 1116.00 |
| Oct-75 | | | | | | 854.70 | 878.40 | 901.80 | 925.50 | 949.50 | 971.70 | 995.70 | 1053.90 | 1053.90 | 1171.80 | 1171.80 |
| Oct-76 | | | | | | 885.60 | 910.20 | 934.50 | 959.10 | 984.00 | 1006.80 | 1031.70 | 1092.00 | 1092.00 | 1214.10 | 1214.10 |
| Oct-77 | | | | | | 940.50 | 966.60 | 992.40 | 1018.50 | 1044.90 | 1069.20 | 1095.60 | 1159.80 | 1159.80 | 1289.40 | 1289.40 |
| Oct-78 | | | | | | 992.10 | 1019.70 | 1047.00 | 1074.60 | 1102.50 | 1128.00 | 1155.90 | 1223.70 | 1223.70 | 1360.20 | 1360.20 |
| Oct-79 | | | | | | 1061.70 | 1091.40 | 1120.50 | 1149.90 | 1179.90 | 1207.20 | 1236.90 | 1309.50 | 1309.50 | 1455.60 | 1455.60 |
| Oct-80 | | | | | | 1185.90 | 1219.20 | 1251.60 | 1284.30 | 1317.90 | 1348.50 | 1381.50 | 1462.80 | 1462.80 | 1626.00 | 1626.00 |
| Oct-81 | | | | | | 1387.50 | 1426.50 | 1464.30 | 1502.70 | 1542.00 | 1577.70 | 1616.40 | 1711.50 | 1711.50 | 1902.30 | 1902.30 |
| Oct-82 | | | | | | 1443.00 | 1483.80 | 1522.80 | 1562.70 | 1603.80 | 1640.70 | 1681.20 | 1779.90 | 1779.90 | 1978.50 | 1978.50 |
| Jan-84 | | | | | | 1500.60 | 1543.20 | 1583.70 | 1625.10 | 1668.00 | 1706.40 | 1748.40 | 1851.00 | 1851.00 | 2057.70 | 2057.70 |
| Jan-85 | | | | | | 1560.60 | 1605.00 | 1647.00 | 1690.20 | 1734.60 | 1774.80 | 1818.30 | 1925.10 | 1925.10 | 2139.90 | 2139.90 |
| Oct-85 | | | | | | 1607.40 | 1653.30 | 1696.50 | 1740.90 | 1786.50 | 1827.90 | 1872.90 | 1983.00 | 1983.00 | 2204.10 | 2204.10 |
| Jan-87 | | | | | | 1655.70 | 1702.80 | 1747.50 | 1793.10 | 1840.20 | 1882.80 | 1929.00 | 2042.40 | 2042.40 | 2270.10 | 2270.10 |
| Jan-88 | | | | | | 1688.70 | 1737.00 | 1782.60 | 1829.10 | 1877.10 | 1920.60 | 1967.70 | 2083.20 | 2083.20 | 2315.40 | 2315.40 |
| Jan-89 | | | | | | 1758.00 | 1808.10 | 1855.80 | 1904.10 | 1954.20 | 1999.20 | 2048.40 | 2168.70 | 2168.70 | 2410.20 | 2410.20 |
| Jan-90 | | | | | | 1821.30 | 1873.20 | 1922.70 | 1972.50 | 2024.70 | 2071.20 | 2122.20 | 2246.70 | 2246.70 | 2496.90 | 2496.90 |
| Jan-91 | | | | | | 1896.00 | 1950.00 | 2001.60 | 2053.50 | 2107.80 | 2156.10 | 2209.20 | 2338.80 | 2338.80 | 2599.20 | 2599.20 |
| Jan-92 | | | | | | 1975.50 | 2031.90 | 2085.60 | 2139.60 | 2196.30 | 2246.70 | 2301.90 | 2436.90 | 2436.90 | 2708.40 | 2708.40 |
| Jan-93 | | | | | | 2048.70 | 2107.20 | 2162.70 | 2218.80 | 2277.60 | 2329.80 | 2387.10 | 2527.20 | 2639.70 | 2808.60 | 2808.60 |
| Jan-94 | | | | | | 2093.70 | 2153.70 | 2210.40 | 2267.70 | 2327.70 | 2381.10 | 2439.60 | 2582.70 | 2697.90 | 2870.40 | 2870.40 |
| Jan-95 | | | | | | 2148.00 | 2209.80 | 2268.00 | 2326.80 | 2388.30 | 2442.90 | 2502.90 | 2649.90 | 2768.10 | 2945.10 | 2945.10 |
| Jan-96 | | | | | | 2199.60 | 2262.90 | 2322.30 | 2382.60 | 2445.60 | 2501.40 | 2562.90 | 2713.50 | 2834.40 | 3015.90 | 3015.90 |
| Jan-97 | | | | | | 2265.60 | 2330.70 | 2391.90 | 2454.00 | 2519.10 | 2576.40 | 2639.70 | 2794.80 | 2919.30 | 3106.50 | 3106.50 |
| Jan-98 | | | | | | 2328.90 | 2396.10 | 2458.80 | 2522.70 | 2589.60 | 2648.40 | 2713.50 | 2873.10 | 3000.90 | 3193.50 | 3193.50 |
| Jan-99 | | | | | | 2412.60 | 2482.50 | 2547.30 | 2613.60 | 2682.90 | 2743.80 | 2811.30 | 2976.60 | 3108.90 | 3308.40 | 3308.40 |
| Jan-00 | | | | | | 2528.40 | 2601.60 | 2669.70 | 2739.00 | 2811.60 | 2875.50 | 2946.30 | 3119.40 | 3258.00 | 3467.10 | 3467.10 |
| Jul-00 | | | | | | 2528.40 | 2601.60 | 2669.70 | 2751.60 | 2840.10 | 2932.50 | 3026.10 | 3161.10 | 3295.50 | 3483.60 | 3483.60 |
| Jan-01 | | | | | | 2622.00 | 2697.90 | 2768.40 | 2853.30 | 2945.10 | 3041.10 | 3138.00 | 3278.10 | 3417.30 | 3612.60 | 3612.60 |
| Jan-02 | | | | | | 2858.10 | 2940.60 | 3017.70 | 3110.10 | 3210.30 | 3314.70 | 3420.30 | 3573.00 | 3724.80 | 3937.80 | 3937.80 |
| Jan-03 | | | | | | 2975.40 | 3061.20 | 3141.30 | 3237.60 | 3342.00 | 3530.10 | 3625.50 | 3787.50 | 3877.50 | 4099.20 | 4099.20 |
| Jan-04 | | | | | | 3085.50 | 3222.00 | 3306.30 | 3407.70 | 3517.50 | 3715.50 | 3815.70 | 3986.40 | 4081.20 | 4314.30 | 4314.30 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-7

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-05 | 126.00 | 126.00 | 126.00 | 132.30 | 132.30 | 138.60 | 138.60 | 144.90 | 144.90 | 151.20 | 151.20 | 157.50 | 157.50 | 157.50 | 157.50 | 157.50 |
| Oct-40 | 126.00 | 126.00 | 126.00 | 138.60 | 138.60 | 144.90 | 144.90 | 151.20 | 151.20 | 157.50 | 157.50 | 157.50 | 157.50 | 157.50 | 157.50 | 157.50 |
| Aug-41 | 136.00 | 136.00 | 136.00 | 148.60 | 148.60 | 154.90 | 154.90 | 161.20 | 161.20 | 167.50 | 167.50 | 167.50 | 167.50 | 167.50 | 167.50 | 167.50 |
| Jun-42 | 138.00 | 138.00 | 144.90 | 144.90 | 151.80 | 151.80 | 158.70 | 165.60 | 165.60 | 172.50 | 179.40 | 186.30 | 193.20 | 193.20 | 200.10 | 207.00 |
| Jul-46 | 165.00 | 165.00 | 173.25 | 173.25 | 181.50 | 181.50 | 189.75 | 198.00 | 198.00 | 206.25 | 214.50 | 222.75 | 231.00 | 231.00 | 239.25 | 247.50 |
| Oct-49 | 198.45 | 198.45 | 198.45 | 205.80 | 213.15 | 220.50 | 227.85 | 235.20 | 242.55 | 249.90 | 264.60 | 264.60 | 279.30 | 279.30 | 294.00 | 294.00 |
| May-52 | 206.39 | 206.39 | 206.39 | 214.03 | 221.68 | 229.32 | 236.96 | 244.61 | 252.25 | 259.90 | 275.18 | 275.18 | 290.47 | 290.47 | 305.76 | 305.76 |
| Apr-55 | 206.39 | 222.30 | 222.30 | 230.10 | 237.90 | 253.50 | 261.30 | 273.00 | 280.80 | 288.80 | 304.20 | 304.20 | 319.80 | 319.80 | 335.40 | 335.40 |
| Jun-58 | 206.39 | 236.00 | 236.00 | 250.00 | 260.00 | 270.00 | 285.00 | 300.00 | 310.00 | 325.00 | 340.00 | 350.00 | 350.00 | 350.00 | 350.00 | 350.00 |
| Oct-63 | 206.39 | 275.00 | 285.00 | 295.00 | 305.00 | 315.00 | 325.00 | 335.00 | 350.00 | 360.00 | 370.00 | 375.00 | 400.00 | 400.00 | 450.00 | 450.00 |
| Sep-64 | 206.39 | 282.00 | 292.20 | 302.40 | 312.60 | 322.80 | 333.00 | 343.50 | 358.80 | 369.00 | 379.20 | 384.30 | 410.10 | 410.10 | 461.40 | 461.40 |
| Sep-65 | 261.00 | 312.90 | 324.30 | 335.70 | 347.10 | 358.20 | 369.60 | 381.30 | 398.40 | 409.50 | 420.90 | 426.60 | 455.10 | 455.10 | 512.10 | 512.10 |
| Jul-66 | 269.40 | 322.80 | 334.80 | 346.50 | 358.20 | 369.60 | 381.30 | 393.60 | 411.00 | 422.70 | 434.40 | 440.40 | 469.80 | 469.80 | 528.60 | 528.60 |
| Oct-67 | 284.40 | 340.80 | 353.40 | 366.00 | 378.30 | 390.30 | 402.60 | 415.50 | 434.10 | 446.40 | 458.70 | 465.00 | 496.20 | 496.20 | 558.30 | 558.30 |
| Jul-68 | 303.90 | 364.20 | 377.70 | 391.20 | 404.40 | 417.30 | 430.50 | 444.30 | 464.10 | 477.30 | 490.50 | 497.10 | 530.40 | 530.40 | 596.70 | 596.70 |
| Jul-69 | 342.30 | 410.10 | 425.40 | 440.40 | 455.40 | 469.80 | 484.80 | 500.40 | 522.60 | 537.30 | 552.30 | 559.80 | 597.30 | 597.30 | 672.00 | 672.00 |
| Jan-70 | 369.90 | 443.40 | 459.90 | 476.10 | 492.30 | 507.90 | 524.10 | 540.90 | 564.90 | 580.80 | 597.00 | 605.10 | 645.60 | 645.60 | 726.30 | 726.30 |
| Jan-71 | 399.00 | 478.50 | 496.20 | 513.60 | 531.30 | 548.10 | 565.50 | 583.50 | 609.60 | 626.70 | 644.10 | 652.80 | 696.60 | 696.60 | 783.60 | 783.60 |
| Nov-71 | 443.40 | 478.50 | 496.20 | 513.60 | 531.30 | 548.10 | 565.50 | 583.50 | 609.60 | 626.70 | 644.10 | 652.80 | 696.60 | 696.60 | 783.60 | 783.60 |
| Jan-72 | 475.50 | 513.00 | 531.90 | 550.50 | 569.70 | 587.70 | 606.30 | 625.50 | 653.70 | 672.00 | 690.60 | 699.90 | 746.70 | 746.70 | 840.00 | 840.00 |
| Oct-72 | 507.30 | 547.20 | 567.60 | 587.40 | 607.80 | 627.00 | 646.80 | 667.20 | 697.50 | 717.00 | 736.80 | 746.70 | 796.80 | 796.80 | 896.10 | 896.10 |
| Oct-73 | 538.50 | 581.10 | 602.70 | 623.70 | 645.30 | 665.70 | 686.70 | 708.30 | 740.40 | 761.10 | 782.40 | 792.90 | 846.00 | 846.00 | 951.30 | 951.30 |
| Oct-74 | 568.20 | 613.20 | 636.00 | 658.20 | 681.00 | 702.30 | 724.50 | 747.30 | 781.20 | 803.10 | 825.60 | 836.70 | 892.80 | 892.80 | 1003.80 | 1003.80 |
| Oct-75 | 596.70 | 643.80 | 667.80 | 691.20 | 715.20 | 737.40 | 760.80 | 784.80 | 820.20 | 843.30 | 867.00 | 878.40 | 937.50 | 937.50 | 1053.90 | 1053.90 |
| Oct-76 | 618.30 | 667.20 | 692.10 | 716.10 | 741.00 | 764.10 | 788.40 | 813.30 | 849.90 | 873.90 | 898.50 | 910.20 | 971.40 | 971.40 | 1092.00 | 1092.00 |
| Oct-77 | 656.70 | 708.60 | 735.00 | 760.50 | 786.90 | 811.50 | 837.30 | 863.70 | 902.70 | 928.20 | 954.30 | 966.60 | 1031.70 | 1031.70 | 1159.80 | 1159.80 |
| Oct-78 | 692.70 | 747.60 | 775.50 | 802.20 | 820.10 | 856.20 | 883.50 | 911.10 | 952.20 | 979.20 | 1006.80 | 1019.70 | 1088.40 | 1088.40 | 1223.70 | 1223.70 |
| Oct-79 | 741.30 | 800.10 | 829.80 | 858.60 | 888.30 | 916.20 | 945.60 | 975.00 | 1019.10 | 1047.90 | 1077.60 | 1091.40 | 1164.90 | 1164.90 | 1309.50 | 1309.50 |
| Oct-80 | 828.00 | 893.70 | 927.00 | 959.10 | 992.10 | 1023.30 | 1056.30 | 1089.00 | 1138.20 | 1170.60 | 1203.60 | 1219.20 | 1301.10 | 1301.10 | 1462.80 | 1462.80 |
| Oct-81 | 968.70 | 1045.50 | 1084.50 | 1122.00 | 1160.70 | 1197.30 | 1236.00 | 1274.10 | 1331.70 | 1369.50 | 1408.20 | 1426.50 | 1522.20 | 1522.20 | 1711.50 | 1711.50 |
| Oct-82 | 1007.40 | 1087.20 | 1128.00 | 1167.00 | 1207.20 | 1245.30 | 1285.50 | 1325.10 | 1385.10 | 1424.40 | 1464.60 | 1483.50 | 1583.10 | 1583.10 | 1779.90 | 1779.90 |
| Jan-84 | 1047.60 | 1130.70 | 1173.00 | 1213.80 | 1255.50 | 1295.10 | 1336.80 | 1378.20 | 1440.60 | 1481.40 | 1523.10 | 1542.90 | 1646.40 | 1646.40 | 1851.00 | 1851.00 |
| Jan-85 | 1089.60 | 1176.00 | 1219.80 | 1262.40 | 1305.60 | 1347.00 | 1390.20 | 1433.40 | 1498.20 | 1540.80 | 1584.00 | 1604.70 | 1712.40 | 1712.40 | 1925.10 | 1925.10 |
| Oct-85 | 1122.30 | 1211.40 | 1256.40 | 1300.20 | 1344.90 | 1387.50 | 1431.90 | 1476.30 | 1543.20 | 1587.00 | 1631.40 | 1652.70 | 1763.70 | 1763.70 | 1983.00 | 1983.00 |
| Jan-87 | 1155.90 | 1247.70 | 1294.20 | 1339.20 | 1385.10 | 1429.20 | 1474.80 | 1520.70 | 1589.40 | 1634.70 | 1680.30 | 1702.20 | 1816.50 | 1816.50 | 2042.40 | 2042.40 |
| Jan-88 | 1179.00 | 1272.60 | 1320.00 | 1365.90 | 1412.70 | 1457.70 | 1504.20 | 1551.00 | 1621.20 | 1667.40 | 1713.90 | 1736.10 | 1852.80 | 1852.80 | 2083.20 | 2083.20 |
| Jan-89 | 1277.30 | 1324.80 | 1374.00 | 1422.00 | 1470.60 | 1517.40 | 1566.00 | 1614.60 | 1687.80 | 1735.80 | 1784.10 | 1807.20 | 1928.70 | 1928.70 | 2168.70 | 2168.70 |
| Jan-90 | 1271.40 | 1372.50 | 1423.50 | 1473.30 | 1523.40 | 1572.00 | 1622.40 | 1672.80 | 1748.70 | 1798.20 | 1848.30 | 1872.30 | 1998.00 | 1998.00 | 2246.70 | 2246.70 |
| Jan-91 | 1323.60 | 1428.90 | 1482.00 | 1533.60 | 1585.80 | 1636.50 | 1689.00 | 1741.50 | 1820.40 | 1872.00 | 1924.20 | 1949.10 | 2079.90 | 2079.90 | 2338.80 | 2338.80 |
| Jan-92 | 1379.10 | 1488.90 | 1544.10 | 1598.10 | 1652.40 | 1705.20 | 1759.80 | 1814.70 | 1896.90 | 1950.60 | 2004.90 | 2031.00 | 2167.20 | 2167.20 | 2436.90 | 2436.90 |
| Jan-93 | 1430.10 | 1544.10 | 1601.10 | 1657.20 | 1713.60 | 1768.20 | 1824.90 | 1881.90 | 1967.10 | 2022.90 | 2079.00 | 2106.00 | 2247.40 | 2359.30 | 2527.20 | 2527.20 |
| Jan-94 | 1461.60 | 1578.00 | 1636.20 | 1693.80 | 1751.40 | 1807.20 | 1865.10 | 1923.30 | 2010.30 | 2067.30 | 2124.60 | 2152.20 | 2296.80 | 2411.10 | 2582.70 | 2582.70 |
| Jan-95 | 1499.70 | 1619.10 | 1678.80 | 1737.90 | 1797.00 | 1854.30 | 1913.70 | 1973.40 | 2062.50 | 2121.00 | 2179.80 | 2208.30 | 2356.50 | 2473.80 | 2649.90 | 2649.90 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-7

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-96 | 1535.70 | 1658.10 | 1719.00 | 1779.60 | 1840.20 | 1898.70 | 1959.60 | 2020.80 | 2112.00 | 2172.00 | 2232.00 | 2261.40 | 2413.20 | 2533.20 | 2713.50 | 2713.50 |
| Jan-97 | 1581.90 | 1707.90 | 1770.60 | 1833.00 | 1895.40 | 1955.70 | 2018.40 | 2081.40 | 2175.30 | 2237.10 | 2298.90 | 2329.20 | 2485.50 | 2609.10 | 2794.80 | 2794.80 |
| Jan-98 | 1626.30 | 1755.60 | 1820.10 | 1884.30 | 1948.50 | 2010.60 | 2074.80 | 2139.60 | 2236.20 | 2299.80 | 2363.40 | 2394.30 | 2555.10 | 2682.30 | 2873.10 | 2873.10 |
| Jan-99 | 1684.80 | 1818.90 | 1885.50 | 1952.10 | 2018.70 | 2082.90 | 2149.50 | 2216.70 | 2316.60 | 2382.60 | 2448.60 | 2480.40 | 2647.20 | 2778.90 | 2976.60 | 2976.60 |
| Jan-00 | 1765.80 | 1906.20 | 1976.10 | 2045.70 | 2115.60 | 2182.80 | 2252.70 | 2323.20 | 2427.90 | 2496.90 | 2566.20 | 2599.50 | 2774.40 | 2912.40 | 3119.40 | 3119.40 |
| Jul-00 | 1765.80 | 1927.80 | 2001.00 | 2073.00 | 2147.70 | 2220.90 | 2294.10 | 2367.30 | 2439.30 | 2514.00 | 2588.10 | 2660.40 | 2787.60 | 2926.20 | 3134.40 | 3134.40 |
| Jan-01 | 1831.20 | 1999.20 | 2075.10 | 2149.80 | 2227.20 | 2303.10 | 2379.00 | 2454.90 | 2529.60 | 2607.00 | 2683.80 | 2758.80 | 2890.80 | 3034.50 | 3250.50 | 3250.50 |
| Jul-01 | 1831.20 | 1999.20 | 2075.10 | 2149.80 | 2228.10 | 2362.20 | 2437.80 | 2512.80 | 2588.10 | 2666.10 | 2742.00 | 2817.90 | 2949.60 | 3034.80 | 3250.50 | 3250.50 |
| Jan-02 | 1986.90 | 2169.00 | 2251.50 | 2332.50 | 2417.40 | 2562.90 | 2645.10 | 2726.40 | 2808.00 | 2892.60 | 2975.10 | 3057.30 | 3200.40 | 3292.80 | 3526.80 | 3526.80 |
| Jan-03 | 2068.50 | 2257.80 | 2343.90 | 2428.20 | 2516.40 | 2667.90 | 2753.40 | 2838.30 | 2990.40 | 3066.30 | 3138.60 | 3182.70 | 3331.50 | 3427.80 | 3671.40 | 3671.40 |
| Jan-04 | 2145.00 | 2341.20 | 2430.60 | 2549.70 | 2642.10 | 2801.40 | 2891.10 | 2980.20 | 3139.80 | 3219.60 | 3295.50 | 3341.70 | 3495.00 | 3599.10 | 3855.00 | 3855.00 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-6

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-05 | 84.00 | 84.00 | 84.00 | 88.20 | 88.20 | 92.40 | 92.40 | 96.60 | 96.60 | 100.80 | 100.80 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 |
| Oct-40 | 84.00 | 84.00 | 84.00 | 92.40 | 92.40 | 96.60 | 96.60 | 100.80 | 100.80 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 |
| Aug-41 | 94.00 | 94.00 | 94.00 | 102.40 | 102.40 | 106.60 | 106.60 | 110.80 | 110.80 | 115.00 | 115.00 | 115.00 | 115.00 | 115.00 | 115.00 | 115.00 |
| Jun-42 | 114.00 | 114.00 | 119.70 | 119.70 | 125.40 | 125.40 | 131.10 | 136.80 | 136.80 | 142.50 | 148.20 | 153.90 | 159.60 | 159.60 | 165.30 | 171.00 |
| Jul-46 | 135.00 | 135.00 | 141.75 | 141.75 | 148.50 | 148.50 | 155.25 | 162.00 | 162.00 | 168.75 | 175.50 | 182.25 | 189.00 | 189.00 | 195.75 | 202.50 |
| Oct-49 | 169.05 | 169.05 | 169.05 | 176.40 | 183.75 | 191.10 | 198.45 | 205.80 | 213.15 | 220.50 | 235.20 | 235.20 | 249.90 | 249.90 | 249.90 | 249.90 |
| May-52 | 175.81 | 175.81 | 175.81 | 183.46 | 191.10 | 198.74 | 206.39 | 214.03 | 221.68 | 229.32 | 244.61 | 244.61 | 259.90 | 259.90 | 259.90 | 259.90 |
| Apr-55 | 175.81 | 187.20 | 187.20 | 195.00 | 214.50 | 222.30 | 234.00 | 241.80 | 249.60 | 257.40 | 273.00 | 273.00 | 288.60 | 288.60 | 288.60 | 288.60 |
| Jun-58 | 175.81 | 200.00 | 200.00 | 225.00 | 235.00 | 245.00 | 255.00 | 265.00 | 275.00 | 280.00 | 290.00 | 290.00 | 290.00 | 290.00 | 290.00 | 290.00 |
| Oct-63 | 175.81 | 240.00 | 250.00 | 260.00 | 270.00 | 280.00 | 290.00 | 305.00 | 315.00 | 325.00 | 330.00 | 330.00 | 330.00 | 330.00 | 330.00 | 330.00 |
| Sep-64 | 175.81 | 246.00 | 256.20 | 266.40 | 276.90 | 287.10 | 297.30 | 312.60 | 322.80 | 333.00 | 338.40 | 338.40 | 338.40 | 338.40 | 338.40 | 338.40 |
| Sep-65 | 225.00 | 273.00 | 284.40 | 295.80 | 307.50 | 318.60 | 330.00 | 347.10 | 358.20 | 369.60 | 375.60 | 375.60 | 375.60 | 375.60 | 375.60 | 375.60 |
| Jul-66 | 232.20 | 281.70 | 293.40 | 305.40 | 317.40 | 328.80 | 340.50 | 358.20 | 369.60 | 381.30 | 387.60 | 387.60 | 387.60 | 387.60 | 387.60 | 387.60 |
| Oct-67 | 245.10 | 297.60 | 309.90 | 322.50 | 335.10 | 347.10 | 359.70 | 378.30 | 390.30 | 402.60 | 409.20 | 409.20 | 409.20 | 409.20 | 409.20 | 409.20 |
| Jul-68 | 261.90 | 318.00 | 331.20 | 344.70 | 358.20 | 371.10 | 384.60 | 404.40 | 417.30 | 430.50 | 437.40 | 437.40 | 437.40 | 437.40 | 437.40 | 437.40 |
| Jul-69 | 294.90 | 358.20 | 372.90 | 388.20 | 403.20 | 417.90 | 433.20 | 455.40 | 469.80 | 484.80 | 492.60 | 492.60 | 492.60 | 492.60 | 492.60 | 492.60 |
| Jan-70 | 318.90 | 387.30 | 403.20 | 419.70 | 435.90 | 451.80 | 468.30 | 492.30 | 507.90 | 524.10 | 532.50 | 532.50 | 532.50 | 532.50 | 532.50 | 532.50 |
| Jan-71 | 344.10 | 417.90 | 435.00 | 453.00 | 470.40 | 487.50 | 505.20 | 531.30 | 548.10 | 565.50 | 574.50 | 574.50 | 574.50 | 574.50 | 574.50 | 574.50 |
| Nov-71 | 382.80 | 417.90 | 435.00 | 453.00 | 470.40 | 487.50 | 505.20 | 531.30 | 548.10 | 565.50 | 574.50 | 574.50 | 574.50 | 574.50 | 574.50 | 574.50 |
| Jan-72 | 410.40 | 447.90 | 466.50 | 485.70 | 504.30 | 522.60 | 541.50 | 569.70 | 587.70 | 606.30 | 615.90 | 615.90 | 615.90 | 615.90 | 615.90 | 615.90 |
| Oct-72 | 438.00 | 477.90 | 497.70 | 518.10 | 537.90 | 557.70 | 577.80 | 607.80 | 627.00 | 646.80 | 657.00 | 657.00 | 657.00 | 657.00 | 657.00 | 657.00 |
| Oct-73 | 465.00 | 507.30 | 528.30 | 550.20 | 571.20 | 592.20 | 613.50 | 645.30 | 665.70 | 686.70 | 697.50 | 697.50 | 697.50 | 697.50 | 697.50 | 697.50 |
| Oct-74 | 490.80 | 535.20 | 557.40 | 580.50 | 602.70 | 624.90 | 647.40 | 681.00 | 702.30 | 724.50 | 735.90 | 735.90 | 735.90 | 735.90 | 735.90 | 735.90 |
| Oct-75 | 515.40 | 561.90 | 585.30 | 609.60 | 632.70 | 656.10 | 679.80 | 715.20 | 737.40 | 760.80 | 772.80 | 772.80 | 772.80 | 772.80 | 772.80 | 772.80 |
| Oct-76 | 534.00 | 582.30 | 606.60 | 631.80 | 655.50 | 679.80 | 704.40 | 741.00 | 764.10 | 788.40 | 800.70 | 800.70 | 800.70 | 800.70 | 800.70 | 800.70 |
| Oct-77 | 567.00 | 618.30 | 644.10 | 671.10 | 696.00 | 721.80 | 748.20 | 786.90 | 811.50 | 837.30 | 850.20 | 850.20 | 850.20 | 850.20 | 850.20 | 850.20 |
| Oct-78 | 598.20 | 652.20 | 679.50 | 708.00 | 734.40 | 761.40 | 789.30 | 830.10 | 856.20 | 883.50 | 897.00 | 897.00 | 897.00 | 897.00 | 897.00 | 897.00 |
| Oct-79 | 640.20 | 698.10 | 727.20 | 757.80 | 786.00 | 814.80 | 844.80 | 888.30 | 916.20 | 945.60 | 960.00 | 960.00 | 960.00 | 960.00 | 960.00 | 960.00 |
| Oct-80 | 715.20 | 779.70 | 812.40 | 846.60 | 878.10 | 910.20 | 943.50 | 992.10 | 1023.30 | 1056.30 | 1072.20 | 1072.20 | 1072.20 | 1072.20 | 1072.20 | 1072.20 |
| Oct-81 | 833.10 | 908.40 | 946.50 | 986.40 | 1023.00 | 1060.50 | 1099.20 | 1155.90 | 1192.20 | 1230.60 | 1249.20 | 1249.20 | 1249.20 | 1249.20 | 1249.20 | 1249.20 |
| Oct-82 | 866.40 | 944.70 | 984.30 | 1026.00 | 1063.80 | 1102.80 | 1143.30 | 1202.10 | 1239.90 | 1279.80 | 1299.30 | 1299.30 | 1299.30 | 1299.30 | 1299.30 | 1299.30 |
| Jan-84 | 901.20 | 982.50 | 1023.60 | 1067.10 | 1106.40 | 1146.90 | 1188.90 | 1250.10 | 1289.40 | 1331.10 | 1351.20 | 1351.20 | 1351.20 | 1351.20 | 1351.20 | 1351.20 |
| Jan-85 | 937.20 | 1021.80 | 1064.40 | 1109.70 | 1150.80 | 1192.80 | 1236.60 | 1300.20 | 1341.00 | 1384.20 | 1405.20 | 1405.20 | 1405.20 | 1405.20 | 1405.20 | 1405.20 |
| Oct-85 | 965.40 | 1052.40 | 1096.20 | 1143.00 | 1185.30 | 1228.50 | 1273.80 | 1339.20 | 1381.20 | 1425.60 | 1447.50 | 1447.50 | 1447.50 | 1447.50 | 1447.50 | 1447.50 |
| Jan-87 | 994.50 | 1083.90 | 1129.20 | 1177.20 | 1221.00 | 1265.40 | 1311.90 | 1379.40 | 1422.60 | 1468.50 | 1491.00 | 1491.00 | 1491.00 | 1491.00 | 1491.00 | 1491.00 |
| Jan-88 | 1014.30 | 1105.50 | 1151.70 | 1200.60 | 1245.30 | 1290.60 | 1338.00 | 1407.00 | 1451.10 | 1497.90 | 1520.70 | 1520.70 | 1520.70 | 1520.70 | 1520.70 | 1520.70 |
| Jan-89 | 1056.00 | 1150.80 | 1198.80 | 1249.80 | 1296.30 | 1343.40 | 1392.90 | 1464.60 | 1510.50 | 1559.40 | 1583.10 | 1583.10 | 1583.10 | 1583.10 | 1583.10 | 1583.10 |
| Jan-90 | 1094.10 | 1192.20 | 1242.00 | 1294.80 | 1343.10 | 1391.70 | 1443.00 | 1517.40 | 1564.80 | 1615.50 | 1640.10 | 1640.10 | 1640.10 | 1640.10 | 1640.10 | 1640.10 |
| Jan-91 | 1139.10 | 1241.10 | 1293.00 | 1347.90 | 1398.30 | 1448.70 | 1502.10 | 1579.50 | 1629.00 | 1681.80 | 1707.30 | 1707.30 | 1707.30 | 1707.30 | 1707.30 | 1707.30 |
| Jan-92 | 1186.80 | 1293.30 | 1347.30 | 1404.60 | 1457.10 | 1509.60 | 1565.10 | 1645.80 | 1697.40 | 1752.30 | 1779.00 | 1779.00 | 1779.00 | 1779.00 | 1779.00 | 1779.00 |
| Jan-93 | 1230.60 | 1341.30 | 1397.10 | 1456.50 | 1511.10 | 1565.40 | 1623.00 | 1706.70 | 1760.10 | 1817.10 | 1844.70 | 1844.70 | 1844.70 | 1844.70 | 1844.70 | 1844.70 |
| Jan-94 | 1257.60 | 1370.70 | 1427.70 | 1488.60 | 1544.40 | 1599.90 | 1658.70 | 1744.20 | 1798.80 | 1857.00 | 1885.20 | 1885.20 | 1885.20 | 1885.20 | 1885.20 | 1885.20 |
| Jan-95 | 1290.30 | 1406.40 | 1464.90 | 1527.30 | 1584.60 | 1641.60 | 1701.90 | 1789.50 | 1845.60 | 1905.30 | 1934.10 | 1934.10 | 1934.10 | 1934.10 | 1934.10 | 1934.10 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-6

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-96 | 1321.20 | 1440.30 | 1500.00 | 1563.90 | 1622.70 | 1680.90 | 1742.70 | 1832.40 | 1890.00 | 1950.90 | 1980.60 | 1980.60 | 1980.60 | 1980.60 | 1980.60 | 1980.60 |
| Jan-97 | 1360.80 | 1483.50 | 1545.00 | 1610.70 | 1671.30 | 1731.30 | 1794.90 | 1887.30 | 1946.70 | 2009.40 | 2040.00 | 2040.00 | 2040.00 | 2040.00 | 2040.00 | 2040.00 |
| Jan-98 | 1398.90 | 1524.90 | 1588.20 | 1655.70 | 1718.10 | 1779.90 | 1845.30 | 1940.10 | 2001.30 | 2065.80 | 2097.00 | 2097.00 | 2097.00 | 2097.00 | 2097.00 | 2097.00 |
| Jan-99 | 1449.30 | 1579.80 | 1645.50 | 1715.40 | 1779.90 | 1844.10 | 1911.60 | 2010.00 | 2073.30 | 2140.20 | 2172.60 | 2172.60 | 2172.60 | 2172.60 | 2172.60 | 2172.60 |
| Jan-00 | 1518.90 | 1655.70 | 1724.40 | 1797.60 | 1865.40 | 1932.60 | 2003.40 | 2106.60 | 2172.90 | 2242.80 | 2277.00 | 2277.00 | 2277.00 | 2277.00 | 2277.00 | 2277.00 |
| Jul-00 | 1518.90 | 1678.20 | 1752.60 | 1824.30 | 1899.30 | 1973.10 | 2047.20 | 2118.60 | 2191.50 | 2244.60 | 2283.30 | 2283.30 | 2285.70 | 2285.70 | 2285.70 | 2285.70 |
| Jan-01 | 1575.00 | 1740.30 | 1817.40 | 1891.80 | 1969.50 | 2046.00 | 2122.80 | 2196.90 | 2272.50 | 2327.70 | 2367.90 | 2367.90 | 2370.30 | 2370.30 | 2370.30 | 2370.30 |
| Jul-01 | 1575.00 | 1740.30 | 1817.40 | 1891.80 | 1969.80 | 2097.30 | 2174.10 | 2248.80 | 2325.00 | 2379.60 | 2421.30 | 2421.30 | 2421.30 | 2421.30 | 2421.30 | 2421.30 |
| Jan-02 | 1701.00 | 1870.80 | 1953.60 | 2003.70 | 2117.40 | 2254.50 | 2337.30 | 2417.40 | 2499.30 | 2558.10 | 2602.80 | 2602.80 | 2602.80 | 2602.80 | 2602.80 | 2602.80 |
| Jan-03 | 1770.60 | 1947.60 | 2033.70 | 2117.10 | 2204.10 | 2400.90 | 2477.40 | 2562.30 | 2636.70 | 2663.10 | 2709.60 | 2709.60 | 2709.60 | 2709.60 | 2709.60 | 2709.60 |
| Jan-04 | 1855.50 | 2041.20 | 2131.20 | 2218.80 | 2310.00 | 2516.10 | 2596.20 | 2685.30 | 2763.30 | 2790.90 | 2809.80 | 2809.80 | 2809.80 | 2809.80 | 2809.80 | 2809.80 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-5

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-05 | 72.00 | 72.00 | 72.00 | 75.60 | 75.60 | 79.20 | 79.20 | 82.80 | 82.80 | 86.40 | 86.40 | 86.40 | 86.40 | 86.40 | 86.40 | 86.40 |
| Oct-40 | 72.00 | 72.00 | 72.00 | 79.20 | 79.20 | 82.80 | 82.80 | 86.40 | 86.40 | 90.00 | 90.00 | 90.00 | 90.00 | 90.00 | 90.00 | 90.00 |
| Aug-41 | 82.00 | 82.00 | 82.00 | 89.20 | 89.20 | 92.80 | 92.80 | 96.40 | 96.40 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |
| Jun-42 | 96.00 | 96.00 | 100.80 | 100.80 | 105.60 | 105.60 | 110.40 | 115.20 | 115.20 | 120.00 | 124.80 | 129.60 | 134.40 | 134.40 | 139.20 | 144.00 |
| Jul-46 | 115.00 | 115.00 | 120.75 | 120.75 | 126.50 | 126.50 | 132.25 | 138.00 | 138.00 | 143.75 | 149.50 | 155.25 | 161.00 | 161.00 | 166.75 | 172.50 |
| Oct-49 | 139.65 | 147.00 | 147.00 | 154.35 | 161.70 | 169.05 | 176.40 | 183.75 | 191.10 | 198.45 | 213.15 | 213.15 | 227.85 | 227.85 | 227.85 | 227.85 |
| May-52 | 145.24 | 152.88 | 152.88 | 160.52 | 168.17 | 175.81 | 183.46 | 191.10 | 198.74 | 206.39 | 221.68 | 221.68 | 236.96 | 236.96 | 236.96 | 236.96 |
| Apr-55 | 145.24 | 163.80 | 163.80 | 183.30 | 191.10 | 202.80 | 210.60 | 218.40 | 226.20 | 234.00 | 241.80 | 241.80 | 257.50 | 257.50 | 257.50 | 257.50 |
| Jun-58 | 145.24 | 180.00 | 180.00 | 205.00 | 210.00 | 220.00 | 240.00 | 240.00 | 240.00 | 240.00 | 240.00 | 240.00 | 240.00 | 240.00 | 240.00 | 240.00 |
| Oct-63 | 145.24 | 210.00 | 220.00 | 230.00 | 245.00 | 255.00 | 266.00 | 275.00 | 280.00 | 280.00 | 280.00 | 280.00 | 280.00 | 280.00 | 280.00 | 280.00 |
| Sep-64 | 145.24 | 215.40 | 225.60 | 235.80 | 251.10 | 261.30 | 271.50 | 282.00 | 287.10 | 287.10 | 287.10 | 287.10 | 287.10 | 287.10 | 287.10 | 287.10 |
| Sep-65 | 194.10 | 239.10 | 250.50 | 261.60 | 278.70 | 290.10 | 301.50 | 312.90 | 318.60 | 318.60 | 318.60 | 318.60 | 318.60 | 318.60 | 318.60 | 318.60 |
| Jul-66 | 200.40 | 246.90 | 258.60 | 270.00 | 287.70 | 299.40 | 311.10 | 322.80 | 328.80 | 328.80 | 328.80 | 328.80 | 328.80 | 328.80 | 328.80 | 328.80 |
| Oct-67 | 211.50 | 260.70 | 273.00 | 285.00 | 303.90 | 316.20 | 328.50 | 340.80 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 |
| Jul-68 | 226.20 | 278.70 | 291.90 | 304.80 | 324.90 | 338.10 | 351.30 | 364.20 | 371.10 | 371.10 | 371.10 | 371.10 | 371.10 | 371.10 | 371.10 | 371.10 |
| Jul-69 | 254.70 | 313.80 | 328.80 | 343.20 | 365.70 | 380.70 | 395.70 | 410.10 | 417.90 | 417.90 | 417.90 | 417.90 | 417.90 | 417.90 | 417.90 | 417.90 |
| Jan-70 | 275.40 | 339.30 | 355.50 | 371.10 | 395.40 | 411.60 | 427.80 | 443.40 | 451.80 | 451.80 | 451.80 | 451.80 | 451.80 | 451.80 | 451.80 | 451.80 |
| Jan-71 | 297.30 | 366.00 | 383.70 | 400.50 | 426.60 | 444.00 | 461.70 | 470.50 | 487.50 | 487.50 | 487.50 | 487.50 | 487.50 | 487.50 | 487.50 | 487.50 |
| Nov-71 | 336.30 | 366.00 | 383.70 | 400.50 | 426.60 | 444.00 | 461.70 | 470.50 | 487.50 | 487.50 | 487.50 | 487.50 | 487.50 | 487.50 | 487.50 | 487.50 |
| Jan-72 | 360.60 | 392.40 | 411.30 | 429.30 | 457.50 | 476.10 | 495.00 | 513.00 | 522.60 | 522.60 | 522.60 | 522.60 | 522.60 | 522.60 | 522.60 | 522.60 |
| Oct-72 | 384.60 | 418.80 | 438.90 | 458.10 | 488.10 | 507.90 | 528.00 | 547.20 | 557.70 | 557.70 | 557.70 | 557.70 | 557.70 | 557.70 | 557.70 | 557.70 |
| Oct-73 | 408.30 | 444.60 | 465.90 | 486.30 | 518.10 | 539.10 | 560.70 | 581.10 | 592.20 | 592.20 | 592.20 | 592.20 | 592.20 | 592.20 | 592.20 | 592.20 |
| Oct-74 | 430.80 | 469.60 | 491.70 | 513.00 | 546.60 | 568.80 | 591.60 | 613.20 | 624.90 | 624.90 | 624.90 | 624.90 | 624.90 | 624.90 | 624.90 | 624.90 |
| Oct-75 | 452.40 | 492.60 | 516.30 | 538.80 | 573.90 | 597.30 | 621.30 | 643.80 | 656.10 | 656.10 | 656.10 | 656.10 | 656.10 | 656.10 | 656.10 | 656.10 |
| Oct-76 | 468.90 | 510.30 | 534.90 | 558.30 | 594.60 | 618.90 | 643.80 | 667.20 | 679.80 | 679.80 | 679.80 | 679.80 | 679.80 | 679.80 | 679.80 | 679.80 |
| Oct-77 | 498.00 | 541.80 | 568.20 | 592.80 | 631.50 | 657.30 | 683.70 | 708.60 | 721.80 | 721.80 | 721.80 | 721.80 | 721.80 | 721.80 | 721.80 | 721.80 |
| Oct-78 | 525.30 | 571.50 | 599.40 | 625.50 | 666.30 | 693.60 | 721.20 | 747.60 | 761.40 | 761.40 | 761.40 | 761.40 | 761.40 | 761.40 | 761.40 | 761.40 |
| Oct-79 | 562.20 | 611.70 | 641.40 | 669.30 | 713.10 | 742.20 | 771.90 | 800.10 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 |
| Oct-80 | 627.90 | 683.40 | 716.40 | 747.60 | 796.50 | 828.90 | 862.20 | 893.70 | 910.20 | 910.20 | 910.20 | 910.20 | 910.20 | 910.20 | 910.20 | 910.20 |
| Oct-81 | 731.40 | 796.20 | 834.60 | 870.90 | 927.90 | 965.70 | 1004.40 | 1041.30 | 1060.50 | 1060.50 | 1060.50 | 1060.50 | 1060.50 | 1060.50 | 1060.50 | 1060.50 |
| Oct-82 | 760.80 | 828.00 | 867.90 | 905.70 | 965.10 | 1004.40 | 1044.60 | 1083.00 | 1102.80 | 1102.80 | 1102.80 | 1102.80 | 1102.80 | 1102.80 | 1102.80 | 1102.80 |
| Jan-84 | 791.10 | 861.00 | 902.70 | 942.00 | 1003.80 | 1044.60 | 1086.30 | 1126.20 | 1146.90 | 1146.90 | 1146.90 | 1146.90 | 1146.90 | 1146.90 | 1146.90 | 1146.90 |
| Jan-85 | 822.60 | 895.50 | 938.70 | 979.80 | 1044.00 | 1086.30 | 1129.80 | 1171.20 | 1192.80 | 1192.80 | 1192.80 | 1192.80 | 1192.80 | 1192.80 | 1192.80 | 1192.80 |
| Oct-85 | 847.20 | 922.50 | 966.90 | 1009.20 | 1075.20 | 1119.00 | 1163.70 | 1206.30 | 1228.50 | 1228.50 | 1228.50 | 1228.50 | 1228.50 | 1228.50 | 1228.50 | 1228.50 |
| Jan-87 | 872.70 | 950.10 | 996.00 | 1039.50 | 1107.60 | 1152.60 | 1198.50 | 1242.60 | 1265.40 | 1265.40 | 1265.40 | 1265.40 | 1265.40 | 1265.40 | 1265.40 | 1265.40 |
| Jan-88 | 890.10 | 969.00 | 1015.80 | 1060.20 | 1129.80 | 1175.70 | 1222.50 | 1267.50 | 1290.60 | 1290.60 | 1290.60 | 1290.60 | 1290.60 | 1290.60 | 1290.60 | 1290.60 |
| Jan-89 | 927.60 | 1008.60 | 1057.50 | 1103.70 | 1176.00 | 1224.00 | 1272.60 | 1319.40 | 1343.40 | 1343.40 | 1343.40 | 1343.40 | 1343.40 | 1343.40 | 1343.40 | 1343.40 |
| Jan-90 | 960.00 | 1044.90 | 1095.60 | 1143.30 | 1218.30 | 1268.10 | 1318.50 | 1366.80 | 1391.70 | 1391.70 | 1391.70 | 1391.70 | 1391.70 | 1391.70 | 1391.70 | 1391.70 |
| Jan-91 | 999.30 | 1087.80 | 1140.60 | 1190.10 | 1286.40 | 1320.00 | 1372.50 | 1422.90 | 1448.70 | 1448.70 | 1448.70 | 1448.70 | 1448.70 | 1448.70 | 1448.70 | 1448.70 |
| Jan-92 | 1041.30 | 1133.40 | 1188.60 | 1240.20 | 1321.80 | 1375.50 | 1430.10 | 1482.60 | 1509.60 | 1509.60 | 1509.60 | 1509.60 | 1509.60 | 1509.60 | 1509.60 | 1509.60 |
| Jan-93 | 1079.70 | 1175.40 | 1232.70 | 1286.10 | 1370.70 | 1426.50 | 1482.90 | 1537.50 | 1565.40 | 1565.40 | 1565.40 | 1565.40 | 1565.40 | 1565.40 | 1565.40 | 1565.40 |
| Jan-94 | 1103.40 | 1201.20 | 1259.70 | 1314.30 | 1401.00 | 1458.00 | 1515.60 | 1571.40 | 1599.90 | 1599.90 | 1599.90 | 1599.90 | 1599.90 | 1599.90 | 1599.90 | 1599.90 |
| Jan-95 | 1132.20 | 1232.40 | 1292.40 | 1348.50 | 1437.30 | 1495.80 | 1554.90 | 1612.20 | 1641.60 | 1641.60 | 1641.60 | 1641.60 | 1641.60 | 1641.60 | 1641.60 | 1641.60 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-5

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-96 | 1159.50 | 1262.10 | 1323.30 | 1380.90 | 1471.80 | 1531.80 | 1592.10 | 1650.90 | 1680.90 | 1680.90 | 1680.90 | 1680.90 | 1680.90 | 1680.90 | 1680.90 | 1680.90 |
| Jan-97 | 1194.30 | 1299.90 | 1362.90 | 1422.30 | 1515.90 | 1577.70 | 1639.80 | 1700.40 | 1731.30 | 1731.30 | 1731.30 | 1731.30 | 1731.30 | 1731.30 | 1731.30 | 1731.30 |
| Jan-98 | 1227.60 | 1336.20 | 1401.00 | 1462.20 | 1558.20 | 1621.80 | 1685.70 | 1748.10 | 1779.90 | 1779.90 | 1779.90 | 1779.90 | 1779.90 | 1779.90 | 1779.90 | 1779.90 |
| Jan-99 | 1271.70 | 1384.20 | 1451.40 | 1514.70 | 1614.30 | 1680.30 | 1746.30 | 1811.10 | 1844.10 | 1844.10 | 1844.10 | 1844.10 | 1844.10 | 1844.10 | 1844.10 | 1844.10 |
| Jan-00 | 1332.60 | 1450.50 | 1521.00 | 1587.30 | 1691.70 | 1761.00 | 1830.00 | 1898.10 | 1932.60 | 1932.60 | 1932.60 | 1932.60 | 1932.60 | 1932.60 | 1932.60 | 1932.60 |
| Jul-00 | 1332.60 | 1494.00 | 1566.00 | 1640.40 | 1714.50 | 1789.50 | 1861.50 | 1936.20 | 1936.20 | 1936.20 | 1936.20 | 1936.20 | 1936.20 | 1936.20 | 1936.20 | 1936.20 |
| Jan-01 | 1381.80 | 1549.20 | 1623.90 | 1701.00 | 1777.80 | 1855.80 | 1930.50 | 2007.90 | 2007.90 | 2007.90 | 2007.90 | 2007.90 | 2007.90 | 2007.90 | 2007.90 | 2007.90 |
| Jul-01 | 1381.80 | 1549.20 | 1623.90 | 1701.00 | 1779.30 | 1888.50 | 1962.90 | 2040.30 | 2040.30 | 2040.30 | 2040.30 | 2040.30 | 2040.30 | 2040.30 | 2040.30 | 2040.30 |
| Jan-02 | 1561.50 | 1665.30 | 1745.70 | 1828.50 | 1912.80 | 2030.10 | 2110.20 | 2193.30 | 2193.30 | 2193.30 | 2193.30 | 2193.30 | 2193.30 | 2193.30 | 2193.30 | 2193.30 |
| Jan-03 | 1625.40 | 1733.70 | 1817.40 | 1903.50 | 2037.00 | 2151.90 | 2236.80 | 2283.30 | 2283.30 | 2283.30 | 2283.30 | 2283.30 | 2283.30 | 2283.30 | 2283.30 | 2283.30 |
| Jan-04 | 1700.10 | 1813.50 | 1901.10 | 1991.10 | 2130.60 | 2250.90 | 2339.70 | 2367.90 | 2367.90 | 2367.90 | 2367.90 | 2367.90 | 2367.90 | 2367.90 | 2367.90 | 2367.90 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-4

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-05 | 54.00 | 54.00 | 54.00 | 56.70 | 56.70 | 59.40 | 59.40 | 62.10 | 62.10 | 64.80 | 64.80 | 64.80 | 64.80 | 64.80 | 64.80 | 64.80 |
| Oct-40 | 60.00 | 60.00 | 60.00 | 66.00 | 66.00 | 69.00 | 69.00 | 72.00 | 72.00 | 75.00 | 75.00 | 75.00 | 75.00 | 75.00 | 75.00 | 75.00 |
| Aug-41 | 70.00 | 70.00 | 70.00 | 76.00 | 76.00 | 79.00 | 79.00 | 82.00 | 82.00 | 85.00 | 85.00 | 85.00 | 85.00 | 85.00 | 85.00 | 85.00 |
| Jun-42 | 78.00 | 78.00 | 81.90 | 81.90 | 85.80 | 85.80 | 89.70 | 93.60 | 93.60 | 97.50 | 101.40 | 105.30 | 109.20 | 109.20 | 113.10 | 117.00 |
| Jul-46 | 100.00 | 100.00 | 105.00 | 105.00 | 110.00 | 110.00 | 115.00 | 120.00 | 120.00 | 125.00 | 130.00 | 135.00 | 140.00 | 140.00 | 145.00 | 150.00 |
| Oct-49 | 117.60 | 124.95 | 124.95 | 132.30 | 139.65 | 147.00 | 154.35 | 161.70 | 169.05 | 176.40 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 |
| May-52 | 122.30 | 129.95 | 129.95 | 137.59 | 145.24 | 152.88 | 160.52 | 168.17 | 175.81 | 183.46 | 198.74 | 198.74 | 198.74 | 198.74 | 198.74 | 198.74 |
| Apr-55 | 122.30 | 140.40 | 140.40 | 159.90 | 167.70 | 179.40 | 187.20 | 190.00 | 202.80 | 210.60 | 218.40 | 218.40 | 218.40 | 218.40 | 218.40 | 218.40 |
| Jun-58 | 122.30 | 150.00 | 160.00 | 170.00 | 180.00 | 190.00 | 190.00 | 190.00 | 190.00 | 190.00 | 190.00 | 190.00 | 190.00 | 190.00 | 190.00 | 190.00 |
| Oct-63 | 122.30 | 180.00 | 190.00 | 205.00 | 215.00 | 215.00 | 215.00 | 215.00 | 215.00 | 215.00 | 215.00 | 215.00 | 215.00 | 215.00 | 215.00 | 215.00 |
| Sep-64 | 122.30 | 184.50 | 194.70 | 210.00 | 220.50 | 220.50 | 220.50 | 220.50 | 220.50 | 220.50 | 220.50 | 220.50 | 220.50 | 220.50 | 220.50 | 220.50 |
| Sep-65 | 165.50 | 204.90 | 216.00 | 233.10 | 244.80 | 244.80 | 244.80 | 244.80 | 244.80 | 244.80 | 244.80 | 244.80 | 244.80 | 244.80 | 244.80 | 244.80 |
| Jul-66 | 168.60 | 211.50 | 222.90 | 240.60 | 252.60 | 252.60 | 252.60 | 252.60 | 252.60 | 252.60 | 252.60 | 252.60 | 252.60 | 252.60 | 252.60 | 252.60 |
| Oct-67 | 177.90 | 223.20 | 235.50 | 254.10 | 266.70 | 266.70 | 266.70 | 266.70 | 266.70 | 266.70 | 266.70 | 266.70 | 266.70 | 266.70 | 266.70 | 266.70 |
| Jul-68 | 190.20 | 238.50 | 251.70 | 271.50 | 285.00 | 285.00 | 285.00 | 285.00 | 285.00 | 285.00 | 285.00 | 285.00 | 285.00 | 285.00 | 285.00 | 285.00 |
| Jul-69 | 214.20 | 268.50 | 283.50 | 305.70 | 321.00 | 321.00 | 321.00 | 321.00 | 321.00 | 321.00 | 321.00 | 321.00 | 321.00 | 321.00 | 321.00 | 321.00 |
| Jan-70 | 231.60 | 290.10 | 306.60 | 330.60 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 | 347.10 |
| Jan-71 | 249.90 | 312.90 | 330.90 | 356.70 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 |
| Nov-71 | 323.40 | 341.40 | 361.20 | 389.40 | 405.00 | 405.00 | 405.00 | 405.00 | 405.00 | 405.00 | 405.00 | 405.00 | 405.00 | 405.00 | 405.00 | 405.00 |
| Jan-72 | 346.80 | 366.00 | 387.30 | 417.60 | 434.10 | 434.10 | 434.10 | 434.10 | 434.10 | 434.10 | 434.10 | 434.10 | 434.10 | 434.10 | 434.10 | 434.10 |
| Oct-72 | 369.90 | 390.60 | 413.10 | 445.50 | 463.20 | 463.20 | 463.20 | 463.20 | 463.20 | 463.20 | 463.20 | 463.20 | 463.20 | 463.20 | 463.20 | 463.20 |
| Oct-73 | 392.70 | 414.60 | 438.60 | 473.10 | 491.70 | 491.70 | 491.70 | 491.70 | 491.70 | 491.70 | 491.70 | 491.70 | 491.70 | 491.70 | 491.70 | 491.70 |
| Oct-74 | 414.30 | 437.40 | 462.90 | 499.20 | 518.70 | 518.70 | 518.70 | 518.70 | 518.70 | 518.70 | 518.70 | 518.70 | 518.70 | 518.70 | 518.70 | 518.70 |
| Oct-75 | 435.00 | 459.30 | 486.00 | 524.10 | 544.50 | 544.50 | 544.50 | 544.50 | 544.50 | 544.50 | 544.50 | 544.50 | 544.50 | 544.50 | 544.50 | 544.50 |
| Oct-76 | 450.60 | 475.80 | 503.70 | 543.00 | 564.30 | 564.30 | 564.30 | 564.30 | 564.30 | 564.30 | 564.30 | 564.30 | 564.30 | 564.30 | 564.30 | 564.30 |
| Oct-77 | 478.50 | 505.20 | 534.90 | 576.60 | 599.40 | 599.40 | 599.40 | 599.40 | 599.40 | 599.40 | 599.40 | 599.40 | 599.40 | 599.40 | 599.40 | 599.40 |
| Oct-78 | 504.90 | 533.10 | 564.30 | 608.40 | 632.40 | 632.40 | 632.40 | 632.40 | 632.40 | 632.40 | 632.40 | 632.40 | 632.40 | 632.40 | 632.40 | 632.40 |
| Oct-79 | 540.30 | 570.60 | 603.90 | 651.00 | 676.80 | 676.80 | 676.80 | 676.80 | 676.80 | 676.80 | 676.80 | 676.80 | 676.80 | 676.80 | 676.80 | 676.80 |
| Oct-80 | 603.60 | 637.50 | 674.70 | 727.20 | 756.00 | 756.00 | 756.00 | 756.00 | 756.00 | 756.00 | 756.00 | 756.00 | 756.00 | 756.00 | 756.00 | 756.00 |
| Oct-81 | 682.20 | 720.30 | 762.30 | 821.70 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 |
| Oct-82 | 709.50 | 749.10 | 792.90 | 854.70 | 888.60 | 888.60 | 888.60 | 888.60 | 888.60 | 888.60 | 888.60 | 888.60 | 888.60 | 888.60 | 888.60 | 888.60 |
| Jan-84 | 738.00 | 779.10 | 824.70 | 888.90 | 924.00 | 924.00 | 924.00 | 924.00 | 924.00 | 924.00 | 924.00 | 924.00 | 924.00 | 924.00 | 924.00 | 924.00 |
| Jan-85 | 767.40 | 810.30 | 857.70 | 924.60 | 960.90 | 960.90 | 960.60 | 960.90 | 960.90 | 960.90 | 960.90 | 960.90 | 960.90 | 960.90 | 960.90 | 960.90 |
| Oct-85 | 790.50 | 834.60 | 883.50 | 952.20 | 989.70 | 989.70 | 989.70 | 989.70 | 989.70 | 989.70 | 989.70 | 989.70 | 989.70 | 989.70 | 988.70 | 989.70 |
| Jan-87 | 814.20 | 859.50 | 909.90 | 980.70 | 1019.40 | 1019.40 | 1019.40 | 1019.40 | 1019.40 | 1019.40 | 1019.40 | 1019.40 | 1019.40 | 1019.40 | 1019.40 | 1019.40 |
| Jan-88 | 830.40 | 876.60 | 928.20 | 1000.20 | 1039.80 | 1039.80 | 1039.80 | 1039.80 | 1039.80 | 1039.80 | 1039.80 | 1039.80 | 1039.80 | 1039.80 | 1039.80 | 1039.80 |
| Jan-89 | 864.30 | 912.60 | 966.30 | 1041.30 | 1082.40 | 1082.40 | 1082.40 | 1082.40 | 1082.40 | 1082.40 | 1082.40 | 1082.40 | 1082.40 | 1082.40 | 1082.40 | 1082.40 |
| Jan-90 | 895.50 | 945.60 | 1001.10 | 1078.80 | 1121.40 | 1121.40 | 1121.40 | 1121.40 | 1121.40 | 1121.40 | 1121.40 | 1121.40 | 1121.40 | 1121.40 | 1121.40 | 1121.40 |
| Jan-91 | 932.10 | 984.30 | 1042.20 | 1122.90 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 |
| Jan-92 | 971.10 | 1025.70 | 1086.00 | 1170.00 | 1216.20 | 1216.20 | 1216.20 | 1216.20 | 1216.20 | 1216.20 | 1216.20 | 1216.20 | 1216.20 | 1216.20 | 1216.20 | 1216.20 |
| Jan-93 | 1007.10 | 1063.80 | 1126.20 | 1213.20 | 1261.20 | 1261.20 | 1261.20 | 1261.20 | 1261.20 | 1261.20 | 1261.20 | 1261.20 | 1261.20 | 1261.20 | 1261.20 | 1261.20 |
| Jan-94 | 1029.30 | 1087.20 | 1151.10 | 1239.90 | 1288.80 | 1288.80 | 1288.80 | 1288.80 | 1288.80 | 1288.80 | 1288.80 | 1288.80 | 1288.80 | 1288.80 | 1288.80 | 1288.80 |
| Jan-95 | 1056.00 | 1115.40 | 1181.10 | 1272.00 | 1322.40 | 1322.40 | 1322.40 | 1322.40 | 1322.40 | 1322.40 | 1322.40 | 1322.40 | 1322.40 | 1322.40 | 1322.40 | 1322.40 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-4

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-96 | 1081.20 | 1142.10 | 1209.30 | 1302.60 | 1354.20 | 1354.20 | 1354.20 | 1354.20 | 1354.20 | 1354.20 | 1354.20 | 1354.20 | 1354.20 | 1354.20 | 1354.20 | 1354.20 |
| Jan-97 | 1113.60 | 1176.30 | 1245.60 | 1341.60 | 1394.70 | 1394.70 | 1394.70 | 1394.70 | 1394.70 | 1394.70 | 1394.70 | 1394.70 | 1394.70 | 1394.70 | 1394.70 | 1394.70 |
| Jan-98 | 1144.80 | 1209.30 | 1280.40 | 1379.10 | 1433.70 | 1433.70 | 1433.70 | 1433.70 | 1433.70 | 1433.70 | 1433.70 | 1433.70 | 1433.70 | 1433.70 | 1433.70 | 1433.70 |
| Jan-99 | 1185.90 | 1252.80 | 1326.60 | 1428.60 | 1485.30 | 1485.30 | 1485.30 | 1485.30 | 1485.30 | 1485.30 | 1485.30 | 1485.30 | 1485.30 | 1485.30 | 1485.30 | 1485.30 |
| Jan-00 | 1242.90 | 1312.80 | 1390.20 | 1497.30 | 1556.70 | 1556.70 | 1556.70 | 1556.70 | 1556.70 | 1556.70 | 1556.70 | 1556.70 | 1556.70 | 1556.70 | 1556.70 | 1556.70 |
| Jul-00 | 1242.90 | 1373.10 | 1447.20 | 1520.10 | 1593.90 | 1593.90 | 1593.90 | 1593.90 | 1593.90 | 1593.90 | 1593.90 | 1593.90 | 1593.90 | 1593.90 | 1593.90 | 1593.90 |
| Jan-01 | 1288.80 | 1423.80 | 1500.60 | 1576.20 | 1653.00 | 1653.00 | 1653.00 | 1653.00 | 1653.00 | 1653.00 | 1653.00 | 1653.00 | 1653.00 | 1653.00 | 1653.00 | 1653.00 |
| Jan-02 | 1443.60 | 1517.70 | 1599.60 | 1680.30 | 1752.30 | 1752.30 | 1752.30 | 1752.30 | 1752.30 | 1752.30 | 1752.30 | 1752.30 | 1752.30 | 1752.30 | 1752.30 | 1752.30 |
| Jan-03 | 1502.70 | 1579.80 | 1665.30 | 1749.30 | 1824.00 | 1824.00 | 1824.00 | 1824.00 | 1824.00 | 1824.00 | 1824.00 | 1824.00 | 1824.00 | 1824.00 | 1824.00 | 1824.00 |
| Jan-04 | 1558.20 | 1638.30 | 1726.80 | 1814.10 | 1891.50 | 1891.50 | 1891.50 | 1891.50 | 1891.50 | 1891.50 | 1891.50 | 1891.50 | 1891.50 | 1891.50 | 1891.50 | 1891.50 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-3

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-05 | 42.00 | 42.00 | 42.00 | 44.10 | 44.10 | 46.20 | 46.20 | 48.30 | 48.30 | 50.40 | 50.40 | 50.40 | 50.40 | 50.40 | 50.40 | 50.40 |
| Oct-40 | 54.00 | 54.00 | 54.00 | 59.40 | 59.40 | 62.10 | 62.10 | 64.80 | 64.80 | 67.50 | 67.50 | 67.50 | 67.50 | 67.50 | 67.50 | 67.50 |
| Aug-41 | 64.00 | 64.00 | 64.00 | 69.40 | 69.40 | 72.10 | 72.10 | 74.80 | 74.80 | 77.50 | 77.50 | 77.50 | 77.50 | 77.50 | 77.50 | 77.50 |
| Jun-42 | 66.00 | 66.00 | 69.30 | 69.30 | 72.60 | 72.60 | 75.90 | 79.20 | 79.20 | 82.50 | 85.80 | 89.10 | 92.40 | 92.40 | 95.70 | 99.00 |
| Jul-46 | 90.00 | 90.00 | 94.50 | 94.50 | 99.00 | 99.00 | 103.50 | 108.00 | 108.00 | 112.50 | 117.00 | 121.50 | 126.00 | 126.00 | 130.50 | 135.00 |
| Oct-49 | 95.55 | 102.90 | 102.90 | 110.25 | 117.60 | 124.95 | 132.30 | 139.65 | 147.00 | 147.00 | 147.00 | 147.00 | 147.00 | 147.00 | 147.00 | 147.00 |
| May-52 | 99.37 | 107.02 | 107.02 | 114.66 | 122.30 | 129.95 | 137.59 | 145.24 | 152.88 | 152.88 | 152.88 | 152.88 | 152.88 | 152.88 | 152.88 | 152.88 |
| Apr-55 | 99.37 | 117.00 | 117.00 | 132.60 | 140.40 | 148.20 | 156.00 | 159.90 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 |
| Jun-58 | 99.37 | 124.00 | 124.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 |
| Oct-63 | 99.37 | 145.00 | 155.00 | 165.00 | 165.00 | 165.00 | 165.00 | 165.00 | 165.00 | 165.00 | 165.00 | 165.00 | 165.00 | 165.00 | 165.00 | 165.00 |
| Sep-64 | 99.37 | 148.50 | 155.00 | 169.20 | 169.20 | 169.20 | 169.20 | 169.20 | 169.20 | 169.20 | 169.20 | 169.20 | 169.20 | 169.20 | 169.20 | 169.20 |
| Sep-65 | 117.90 | 164.70 | 176.40 | 187.80 | 187.80 | 187.80 | 187.80 | 187.80 | 187.80 | 187.80 | 187.80 | 187.80 | 187.80 | 187.80 | 187.80 | 187.80 |
| Jul-66 | 121.80 | 170.10 | 182.10 | 193.80 | 193.80 | 193.80 | 193.80 | 193.80 | 193.80 | 193.80 | 193.80 | 193.80 | 193.80 | 193.80 | 193.80 | 193.80 |
| Oct-67 | 128.70 | 179.70 | 192.30 | 204.60 | 204.60 | 204.60 | 204.60 | 204.60 | 204.60 | 204.60 | 204.60 | 204.60 | 204.60 | 204.60 | 204.60 | 204.60 |
| Jul-68 | 137.70 | 192.00 | 205.50 | 218.70 | 218.70 | 218.70 | 218.70 | 218.70 | 218.70 | 218.70 | 218.70 | 218.70 | 218.70 | 218.70 | 218.70 | 218.70 |
| Jul-69 | 155.10 | 216.30 | 231.30 | 246.30 | 246.30 | 246.30 | 246.30 | 246.30 | 246.30 | 246.30 | 246.30 | 246.30 | 246.30 | 246.30 | 246.30 | 246.30 |
| Jan-70 | 167.70 | 233.70 | 249.90 | 266.40 | 266.40 | 266.40 | 266.40 | 266.40 | 266.40 | 266.40 | 266.40 | 266.40 | 266.40 | 266.40 | 266.40 | 266.40 |
| Jan-71 | 180.90 | 252.30 | 269.70 | 287.40 | 287.40 | 287.40 | 287.40 | 287.40 | 287.40 | 287.40 | 287.40 | 287.40 | 287.40 | 287.40 | 287.40 | 287.40 |
| Nov-71 | 311.10 | 328.20 | 341.10 | 354.60 | 354.60 | 354.60 | 354.60 | 354.60 | 354.60 | 354.60 | 354.60 | 354.60 | 354.60 | 354.60 | 354.60 | 354.60 |
| Jan-72 | 333.60 | 351.90 | 365.70 | 380.10 | 380.10 | 380.10 | 380.10 | 380.10 | 380.10 | 380.10 | 380.10 | 380.10 | 380.10 | 380.10 | 380.10 | 380.10 |
| Oct-72 | 355.80 | 375.30 | 390.30 | 405.60 | 405.60 | 405.60 | 405.60 | 405.60 | 405.60 | 405.60 | 405.60 | 405.60 | 405.60 | 405.60 | 405.60 | 405.60 |
| Oct-73 | 377.70 | 398.40 | 414.30 | 430.50 | 430.50 | 430.50 | 430.50 | 430.50 | 430.50 | 430.50 | 430.50 | 430.50 | 430.50 | 430.50 | 430.50 | 430.50 |
| Oct-74 | 398.40 | 420.30 | 437.10 | 454.20 | 454.20 | 454.20 | 454.20 | 454.20 | 454.20 | 454.20 | 454.20 | 454.20 | 454.20 | 454.20 | 454.20 | 454.20 |
| Oct-75 | 418.20 | 441.30 | 459.00 | 477.00 | 477.00 | 477.00 | 477.00 | 477.00 | 477.00 | 477.00 | 477.00 | 477.00 | 477.00 | 477.00 | 477.00 | 477.00 |
| Oct-76 | 433.20 | 457.20 | 475.50 | 494.40 | 494.40 | 494.40 | 494.40 | 494.40 | 494.40 | 494.40 | 494.40 | 494.40 | 494.40 | 494.40 | 494.40 | 494.40 |
| Oct-77 | 460.20 | 485.40 | 504.90 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 | 525.00 |
| Oct-78 | 485.40 | 512.10 | 532.80 | 553.80 | 553.80 | 553.80 | 553.80 | 553.80 | 553.80 | 553.80 | 553.80 | 553.80 | 553.80 | 553.80 | 553.80 | 553.80 |
| Oct-79 | 519.60 | 548.10 | 570.30 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 | 592.80 |
| Oct-80 | 580.50 | 612.30 | 636.90 | 662.10 | 662.10 | 662.10 | 662.10 | 662.10 | 662.10 | 662.10 | 662.10 | 662.10 | 662.10 | 662.10 | 662.10 | 662.10 |
| Oct-81 | 642.60 | 677.70 | 705.00 | 732.90 | 732.90 | 732.90 | 732.90 | 732.90 | 732.90 | 732.90 | 732.90 | 732.90 | 732.90 | 732.90 | 732.90 | 732.90 |
| Oct-82 | 668.40 | 704.70 | 733.20 | 762.30 | 762.30 | 762.30 | 762.30 | 762.30 | 762.30 | 762.30 | 762.30 | 762.30 | 762.30 | 762.30 | 762.30 | 762.30 |
| Jan-84 | 695.10 | 732.90 | 762.60 | 792.90 | 792.90 | 792.90 | 792.90 | 792.90 | 792.90 | 792.90 | 792.90 | 792.90 | 792.90 | 792.90 | 792.90 | 792.90 |
| Jan-85 | 723.00 | 762.30 | 793.20 | 824.70 | 824.70 | 824.70 | 824.70 | 824.70 | 824.70 | 824.70 | 824.70 | 824.70 | 824.70 | 824.70 | 824.70 | 824.70 |
| Oct-85 | 744.60 | 785.10 | 816.90 | 849.30 | 849.30 | 849.30 | 849.30 | 849.30 | 849.30 | 849.30 | 849.30 | 849.30 | 849.30 | 849.30 | 849.30 | 849.30 |
| Jan-87 | 766.80 | 808.80 | 841.50 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 |
| Jan-88 | 782.10 | 825.00 | 858.30 | 892.20 | 892.20 | 892.20 | 892.20 | 892.20 | 892.20 | 892.20 | 892.20 | 892.20 | 892.20 | 892.20 | 892.20 | 892.20 |
| Jan-89 | 814.20 | 858.90 | 893.40 | 928.80 | 928.80 | 928.80 | 928.80 | 928.80 | 928.80 | 928.80 | 928.80 | 928.80 | 928.80 | 928.80 | 928.80 | 928.80 |
| Jan-90 | 843.60 | 889.80 | 925.50 | 962.10 | 962.10 | 962.10 | 962.10 | 962.10 | 962.10 | 962.10 | 962.10 | 962.10 | 962.10 | 962.10 | 962.10 | 962.10 |
| Jan-91 | 878.10 | 926.40 | 963.30 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 |
| Jan-92 | 915.00 | 965.40 | 1003.80 | 1043.40 | 1043.40 | 1043.40 | 1043.40 | 1043.40 | 1043.40 | 1043.40 | 1043.40 | 1043.40 | 1043.40 | 1043.40 | 1043.40 | 1043.40 |
| Jan-93 | 948.90 | 1001.10 | 1041.00 | 1082.10 | 1082.10 | 1082.10 | 1082.10 | 1082.10 | 1082.10 | 1082.10 | 1082.10 | 1082.10 | 1082.10 | 1082.10 | 1082.10 | 1082.10 |
| Jan-94 | 969.90 | 1023.00 | 1063.80 | 1105.80 | 1105.80 | 1105.80 | 1105.80 | 1105.80 | 1105.80 | 1105.80 | 1105.80 | 1105.80 | 1105.80 | 1105.80 | 1105.80 | 1105.80 |
| Jan-95 | 995.10 | 1049.70 | 1091.40 | 1134.60 | 1134.60 | 1134.60 | 1134.60 | 1134.60 | 1134.60 | 1134.60 | 1134.60 | 1134.60 | 1134.60 | 1134.60 | 1134.60 | 1134.60 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-3

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-96 | 1019.10 | 1074.90 | 1117.50 | 1161.90 | 1161.90 | 1161.90 | 1161.90 | 1161.90 | 1161.90 | 1161.90 | 1161.90 | 1161.90 | 1161.90 | 1161.90 | 1161.90 | 1161.90 |
| Jan-97 | 1049.70 | 1107.00 | 1151.10 | 1196.70 | 1196.70 | 1196.70 | 1196.70 | 1196.70 | 1196.70 | 1196.70 | 1196.70 | 1196.70 | 1196.70 | 1196.70 | 1196.70 | 1196.70 |
| Jan-98 | 1079.10 | 1137.90 | 1183.20 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 | 1230.30 |
| Jan-99 | 1117.80 | 1179.00 | 1225.80 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 | 1274.70 |
| Jan-00 | 1171.50 | 1235.70 | 1284.60 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 |
| Jul-00 | 1171.50 | 1260.60 | 1334.10 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 | 1335.90 |
| Jan-01 | 1214.70 | 1307.10 | 1383.60 | 1385.40 | 1385.40 | 1385.40 | 1385.40 | 1385.40 | 1385.40 | 1385.40 | 1385.40 | 1385.40 | 1385.40 | 1385.40 | 1385.40 | 1385.40 |
| Jan-02 | 1303.50 | 1385.40 | 1468.50 | 1468.50 | 1468.50 | 1468.50 | 1468.50 | 1468.50 | 1468.50 | 1468.50 | 1468.50 | 1468.50 | 1468.50 | 1468.50 | 1468.50 | 1468.50 |
| Jan-03 | 1356.90 | 1442.10 | 1528.80 | 1528.80 | 1528.80 | 1528.80 | 1528.80 | 1528.80 | 1528.80 | 1528.80 | 1528.80 | 1528.80 | 1528.80 | 1528.80 | 1528.80 | 1528.80 |
| Jan-04 | 1407.00 | 1495.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 | 1585.50 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-2

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-05 | 30.00 | 30.00 | 30.00 | 31.50 | 31.50 | 33.00 | 33.00 | 34.50 | 34.50 | 36.00 | 36.00 | 36.00 | 36.00 | 36.00 | 36.00 | 36.00 |
| Oct-40 | 36.00 | 36.00 | 36.00 | 39.60 | 39.60 | 41.40 | 41.40 | 42.30 | 43.20 | 45.00 | 45.00 | 45.00 | 45.00 | 45.00 | 45.00 | 45.00 |
| Aug-41 | 46.00 | 46.00 | 46.00 | 49.60 | 49.60 | 51.40 | 51.40 | 53.20 | 53.20 | 55.00 | 55.00 | 55.00 | 55.00 | 55.00 | 55.00 | 55.00 |
| Jun-42 | 54.00 | 54.00 | 56.70 | 56.70 | 59.40 | 59.40 | 62.10 | 64.80 | 64.80 | 67.50 | 70.20 | 72.90 | 75.60 | 75.60 | 78.30 | 81.00 |
| Jul-46 | 80.00 | 80.00 | 84.00 | 84.00 | 88.00 | 88.00 | 92.00 | 96.00 | 96.00 | 100.00 | 104.00 | 108.00 | 112.00 | 112.00 | 116.00 | 120.00 |
| Oct-49 | 82.50 | 90.00 | 90.00 | 97.50 | 105.00 | 112.50 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 |
| May-52 | 85.80 | 93.60 | 93.60 | 101.40 | 109.20 | 117.00 | 124.80 | 124.80 | 124.80 | 124.80 | 124.80 | 124.80 | 124.80 | 124.80 | 124.80 | 124.80 |
| Apr-55 | 85.80 | 101.40 | 101.40 | 109.20 | 117.00 | 124.80 | 132.60 | 132.60 | 132.60 | 132.60 | 132.60 | 132.60 | 132.60 | 132.60 | 132.60 | 132.60 |
| Jun-58 | 85.80 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 | 108.00 |
| Oct-63 | 85.80 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 | 120.00 |
| Sep-64 | 85.80 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 | 123.00 |
| Sep-65 | 97.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 | 136.50 |
| Jul-66 | 100.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 | 141.00 |
| Oct-67 | 106.20 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 | 148.80 |
| Jul-68 | 113.40 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 | 159.00 |
| Jul-69 | 127.80 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 | 179.10 |
| Jan-70 | 138.30 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 | 193.50 |
| Jan-71 | 149.10 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 | 208.80 |
| Nov-71 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 | 299.10 |
| Jan-72 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 | 320.70 |
| Oct-72 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 | 342.30 |
| Oct-73 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 | 363.30 |
| Oct-74 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 | 383.40 |
| Oct-75 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 | 402.60 |
| Oct-76 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 | 417.30 |
| Oct-77 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 | 443.10 |
| Oct-78 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 | 467.40 |
| Oct-79 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 | 500.10 |
| Oct-80 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 | 558.60 |
| Oct-81 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 | 618.30 |
| Oct-82 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 | 642.90 |
| Jan-84 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 | 668.70 |
| Jan-85 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 | 695.40 |
| Oct-85 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 | 716.40 |
| Jan-87 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 | 738.00 |
| Jan-88 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 | 752.70 |
| Jan-89 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 | 783.60 |
| Jan-90 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 | 811.80 |
| Jan-91 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 |
| Jan-92 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 | 880.50 |
| Jan-93 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 | 913.20 |
| Jan-94 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 | 933.30 |
| Jan-95 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 | 957.60 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-2

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-96 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 | 980.70 |
| Jan-97 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 | 1010.10 |
| Jan-98 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 | 1038.30 |
| Jan-99 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 | 1075.80 |
| Jan-00 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 | 1127.40 |
| Jan-01 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 | 1169.10 |
| Jan-02 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 | 1239.30 |
| Jan-03 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 | 1290.00 |
| Jan-04 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 | 1337.70 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-1>4

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jul-05 | 21.00 | 21.00 | 21.00 | 22.05 | 22.05 | 23.10 | 23.10 | 24.15 | 24.15 | 25.20 | 25.20 | 25.20 | 25.20 | 25.20 | 25.20 | 25.20 |
| Oct-40 | 30.00 | 30.00 | 30.00 | 33.00 | 33.00 | 34.50 | 34.50 | 36.00 | 36.00 | 37.50 | 37.50 | 37.50 | 37.50 | 37.50 | 37.50 | 37.50 |
| Aug-41 | 40.00 | 40.00 | 40.00 | 43.00 | 43.00 | 44.50 | 44.50 | 46.00 | 46.00 | 47.50 | 47.50 | 47.50 | 47.50 | 47.50 | 47.50 | 47.50 |
| Jun-42 | 50.00 | 50.00 | 52.50 | 52.50 | 55.00 | 55.00 | 57.50 | 60.00 | 60.00 | 62.50 | 65.00 | 67.50 | 70.00 | 70.00 | 72.50 | 75.00 |
| Jul-46 | 75.00 | 75.00 | 78.75 | 78.75 | 82.50 | 82.50 | 86.25 | 90.00 | 90.00 | 93.75 | 97.50 | 101.25 | 105.00 | 105.00 | 108.75 | 112.50 |
| Oct-49 | 80.00 | 87.50 | 87.50 | 95.00 | 95.00 | 95.00 | 95.00 | 95.00 | 95.00 | 95.00 | 95.00 | 95.00 | 95.00 | 95.00 | 95.00 | 95.00 |
| May-52 | 83.20 | 91.00 | 91.00 | 98.80 | 98.80 | 98.80 | 98.80 | 98.80 | 98.80 | 98.80 | 98.80 | 98.80 | 98.80 | 98.80 | 98.80 | 98.80 |
| Apr-55 | 83.20 | 98.80 | 98.80 | 106.60 | 106.60 | 106.60 | 106.60 | 106.60 | 106.60 | 106.60 | 106.60 | 106.60 | 106.60 | 106.60 | 106.60 | 106.60 |
| Jun-58 | 83.20 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 | 105.00 |
| Oct-63 | 83.20 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 | 110.00 |
| Sep-64 | 83.20 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 | 112.80 |
| Sep-65 | 93.90 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 | 125.10 |
| Jul-66 | 96.90 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 | 129.00 |
| Oct-67 | 102.30 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 | 136.20 |
| Jul-68 | 109.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 | 145.50 |
| Jul-69 | 123.30 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 | 163.80 |
| Jan-70 | 133.20 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 | 177.00 |
| Jan-71 | 143.70 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 | 191.10 |
| Nov-71 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 | 268.50 |
| Jan-72 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 | 288.00 |
| Oct-72 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 | 307.20 |
| Oct-73 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 | 326.10 |
| Oct-74 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 | 344.10 |
| Oct-75 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 | 361.20 |
| Oct-76 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 | 374.40 |
| Oct-77 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 | 397.50 |
| Oct-78 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 | 419.40 |
| Oct-79 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 | 448.80 |
| Oct-80 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 | 501.30 |
| Oct-81 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 | 551.40 |
| Oct-82 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 | 573.60 |
| Jan-84 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 | 596.40 |
| Jan-85 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 | 620.40 |
| Oct-85 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 | 639.00 |
| Jan-87 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 | 658.20 |
| Jan-88 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 | 671.40 |
| Jan-89 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 | 699.00 |
| Jan-90 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 | 724.20 |
| Jan-91 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 |
| Jan-92 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 | 785.70 |
| Jan-93 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 | 814.80 |
| Jan-94 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 | 832.80 |
| Jan-95 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 | 854.40 |

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-1

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan-96 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 | 874.80 |
| Jan-97 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 | 900.90 |
| Jan-98 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 | 926.10 |
| Jan-99 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 | 959.40 |
| Jan-00 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 | 1005.60 |
| Jan-01 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 | 1042.80 |
| Jan-02 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 | 1105.50 |
| Jan-03 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 | 1150.80 |
| Jan-04 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 | 1193.40 |

Note 1: Notwithstanding the basic pay rates specified in this table, the actual rate of basic pay for enlisted members may not exceed the rate of pay for level V of the Executive Schedule ($10,683.30 in 2004).

Note 2: The rate of basic pay for enlisted members in grade E-9 serving as Sergeant Major or the Army, Master Chief Petty Officer of the Navy, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Master Chief Petty Officer of the Coast Guard, is $6090.90, regardless of cumulative years of service computed under Section 205 of title 37, U.S. Code.

# BASIC PAY SCHEDULE - Historical Data

## Pay Grade E-1< 4 months

| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1997 | 833.40 | | | | | | | | | | | | | | | |
| 1998 | 856.80 | | | | | | | | | | | | | | | |
| 1999 | 887.70 | | | | | | | | | | | | | | | |
| 2000 | 930.30 | | | | | | | | | | | | | | | |
| 2001 | 964.80 | | | | | | | | | | | | | | | |
| 2002 | 1022.70 | | | | | | | | | | | | | | | |
| 2003 | 1064.70 | | | | | | | | | | | | | | | |
| 2004 | 1104.00 | | | | | | | | | | | | | | | |

Note: Members in Pay Grade E-1 with less than four months of active duty were entitled to $573.60 per month during the period effective January 1984 through September 1985, $590.70 beginning October 1985 through December 1986, $608.40 beginning January 1987 through December 1987, $620.70 beginning January 1988 through December 1988, $646.20 beginning January 1989 through December 1989, $669.60 beginning January 1990 through December 1990, $697.20 beginning January 1991 through December 1991, $726.60 beginning January 1992 through December 1992, $753.60 beginning January 1993 through December 1993, $770.10 beginning January 1994 through December 1994, $790.20 beginning January 1995 through December 1995, and $809.10 beginning January 1996.

**Chapter II.B.2.**

## Housing Allowances

**Legislative Authority**: 37 U.S.C. §§403 and 405(b).

**Purpose**: To provide a cash allowance to military personnel not provided with government quarters adequate for themselves and their dependents to enable such personnel to obtain civilian housing as a substitute.

**Background**: Section 101(25) of Title 37, United States Code, 37 U.S.C. §101(25), defines "regular military compensation," or "RMC," to include "basic pay, basic allowance for housing, basic allowance for subsistence; and federal tax advantage accruing to the aforementioned allowances because they are not subject to Federal income tax."[1] Prior to the reorganization of housing allowances in 1998, variable housing allowances and overseas housing allowances were discussed in addition to basic allowance for quarters because they all were part of a housing allowance program intended to defray or offset the housing costs that members of the armed forces incur when adequate, government-provided quarters are not available. This chapter discusses all three allowances because until 1998 Congress expressly required that any variable housing allowance or overseas housing allowance a member received be included along with the basic pay, basic allowance for subsistence, and basic allowance for quarters when computing the amount of the federal income tax advantage (see Chapter II.B.4., "Federal Income Tax Advantage," below) to be imputed to the member in determining the member's overall level of "regular military compensation."[2]

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[1] Although 37 U.S.C. §101(25) specifically refers to "station housing allowance" as being included within the "regular military compensation" or "RMC" construct, "station housing allowance" is commonly referred to as "overseas housing allowance," inasmuch as it may only be paid to "member[s] ... on duty outside of the United States". 37 U.S.C. §405(b). The term "overseas housing allowance" is used in this chapter to designate the "station housing allowance" authorized by 37 U.S.C. §405(b) and included within the "regular military compensation" construct in 37 U.S.C. §101(25).

[2] Historically, the two most venerable of the three allowances--basic allowance for quarters and overseas housing allowance--developed, as shown below, under separate lines of statutory authority. When the variable housing allowance program was first implemented, on the other hand, it was legislatively appended to the basic allowance for quarters provisions of Title 37, United States Code. For this reason, while it is easy to treat the basic allowance for quarters and overseas housing allowance programs as separate programs that are not particularly interrelated, it is more difficult to treat the basic allowance for

## Basic Allowance for Quarters (BAQ)

Since the founding of the United States, military officers normally have been furnished living accommodations without charge. Except for a comparatively short period when a so-called "salary" system was in effect, payment of a cash substitute has been authorized when quarters in kind were not available. Originally, entitlement to the commuted quarters allowance did not rest on specific legislative authority, but was instead based on Army and Navy regulations and indirectly sanctioned by Congress through appropriations for payment of the commutation.[3]

The commutation of quarters authorized by early Army regulations permitted officers serving where public housing was not available and housing could not be rented by the government to be reimbursed for actual expenses paid by them for housing and fuel. In the mid-1800s regulations were adopted establishing adequacy standards for officer quarters by specifying the number of rooms to which officers of different grades were entitled. The number of rooms ranged from two for second lieutenants to 10 for lieutenant generals. When quarters adequacy standards were adopted for officers, the commuted quarters allowance changed from an actual expense basis to an amount calculated by multiplying the number of rooms authorized for the officer's grade by the average rental cost per room in the area in which the officer was stationed. The amount of the commuted allowance for heating fuel varied with the season of the year and the climate in the locality in which the officer was stationed.

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quarters and variable housing allowance programs as separate and distinct. Nevertheless, for reasons of convenience, the three programs are discussed under separate headings below insofar as feasible.

[3]The Third Amendment to the Constitution of the United States is instructive in this regard. It provides--

No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

*U.S. Const.* Amend. III. Thus, to the extent the government does not provide quarters to a specific service member, no "house ... Owner" may be forced against his will to provide accommodations to the service member. One way of overcoming the reluctance of a "house ... Owner" to provide accommodations to a service member is for the service member to rent accommodations from the "house ... Owner". Obviously, a cash allowance from the government in lieu of government provision of quarters to a service member will assist the service member in renting accommodations on the open market.

Navy regulations did not follow either of the Army methods for determining commuted quarters and fuel allowances. Instead, Navy officers not provided public housing while on shore duty were paid an additional amount equal to one-third of their pay as a commutation for quarters and fuel.

The Army and Navy Appropriation Acts for 1871 (Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, §24, 16 Stat. 315, 320 (1870) and Act of July 15, 1870 (Navy Appropriation Act of 1871), ch. 295, §§3-4, 16 Stat. 321, 330-333 (1870)) prescribed annual "pay" rates for officers of the Army and Navy, respectively, which rates, in the case of Army officers, were provided to be "in full of all commutation of quarters, fuel, forage, servants' wages and clothing, longevity rations, and all allowances of every name and nature whatsoever," Army Appropriation Act of 1871, *id*., §24, 16 Stat. at 320, and, in the case of Navy officers, were provided to be their "full and entire compensation" with "no additional allowance" being permitted "on any account whatever," Navy Appropriation Act of 1871, *id*., §4, 16 Stat. at 332.[4] While "commutation of quarters" was thus specifically prohibited for Army officers and "additional allowance[s]" were forbidden for Navy officers, both the Army and Navy appropriation acts of 1871 were interpreted to allow housing to be furnished in kind to officers. Indeed, the Army Appropriation Act specifically provided that, notwithstanding the prohibition on commutation payments, "fuel, quarters, and forage in kind may be furnished to officers." Army Appropriation Act of 1871, *id*., §24, 16 Stat. at 320. In permitting housing to continue to be furnished in kind without charge to Army and Navy officers, the Army and Navy Appropriation Acts of 1871 obviously placed officers assigned to housing in a more favorable financial position than their contemporaries not assigned to quarters.

At least in part to remedy this disparity in treatment, the Act of June 18, 1878, ch. 263, §9, 20 Stat. 145, 151 (1878), removed the prohibition against quarters commutation payments to Army officers. The 1878 act--the first legislative provision that specifically

[4] See also Revised Statutes §§1261,1269, 1270, 1271, and 1272 (1878), concerning Army officers and Revised Statutes §§1556, 1558, 1578, and 1585 (1878), concerning Navy officers.

authorized a cash quarters allowance--fixed the rate of the allowance at a uniform $10 per room per month.[5] The law did not specify the number of rooms different officers were entitled to; this continued to be governed by regulation. Nor did it authorize commutation for fuel. While the Act of June 18, 1878, ch. 263, *id*., in fact removed the prohibition on quarters commutations for Army officers, it did not affect the prohibition on quarters commutations for Navy officers. Rather, the prohibition against quarters commutations for Navy officers continued in effect until the Act of March 3, 1899, ch. 413, §13, 30 Stat. 1004, 1007 (1899), provided general equality of treatment for Army and Navy officers--at least insofar as allowances were concerned.

In specifying the number of rooms different officers were entitled to under the Act of June 18, 1878, ch. 263, §9, 20 Stat. 145, 151 (1878), *supra*, Army regulations established room entitlements by grade. After adoption of the Act of March 3, 1899, ch. 413, §13, 30 Stat. 1004, 1007 (1899), *supra*, the Army regulations that specified the number of rooms different officers were entitled to came to govern the number of rooms Navy officer were entitled to and hence commutation-of-quarters computations for Navy officers. The Act of March 2, 1907, ch. 2511 [Public Law 170, 59th Congress], 34 Stat. 1158, 1168-1169 (1907), effectively made permanent the Army regulations governing room entitlements while also authorizing commutation of heat and light for Army officers--and hence for Navy officers as well by virtue of the 1899 allowance equivalency law--at varying rates depending on number of rooms, season of the year, and geographical area.

The payment of commutations for quarters, fuel, heat, and light authorized by regulation or statute before 1918 depended on whether an officer did or did not himself occupy government quarters. The dependency status of an officer was first introduced as an element in determining the right to and the amount of commutation pay as a temporary World War I measure in the Act of April 16, 1918, ch. 53 [Public Law 131, 65th Congress], 40 Stat. 530 (1918). This act authorized payment of commutation for quarters,

[5] The monthly rate per room was increased to $12 the following year.

heat, and light to Army officers in the field whose dependents were not occupying public quarters, the commutation being payable whether or not such officers were furnished field accommodations by the government. Since shipboard service was held to be the essential equivalent of service "in the field" for Army officers, Navy officers were also entitled to the commutation for dependents under the linkage mechanism of the Act of March 3, 1899, ch. 413, §13, 30 Stat. 1004, 1007 (1899), discussed above. This World War I measure expired June 30, 1922.

The Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §6, 42 Stat. 625, 628 (1922), substituted a rental allowance system for commutation of quarters, heat, and light. The base used to compute the rental allowance was the average monthly cost in the United States of renting one room. The act initially established the monthly value of a room at $20 and provided that this amount was to be adjusted annually by the President. The base amount was in fact adjusted downward between April 1, 1933, and April 1, 1936, to a low of $17 per room per month, but the Act of April 9, 1935, ch. 413 [Public Law 29, 74th Congress], §1, 49 Stat. 120, 125 (1935), stabilized it at the $20 rate, and this rate remained in effect until 1942. Dependency status was reflected in the number of rooms used to compute the rental allowance, an officer with dependents being authorized more rooms than an officer of the same pay status without dependents. As an example, a major in the fourth pay period (see Chapter II.B.1., "Basic Pay," above, concerning pay periods) with dependents was entitled to a rental allowance of $100 a month (five rooms), while a similarly situated officer without dependents was entitled to $60 a month (three rooms). In addition to establishing a rental allowance system, the 1922 act limited the total pay and allowances of a major general (and the Navy equivalent) to $9,700 annually; the total pay and allowances of a brigadier general to $7,500 annually; and the total pay and allowances for grades below brigadier general to $7,200 annually. If any officer's pay and allowances were such as to otherwise exceed these limits, the officer's rental allowance was reduced by the amount of the excess.

The Pay Readjustment Act of 1942, ch. 681 [Public Law 607, 77th Congress], §6, 56 Stat. 359, 361-362 (1942), though retaining the principle of providing a larger rental allowance to officers with dependents, changed the "number-of-rooms" system for calculating the allowance to a fixed monthly sum based on an affected officer's pay period and dependency status. The amount of the allowance ranged from a low of $45 a month for a second lieutenant without dependents upward to $120 a month for a general officer with dependents. Aside from differences in rates and nomenclature, the 1942 system closely resembled the current basic allowance-for-quarters system.

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §302, 63 Stat. 802, 812-813 (1942), replaced the "rental allowance" with the "basic allowance for quarters" (BAQ), which continued to exist until 1998. The Career Compensation Act initially established BAQ rates for each officer grade at levels estimated by the Advisory Commission on Service Pay (the so-called Hook Commission) to be equal to the maximum monthly rate at which 75 percent of the civilians in comparable income groupings could reasonably expect to find adequate bachelor or family housing.[6] Because BAQ rates were thus related to comparable income groupings and housing costs, and since military income varied with rank, and housing costs varied with marital status, the officer BAQ rates recommended by the Hook Commission and ultimately prescribed in the Career Compensation Act were graduated by pay grade and the rates within each grade were further differentiated by dependency status.[7] For the purpose of specifying the amount of BAQ to which an officer was entitled, only two different dependency statuses were recognized--with dependents and without dependents.[8]

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[6] "Career Compensation for the Uniformed Services, A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 14, December 1948.

[7] See "Career Compensation for the Uniformed Services, A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," pp. 12-15, December 1948, generally.

[8] The provisions relating to quarters allowances for officers that were incorporated in the Career Compensation Act of 1949, ch. 681, *id*., derived from recommendations made to the Secretary of Defense, and thence to Congress, by the so-called Hook Commission, more formally known as the Advisory Commission on Service Pay, whose report and recommendations were delivered to the Secretary of Defense in December 1948. In the words of the Hook Commission:

The officer BAQ rates established by the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §302, 63 Stat. 802, 812-813 (1942), have been explicitly adjusted a number of times since 1949. They were increased 14 percent in 1952 to compensate for higher living costs. They were further increased January 1, 1963, to bring them up to the Federal Housing Administration (FHA) median for housing expenses of comparable income groups in the United States. After 1963, however, BAQ rates lagged behind the FHA standard as the general price level, including housing costs, and military income, especially the basic pay component, moved upward in succeeding years. In 1971, however, BAQ rates were increased again. This time to approximately 85 percent of the FHA median for nationwide housing expenses of comparable income groups. This increase was a compromise between the House of Representatives, which wanted a 100 percent FHA standard, and the Senate, which wanted no BAQ increase at all. Further adjustments occurred in 1974 and 1975 when all cash elements of regular military compensation, including BAQ,[9] were increased 5.5 percent in step with increases in general schedule salaries of Federal Civil Service employees. Subsequent increases have been made both legislatively and through use of the pay adjustment mechanism incorporated in 37 U.S.C. §1009, as described more fully below.

Enlisted personnel, like officers, have normally been furnished living accommodations at Government expense, or a cash substitute when such accommodations were not

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A. Officer[s] and warrant officers should be granted allowances for quarters at all times, subject to the withholding of allowances when Government quarters are assigned.

. . .

C. Allowances should be granted with due consideration for personnel who may reasonably be expected to have dependents accompany them. Accordingly, all officers [and] warrant officers ... in any branch should be authorized a higher allowance, if they have dependents.

"Career Compensation for the Uniformed Services, A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 12, December 1948. (The rationale for distinguishing between officers with dependents and those without dependents was somewhat different from the rationale for distinguishing between enlisted personnel with dependents and those without dependents. See footnote 10 to this chapter, below.)

[9] See discussion of regular military compensation (RMC) in Chapter II.B.1., "Basic Pay," above.

provided. The enlisted cash substitute was for many years authorized strictly as a commutation of quarters in kind. Entitlement to the commuted quarters allowance rested on regulations rather than any specific provision of law. Statutory authority for enlisted commutation payments first appeared in the Act of March 4, 1915 (Army Appropriations Act for 1916), ch. 143 [Public Law 292, 63d Congress], §1, 38 Stat. 1062, 1069 (1915), which authorized commutation of quarters at $15 per month and commutation of heat and light at varying rates. The Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §11, 42 Stat. 625, 630 (1922), previously cited in connection with officer rental allowance entitlements, provided that enlisted men not furnished quarters or subsistence in kind were entitled to an allowance not to exceed $4 a day.

The entitlement of specific enlisted personnel to commutations and quarters allowances before 1940 turned on whether they did or did not occupy Government quarters. The first legislative recognition that enlisted personnel in the three highest pay grades who had dependents were entitled to public quarters, or a cash allowance in lieu of quarters, appeared in the Act of October 17, 1940, ch. 899 [Public Law 872, 76th Congress], 54 Stat. 1205 (1940), and was subsequently given more formal, as well as more permanent, recognition in the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §10, 56 Stat. 359, 363-364 (1942).

The principle that all enlisted personnel should be entitled to public quarters, or a cash substitute, and the related principle that certain grades of enlisted personnel should be entitled to quarters adequate to house themselves and their dependents--or a cash substitute--were continued in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §302, 63 Stat. 802, 812-813 (1949), the source of present BAQ authority. The Career Compensation Act, however, slightly expanded the category of enlisted personnel entitled to dependents' housing to include "career" members instead of just members in the three highest pay grades.[10] The act authorized payment of BAQ, at

[10] Just as was the case with officer BAQ entitlements, the provisions relating to quarters allowances for enlisted personnel that were incorporated in the Career Compensation Act of 1949, ch. 681, *id*., also

the rate of $45 a month regardless of grade, to all enlisted members without dependents when government quarters were not available.[11] The act also provided that, for BAQ purposes, members in pay grades E-1 through E-4 (less than seven years of service) were at all times to be considered as without dependents, regardless of actual dependency status.[12] Members in pay grades E-4 (seven or more years of service) through E-7 with dependents were entitled to BAQ at the rate of $67.50 per month when not assigned government quarters adequate for both themselves and their dependents. The provision requiring that junior enlisted personnel at all times be considered as without dependents stemmed from the prevailing view that such personnel made better servicemen, *i.e.*, were less likely to create a "social problem,"[13] when not married. Consequently, a policy

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derived from recommendations made to the Secretary of Defense, and thence to Congress, by the Hook Commission. In the words of the Hook Commission:

B. Enlisted personnel should be granted separate allowances for quarters when Government quarters are not assigned.

C. Allowances should be granted with due consideration for personnel who may reasonably be expected to have dependents accompany them. Accordingly, all ... enlisted personnel of the first three pay grades [corresponding to present pay grades E-7 through E-5] and grade four [corresponding to present pay grade E-4] with 7 years' total service in any branch should be authorized a higher allowance, if they have dependents. Enlisted personnel of pay grade four with less than 7 years' total service in any branch and grades five through seven [corresponding to present pay grades E-3 through E-1] should receive the same allowance regardless of dependents.

. . .

... The Commission supports the principle of higher [quarters] allowances for officers with dependents and believes further that it should be expanded to career enlisted personnel who may reasonably be expected to have dependents with them.

"Career Compensation for the Uniformed Services, A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," pp. 12, 13, December 1948. In effect, the Hook Commission's recommendations concerning quarters allowances for enlisted personnel amounted to a determination that personnel in pay grades five through seven (current pay grades E-3 through E-1) and personnel in pay grade four (current pay grade E-4) with less than seven years of service should not "reasonably be expected to have dependents with them". (For the Hook Commission's recommendations regarding officer BAQ entitlements, and how those recommendations differed from the Commission's recommendations regarding enlisted BAQ entitlements, see footnote 8 to this chapter, above.)

[11] See, *e.g.*, the table at Section 302(f) of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §302(f), 63 Stat. 802, 813 (1949).

[12] Proviso to Section 302(a) of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §302(a), 63 Stat. 802, 813 (1949).

[13] An example of the sort of "social problem" adverted to was cited in the hearings on the Career Compensation Act in the following terms:

decision was made to structure quarters allowances so as to discourage such personnel from marrying.

With the coming of the Korean conflict, Reserve and National Guard enlisted personnel with families were in 1950 being involuntarily ordered to active duty, and it was anticipated that individuals with dependents might soon be inducted under the Selective Service System. The Dependents Assistance Act of 1950 (DAA), ch. 922 [Public Law 771, 81st Congress], §3, 64 Stat. 794, 795 (1950), was enacted to provide extra compensation to aid such personnel and their families and prevent financial hardship. The DAA "temporarily" substituted new enlisted BAQ rates in place of the "permanent" rates established in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §302, 63 Stat. 802, 812-813 (1949), *supra*. For members with dependents, DAA rates were graduated by number of dependents, to a maximum of $85 a month for any member with three or more dependents. The act also suspended the provisions of the preexisting law that barred junior enlisted personnel with dependents from qualifying for dependent BAQ. *id*., §2, 64 Stat. at 795. The DAA continued the across-the-board $45 monthly BAQ rate for members without dependents. In order to receive BAQ under the DAA, an enlisted member with dependents had to effect a monthly "Class Q" allotment for the support of such dependents in the amount of his BAQ entitlement plus $80, $60, or $40, depending on pay grade. *id*., §4, 64 Stat. at 795. Although the DAA had an expiration date of April 30, 1953, it was extended six times, completely governed enlisted BAQ entitlements until January 1, 1963, and partially governed them until July 1, 1973, when it was finally allowed to expire. The rates established by the DAA were increased 14 percent in 1952 to compensate for higher living costs.

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When we started to move troops in 1940, had it not been for the Red Cross we would have had the worst scandal in history because of families left behind in distress by men who should not have families. *Career Compensation for the Uniformed Services: Hearings of March 18, 1949, on H.R. 2553, before a subcommittee of the House Armed Services Committee*, p. 1696, 81st Congress, 1st Session (1949) (statement of Major General John E. Duhlquist, USA).

The Act of July 10, 1962, Public Law 87-531, §1, 76 Stat. 152 (1962), adjusted enlisted BAQ rates again and modified the enlisted BAQ system, effective January 1, 1963. This act increased permanent BAQ rates, that is, those established under the Career Compensation Act, for pay grades E-4 (over four years of service) through E-9 to bring them generally up to the FHA median for housing expenses of comparable income groups in the United States. It also changed the within-grade differentials in enlisted BAQ rates from a graduated structure based on number of dependents to a structure based only on a with- or without-dependents determination, thus establishing essential parity between the BAQ entitlement status of enlisted members and officers. The BAQ rate for members in pay grades E-1 through E-4 (four years of service or less), whether with or without dependents, was left at the level established under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §302(f), 63 Stat. 802, 813 (1949), namely, $45 a month. For the duration of the DAA, however, the 1962 Act, Public Law 87-531, *id*., substituted higher rates for the junior grades where the Career Compensation Act rates had not been raised. This increase in DAA rates amounted to approximately 8 percent. In short, the 1962 Act, Public Law 87-531, *id*., shifted the BAQ entitlements of pay grades E-4 (over four years of service) through E-9 from the DAA to the Career Compensation Act, raised the latter rates to the FHA standard, kept the BAQ entitlements of pay grades E-1 through E-4 (four years of service or less) under the DAA, and raised DAA rates by 8 percent. This meant, among other things, that as of January 1, 1963, members in higher grades did not have to effect a Class Q allotment to qualify for dependents BAQ, but members in the lower grades were still required to allot not less than their monthly BAQ plus $40.

The Act of December 16, 1967, Public Law 90-207, §4, 81 Stat. 649, 654 (1967), raised BAQ rates by approximately 9 percent as of October 1, 1967, for members whose entitlements were based on the DAA--that is, for members in pay grades E-1 through E-4 (four years of service or less). The 9 percent represented the advance in the shelter component of the Consumer Price Index between January 1963 and November 1966.

The Act of September 28, 1971 (Military Selective Service Act of 1967 Amendments), Public Law 92-129, §§204 and 206, 85 Stat. 348, 359 (1971), increased BAQ rates authorized under both the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §302, 63 Stat. 802, 812-813 (1949), and the Dependents Assistance Act of 1950 (DAA), ch. 922 [Public Law 771, 81st Congress], §3, 64 Stat. 794, 795 (1950), to approximately 85 percent of the FHA median for housing expenses of comparable income groups. It also changed within-grade differentials in enlisted DAA rates from a graduated structure based on number of dependents to a structure based only on a with-or-without-dependents determination. Thus, the 1971 act, Public Law 92-129, *id*., placed officer BAQ, Career Compensation Act enlisted BAQ, and DAA enlisted BAQ on essentially the same basis.

When the DAA expired July 1, 1973, the BAQ entitlements that had existed under it were made permanent by moving them to the Career Compensation Act structure. No rate adjustment was involved; the DAA rates that had been authorized in 1971 were merely converted into Career Compensation Act rates. This conversion was effected by the Act of July 9, 1973, Public Law 93-64, §105, 87 Stat. 147, 148-149 (1973), which also repealed the provision of the Career Compensation Act--suspended for some 23 years--that had required junior enlisted personnel to be considered as without dependents at all times. The expiration of the DAA eliminated the Class Q allotment requirement for members in pay grades E-1 through E-4 (four years of service or less).

The Act of December 16, 1967, Public Law 90-207, §8, 81 Stat. 649, 654-655 (1967), provided that whenever the general schedule of compensation for federal classified employees, so-called "civil servants," was increased, a "comparable increase" was to be effected in the three cash components of "regular military compensation" (RMC--see Chapter II.B., "Regular Military Compensation/Basic Military Compensation," and Chapter II.B.1., "Basic Pay," above) of uniformed services personnel. As the base for determining the "comparable increase required in military pay," RMC, which at that time consisted of basic pay, BAQ, BAS, and the federal tax advantage deriving from the nontaxable status of those allowances (see Chapter II.B.4., "Federal Income Tax

Advantage," below)[14], had the effect of imputing an increase in all four of the RMC elements of military compensation each time a general schedule increase occurred. However, since the entire increase was actually allocated to basic pay, the "increase" in the BAQ, BAS, and tax advantage elements was implicit only. The Act of September 19, 1974, Public Law 93-419, §4, 88 Stat. 1152, 1152-1153 (1974), discontinued the method by which the entire increase in military compensation was incorporated in basic pay. Instead, raises were to be equally distributed among the three cash elements of RMC--that is, basic pay, BAQ, and BAS.[15] [16]

The Department of Defense Appropriation Authorization Act, 1977,[17] Public Law 94-361, §303(b), 90 Stat. 923, 925 (1976), permitted a further change in the method of distributing military pay increases. The Act authorized the President to allocate future overall increases among the three cash elements of RMC on other than an equal percentage basis whenever it was determined that such action was "in the best interest of the Government." See 37 U.S.C. §1009(c) as added by the Department of Defense

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[14] RMC is currently defined as the sum of basic pay, housing allowance, basic allowance for subsistence, and the federal tax advantage deriving from the nontaxable status of all the allowances.

[15] See, *e.g.*, Senate Report No. 93-1132 (Committee on Armed Services), p. 2, accompanying H.R. 15406, 93d Congress, 2d Session (1974):

> [The bill] H.R. 15406 will retain the principle that military pay raises are to be linked to federal civilian pay increases but will change the method of allocating pay raises. Instead of putting all of each pay raise solely into basic pay, future increases will be allocated to the three cash elements of RMC--basic pay, Basic Allowance for Quarters and Basic Allowance for Subsistence.

[16] The Act of August 21, 1965, Public Law 89-132, §2, 79 Stat. 544, 546-547 (1965), adopted a special provision, codified at 37 U.S.C. §1008, requiring the President to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system. Pursuant to Section 2(a) of the Act, *id*., as codified at 37 U.S.C. §1008(b), the first such review was to be undertaken "[w]henever the President considers it appropriate, but in no event later than January 1, 1967." In the House and Senate Reports on the bill, H.R. 9075, 89th Congress, 1st Session (1965), the required residential review was referred to as a "quadrennial review ... of military compensation," House Report No. 89-549 (Committee on Armed Services), pp. 1 and 50, and Senate Report No. 89-544 (Committee on Armed Services), p. 1, accompanying H.R. 9075, 89th Congress, 1st Session (1965); and the seven reviews of military compensation that have been completed under the direction of 37 U.S.C. §1008(b) have been referred to, successively, as the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Quadrennial Review of Military Compensation, respectively. The First Quadrennial Review was convened in 1966, and the most recent to have been completed, the Seventh, in 1990. The Eighth Quadrennial Review of Military Compensation was convened, pursuant to Presidential directive, in the fall of 1994.

[17] In the late 1970s, Defense Department authorization acts bore this longer title.

Appropriation Authorization Act, 1977, Public Law 94-361, §303(b), 90 Stat. 923, 925 (1976) (essentially, current 37 U.S.C. §1009(c)(1)). The 1977 authorization act provided, however, that the amount allocated to basic pay could not be less than 75 percent of the amount that would have been allocated on an equal percentage allocation basis. The purpose of providing for a "reallocation" of compensation increases among the three cash elements of RMC was to enable progressive adjustments to be made to the two basic allowance elements so that these allowances would, over time, more nearly cover the costs of the items they had originally been intended to defray, as well as to provide for more adequate quarters and subsistence allowances in general. Under the act, the President was required to advise Congress regarding any planned reallocation at the earliest practicable time before the effective date of a military pay increase. Furthermore, all allocations of increases among the different cash elements of RMC were to be assessed in conjunction with the quadrennial reviews of military compensation required under 37 U.S.C. §1008(b), and a full report was to be made to Congress summarizing the objectives and results of those allocations.[18]

The 1977 Appropriation Authorization Act, Public Law 94-361, *id.*, also permitted, but did not require, the President to provide for payment of partial BAQ to members without dependents not entitled to cash BAQ. See 37 U.S.C. §1009(d) as added by the Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, §303(b), 90 Stat. 923, 925 (1976) (essentially, current 37 U.S.C. §1009(c)(2)). The act stipulated that any partial BAQ payment made under this authority should be an amount equal to the difference between (1) the amount by which BAQ was increased on the basis of reallocation and to which affected members would be entitled were they not on sea or field duty or living in government quarters and (2) the amount by which BAQ would have been increased had the pay raise been distributed among the three cash elements of RMC on an equal percentage basis.

[18] See, *e.g.*, Senate Report No. 96-826 (Committee of Conference), p. 121, and House Report No. 96-1222 (Committee of Conference), p. 95, accompanying H.R. 6974, 96th Congress, 2d Session (1980). Also see, *e.g.*, 126 CONG. REC. 1643-1645 (1980) (daily ed., 126 *Cong. Rec.* S828-S830 (February 4, 1980)) (remarks of Senator Matsunaga in debate on H.R. 5168, subsequently adopted, with amendments, as the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, 94 Stat. 1123 (1980)).

The pay adjustment mechanism incorporated in 37 U.S.C. §1009 was suspended for fiscal year 1981 by the Department of Defense Authorization Act, 1981, Public Law 96-342, §801, 94 Stat. 1077, 1090-1091 (1980), in favor of an 11.7 percent across-the-board increase in basic pay, BAS, and BAQ. This increase was, however, explicitly made subject to the President's reallocation authority under 37 U.S.C. §1009(c)(1). The basic reason for the legislated increase in military compensation--including BAQ--was a general feeling that military pay had lagged behind civilian wages and that the comparability basis under which federal general schedule civilian wages were adjusted may have limited applicability to military pay.[19]

In 1981, Congress again suspended the pay adjustment mechanism incorporated in 37 U.S.C. §1009 and further legislatively increased BAQ. In the Uniformed Services Pay Act of 1981, Public Law 97-60, §101(b)(3), 95 Stat. 989, 992 (1981), BAQ rates were increased by 14.3 percent, with a similar increase in BAS, *id*., §101(b)(2), 95 Stat. at 992, and a 10 to 17 percent increase in basic pay, depending on pay grade, *id*., §101(b)(1), 95 Stat. at 989-991. The intent was to "restore, in current dollars, the relative relationship of military compensation to pay in the private sector that existed in 1972" when Congress adopted the "all-volunteer force" construct as the manning principle for the armed services.[20] In short, Congress felt it necessary to increase the three cash elements of RMC--namely, basic pay, BAS, and BAQ--to restore lost purchasing power and thereby to improve retention and achieve manning objectives in the armed services.[21]

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[19] See, *e.g*., House Report No. 97-109 (Committee on Armed Services), pp. 1 and 4, accompanying H.R. 3380, and Senate Report No. 97-146 (Committee on Armed Services), pp. 2 and 3, accompanying S. 1181, 97th Congress, 1st Session (1981).

[20] For a more detailed description of the reasons underlying adoption of the increase in all three such elements of RMC in the Uniformed Services Pay Act of 1981, Public Law 97-60, §101(b)(3), 95 Stat. 989, 992 (1981), see discussion of that Act in text accompanying footnotes 32 to 39 of Chapter II.B.1., "Basic Pay," above.

[21] See Executive Order 12387, 47 *Fed. Reg*. 44981 (October 8, 1982).

For fiscal year 1983, BAQ rates were adjusted under the pay-adjustment mechanism of 37 U.S.C. §1009,[22] but that mechanism was again suspended the next year by the Department of Defense Authorization Act, 1984, Public Law 98-94, §901, 97 Stat. 614, 634-635 (1983), in favor of a 4 percent, legislatively mandated increase in the three "basic" elements of regular military compensation--namely, basic pay, basic allowance for quarters, and basic allowance for subsistence. While specifying a general 4 percent increase in the three "basic" elements of RMC, however, the 1984 Authorization Act specifically permitted the President to exercise his authority to redistribute part of the pay raise among those three elements, pursuant to the redistribution provisions of 37 U.S.C. §1009(c)(1) and (d)(1).

For fiscal year 1985, Congress specifically abandoned all adjustment mechanisms --whether legislative or Section 1009 mechanisms--in favor of new, restructured BAQ rates computed on the basis of housing costs actually experienced by personnel in different pay grades throughout the United States. This change was effected by the Department of Defense Authorization Act, 1985, Public Law 98-525, §602(a)(1), 98 Stat. 2492, 2533-2534 (1984).

The reasons underlying the adoption of the restructured rates were somewhat complex, having to do with the interrelationships between the basic allowance for quarters program and the variable housing allowance program. As discussed in more detail below, the variable housing allowance program was established by the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §4, 94 Stat. 1123, 1125-1126 (1980), as an amendment to the basic allowance for quarters provisions of Title 37.[23] From the outset, the two programs were, and were intended to be, closely

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[22] See 37 U.S.C. §403 as in effect after enactment of the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §4, 94 Stat. 1123, 1125-1126 (1980), and before enactment of the Department of Defense Authorization Act, 1985, Public Law 98-525, §602(a)(1), 98 Stat. 2492, 2533-2534 (1984).

[23] Senate Report No. 98-500 (Committee on Armed Services), p. 205, accompanying S. 2723, 98th Congress, 2d Session (1984). See House Report No. 98-691 (Committee on Armed Services), p. 256, accompanying H.R. 587, 98th Congress, 2d Session (1984), to the same effect. *cf.* House Report No. 98-1080 (Committee of Conference), p. 295, 98th Congress, 2d Session (1984).

related; and this relationship led to the amendment of both programs. As stated by the Senate Armed Services Committee:

> The basic allowance for quarters and the variable housing allowance are the elements of military compensation designed to help members pay for their housing when the government does not provide quarters. The basic allowance for quarters (BAQ) is no longer directly tied to the cost of housing, either individually or across the uniformed services. The variable housing allowance (VHA) was designed as a means of defraying high housing costs experienced by those members who were assigned to high cost areas of the country. Under current law, the VHA is provided when the average housing cost of members of the same pay grade in a specific area exceeds 115 percent of the BAQ and is equal to the difference between that average housing cost and 115 percent of BAQ. However, since VHA is tied in law to the amount of BAQ, and since the rates of BAQ have not kept pace with the rise in housing costs, major program growth has occurred in VHA.
>
> In order to save money, Congress has imposed restraints on the rates of BAQ and VHA. These restraints have lessened the ability of VHA to serve its intended purpose, compensating those with high housing costs. The results of the combined restraints on BAQ and VHA have been to sever the relationship of housing compensation and housing costs and to force military members to absorb a higher and higher percentage of housing costs out of other compensation.
>
> The committee believes it is now appropriate to revise the structure of both BAQ and VHA, so that these combined elements will be directly tied to housing costs and so that each military member receiving VHA, regardless of grade or duty location, will be required to fund a proportionate share of their housing expenses out of other compensation.
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> Therefore, the committee recommends that the rates for basic allowance for quarters, effective on January 1, 1985, be set at 65 percent of national median housing costs with respect to each pay grade and that variable housing allowance be paid only where the local median cost of housing for a pay grade exceeds 80 percent of the national median housing costs for that pay grade. This arrangement, tying BAQ to national median housing costs, would be maintained by periodic revisions to the BAQ rates. It would also insure that no member would receive VHA unless that member were absorbing 15 percent of their housing costs from other compensation and that rate would be true for all personnel receiving VHA.[24]

[24] In providing for a three percent increase to the "basic" elements of regular military compensation, Congress did not provide authority for the President to redistribute any of the pay increase pursuant to 37 U.S.C. §1009(c)(1) or (d)(1).

In adopting the Senate proposal, Congress, in addition to setting new BAQ rates, removed variable housing allowance authority from 37 U.S.C. §403 and moved it to 37 U.S.C. §403a, with little in the way of substantive modification other than as indicated above. See discussion of the variable housing allowance program, below, and the amendments effected by the 1985 authorization act. At the same time as it adopted new BAQ rates, Congress adopted a provision protecting any member of the armed forces from a cut in BAQ entitlement as a result of the adoption of the new rates. The new rates became effective January 1, 1985.

For fiscal year 1986, Congress, again bypassing the pay-adjustment mechanism of 37 U.S.C. §1009, legislated a 3 percent increase in each of the three "basic" elements of regular military compensation in the Department of Defense Authorization Act, 1986, Public Law 99-145, §601, 99 Stat. 583, 635-636 (1985).[25] The effective date of the increase was October 1, 1985.

Like the 1986 Defense Authorization Act, Public Law 99-145, *id*., the authorization acts for fiscal years 1987, 1988, 1989, 1990, and 1991 all bypassed the Section 1009 adjustment mechanism. In bypassing this adjustment mechanism, the National Defense Authorization Act for Fiscal Year 1987, Public Law No. 99-661, Div. A: Department of Defense Authorization Act, 1987, §601(a) and (b), 100 Stat. 3816, 3873 (1986), incorporated a 3 percent increase in basic pay, basic allowance for subsistence, and basic allowance for quarters, effective January 1, 1987; the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §601(b) and (c), 101 Stat. 1019, 1092 (1987), as amended by the Act of December 22, 1987 (Continuing Appropriations Act for Fiscal Year 1988), Public Law 100-202, §110(b), 101 Stat. 1329, 1329-436 (1987), a 2 percent increase in basic pay, basic allowance for subsistence, and basic allowance for quarters, effective January 1, 1988; the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §601(b) and (c), 102 Stat. 1918, 1976 (1988), a 4.1 percent increase in basic pay and basic allowance for

[25] House Report No. 100-446 (Committee of Conference), p. 641, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

subsistence and a 7 percent increase in basic allowance for quarters, effective January 1, 1989; the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §601(b), 103 Stat. 1352, 1444 (1989), a 3.6 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1990; and the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §601(b), 104 Stat. 1485, 1575 (1990), a 4.1 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1991.

In connection with its consideration of the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, 101 Stat. 1019 (1987), Congress did attempt to increase basic allowance for quarters rates above the increases proposed for basic pay and basic allowance for subsistence, but that attempt was effectively defeated when the "budget summit agreement," memorialized in the Act of December 22, 1987 (Continuing Appropriations for Fiscal Year 1988), Public Law 100-202, §110(b), 101 Stat. 1329, 1329-436 (1987), scaled back the proposed increase of 3 percent in basic pay and basic allowance for subsistence and the proposed increase of 7 percent in basic allowance for quarters, to 2 percent for all three cash elements of RMC. As the joint House-Senate Conference Committee that considered the 1988/1989 Defense Authorization Act noted with respect to the appropriate increase for BAQ:

> The conferees note that, in 1985, basic allowance for quarters (BAQ) rates are [sic, were?] restructured so that they would cover 65 percent of national median housing costs in each pay grade. Since the 1985 restructuring, BAQ has lagged behind housing cost growth, causing BAQ to fall below the 65 percent standard. The conferees intend the six percent increase in BAQ to be a step toward restoring BAQ to the 65 percent standard.[26]

In connection with its consideration of the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, 102 Stat. 1918 (1988), the House Armed Services Committee again addressed the issue of the adequacy of BAQ in relationship to national median housing costs and VHA rates, as follows:

[26] House Report No. 100-563 (Committee on Armed Services), p. 251-252, accompanying H.R. 4624, 100th Congress, 2d Session (1988).

In fiscal year 1988, as a part of the budget summit agreement, military personnel received only a two percent pay raise. The committee anticipates considerable budgetary pressure to reduce substantially the pay raise request for fiscal year 1989....

Today, the nation's armed forces have the highest quality young men and women in history, representing a dramatic reversal of the dark days of the 1970's when recruiting and retention rates plummeted. Although several factors contributed to the turnaround, the large pay raises in October 1980 and 1981 played a paramount role. The committee believes that a competitive rate of pay remains important and is deeply concerned that the gap between private sector and military salaries, as measured by the Employment Cost Index (ECI), is widening. Currently, military pay lags 11 percent behind wages in the civilian economy. If this trend is not reversed, the nation's armed forces could again fall on hard times.

The committee therefore recommends a four percent increase in basic pay and basic allowance for subsistence (BAS) and a seven percent increase in basic allowance for quarters (BAQ). The committee believes reallocation of a small fraction of the pay raise into the basic allowance for quarters is sensible because basic allowance for quarters continues to fall behind the soaring cost of housing in the civilian economy.

In an effort to address the problem of inadequate reimbursement for housing costs for certain individuals, Congress in the 1985 Defense Authorization Act (Public Law 98-525 [§602(a)(1), 98 Sta. 2492, 2533-2534 (1984)]) restructured the basic allowance for quarters and variable housing allowance (VHA) programs, pegging the basic allowance for quarters to a percentage (65 percent) of national median housing costs. The service member was expected to absorb 15 percent of housing costs, at which point the variable housing allowance kicks in.

The program envisioned that the Department of Defense would periodically seek to update the BAQ rates, in order to maintain the linkage with national median housing costs. This, however, has not occurred. Instead, basic allowance for quarters has been increased each year, along with and by the same percentage as the annual pay raise, but national housing costs have gone up faster than pay raises. The Department of Defense has attempted to address this problem through increased variable housing allowance. This year's budget proposes a 3.4 percent VHA increase. Unfortunately, due to budget constraints, variable housing allowance has been capped through the appropriations process for the past two years.

Currently, the BAQ rates have declined to slightly over 59 percent of national median housing costs, instead of 65 percent. With the caps on variable housing allowance, service members are now absorbing over 22 percent of their

> housing costs, instead of the 15 percent envisioned when the program was restricted [sic, restructured?] by Public Law 98-525.
>
> In an attempt to address this problem, last year the fiscal 1988/1989 Defense Authorization Act (Public Law 100-180 [§601(b) and (c), 101 Stat. 1019, 1092 (1987)]) authorized a six percent increase in basic allowance for quarters, along with a three percent increase in basic pay. Both the pay raise and the BAQ increase were subsequently limited to two percent in compliance with the budget summit agreement.
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> The seven percent increase [in basic allowance for quarters, as proposed in the House bill, H.R. 4264, 100th Congress, 2d Session (1988)] would raise basic allowance for quarters to 62 percent of national median housing costs and, hopefully, would constitute the first step of a return to the 65 percent level established in the 1985 Defense Authorization Act.[27]

In conference, after the Senate had proposed a flat, across-the-board increase of 4.3 percent in basic pay, basic allowance for quarters, and basic allowance for subsistence,[28] a 4.1 percent increase in basic pay and basic allowance for subsistence and a seven percent increase in basic allowance for quarters were agreed upon, with the conferees noting:

> The 4.3 percent across the board [sic] military pay raise requested by the Administration was based on projected private sector wage growth as measured by the employment cost index (ECI). At the time the request was submitted, the projected ECI was 4.3 percent. The 4.3 percent pay raise request matched the projected ECI increase to keep the 11 percent gap between private sector pay increases and military pay increases from widening.
>
> The actual ECI has now been reported as 3.5 percent. Therefore, the projection on which the Administration's request was based is overstated by 0.8 of a percentage point. As a result, the conference agreement will actually close the gap between private sector and military wage growth by 0.6 of a percentage point, the first time the military pay raise will exceed the ECI since 1981.[29]

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[27] See, *e.g.*, Senate Report No. 100-326 (Committee on Armed Services), p. 92, accompanying S. 2355, 100th Congress, 2d Session (1988).

[28] House Report No. 100-753 (Committee of Conference), p. 403, accompanying H.R. 4264, and House Report No. 100-989 (Committee of Conference), pp. 404-405, accompanying H.R. 4481, 100th Congress, 2d Session (1988).

[29] With respect to the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §601(b), 105 Stat. 1290, 1372 (1991), and the pay raise authorized for fiscal year 1992, see House Report No. 102-60 (Committee on Armed Services), p. 247, accompanying H.R. 2100, and Senate Report No. 102-113 (Committee on Armed Services), p. 221, accompanying S. 1507, cf. House Report No. 102-

The conference committee did not specifically address the question of the appropriateness of a seven percent increase in basic allowance for quarters, apparently accepting the reasoning of the House Committee on Armed Services as expounded in House Report No. 100-563, quoted above *in extenso.*

In contrast to the extensive concern expressed in deliberations on the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, 101 Stat. 1019 (1987), and the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, 102 Stat. 1918 (1988), over the level and adequacy of basic allowance for quarters in relation to the housing costs actually experienced by service members, military pay raises and concomitant increases in BAQ rates for fiscal years 1992 through 1995 (with the possible exception of the pay raise for fiscal year 1994) were treated as more of a routine affair. Like the pay raises stretching back to fiscal year 1983, the authorization acts for fiscal years 1992 through 1995 all bypassed the Section 1009 adjustment mechanism, although in most years the Congressionally mandated rate of increase matched the figure that would have resulted from using that mechanism.[30]

The National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §601(b), 105 Stat. 1290, 1372 (1991), provided for a 4.2 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1992; the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §601(b), 106 Stat. 2315, 2420 (1992), a 3.7 percent increase in

311 (Committee of Conference), p. 548, accompanying H.R. 2100, 102d Congress, 1st Session (1991); with respect to the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §601(b), 106 Stat. 2315, 2420 (1992), and the pay raise authorized for fiscal year 1993, see House Report No. 102-527 (Committee on Armed Services), p.243, accompanying H.R. 5006, and Senate Report No. 102-352 (Committee on Armed Services), p. 208, accompanying S. 3114, cf. House Report No. 102-966 (Committee of Conference), p. 712, accompanying H.R. 5006, 102d Congress, 2d Session (1992); with respect to the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §601(b), 107 Stat. 1547, 1677 (1993), and the pay raise authorized for fiscal year 1994, see House Report No. 103-200 (Committee on Armed Services), p. 293, accompanying H.R. 2401, Senate Report No. 103-112 (Committee on Armed Services), pp. 151-152, accompanying S. 1298, and House Report No. 103-357 (Committee of Conference), p. 682, accompanying H.R. 2401, 103d Congress, 1st Session (1993); and with respect to the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §601(b), 108 Stat. 2663, 2779 (1994), and the pay raise authorized for fiscal year 1995, see House Report No. 103-499 (Committee on Armed Services), p. 601, accompanying H.R. 4301, Senate Report No. 103-282 (Committee on Armed Services), p. 193, accompanying S. 2182, and House Report No. 103-701 (Committee of Conference), p. 711, accompanying S. 2182, 103d Congress, 2d Session (1994).

[30] Robert L. Goldich, "Military Pay and Benefits: Key Questions and Answers," *CRS Issue Brief for Congress*, 27 December 2001, 6.

basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1993; the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §601(b), 107 Stat. 1547, 1677 (1993), a 2.2 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1994; and the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §601(b), 108 Stat. 2663, 2779 (1994), a 2.6 percent increase in basic pay, basic allowance for quarters, and basic allowance for subsistence, effective January 1, 1995. Except for the pay raise for military personnel for fiscal year 1994, none of the deliberations that led to any of these adjustments dealt explicitly with either the level or adequacy of military pay in terms of attracting and retaining appropriate numbers of military personnel or with the skills necessary for a modern military force; nor was the question of the appropriate index to use in adjusting military pay rates from year to year raised.[31]

In consideration of pay raises for fiscal years 1992 through 1995, special attention went only to those for fiscal 1994 and 1995. In both cases, the attention that was given to military pay raises derived from budget proposals made by the Clinton Administration. For fiscal year 1994, the Clinton Administration had proposed a freeze on military pay, but neither the Senate nor the House chose to go along with the administration. The Senate in particular felt it would be inequitable to military personnel to freeze their pay while federal civilian employees would almost certainly get a pay raise. As the Senate noted:

> The committee recommends a provision ... that would authorize a 2.2 percent pay raise for military personnel on January 1, 1994. The administration proposed a pay freeze for federal civilian employees, including military personnel, in its budget request. Under current law, the normal pay raise would have been a 2.2 percent increase on January 1, 1994 [under the provisions of 37 U.S.C. §1009]. In testimony before the committee, Defense Department witnesses indicated that military personnel overwhelmingly oppose the pay freeze, but that

[31] Senate Report No. 103-112 (Committee on Armed Services), pp. 151-152, accompanying S. 1298, 103d Congress, 1st Session (1993).

they could justify the pay freeze as long as military personnel are not singled out to bear a disparate sacrifice.

Although federal civilians would forego the normal January 1 pay raise just as military personnel would under the administration's pay freeze proposal, current law provides for a second component to federal civilian pay, a locality adjustment, to address pay disparities for different areas which takes effect on January 1, 1994. Locality payments are mandated by law for areas where the difference between federal and non-federal pay exceeds five percent. According to the Office of Management and Budget, because federal civilian pay lags private sector pay by over 25 percent in the aggregate, practically all civilian white collar workers would receive a locality pay increase.

The administration has requested in its budget that the locality pay adjustment be delayed for one year to January 1, 1995. This would require legislative action. At the time of this report, the House [Budget] Reconciliation bill contains a provision that would delay the implementation of federal civilian locality pay by six months to July 1, 1994. The Senate Reconciliation bill contains no provision on federal civilian locality pay. Therefore, the committee assumes that civilian locality pay will be implemented on January 1, 1994 as provided for under current law or by July 1, 1994 as provided for in the House bill.

The committee also notes that under the pay freeze recommended by the administration, the comparability gap between private sector pay as measured by the employment cost index and military pay would widen to 14.5 percent. This would be the largest gap since the Congress equalized private sector and military pay by authorizing a 14.3 percent military pay raise for October 1, 1981 [in the Uniformed Services Pay Act of 1981, Public Law 97-60, 95 Stat. 989 (1981)].

The committee further notes that military personnel are operating at a higher tempo as our military downsizes. While the state of personnel readiness is high, there are signs of strain, such as the decline in the propensity of youth to serve in the military, and persistent shortages in certain skills that are also in demand in the private sector.

In view of the foregoing, the committee believes that it would be fair and prudent to provide a pay raise for military personnel.[32]

In recommending its own version of a pay raise for military personnel for fiscal year 1994, the House Committee on Armed Services noted:

The budget proposed a freeze on military pay during fiscal year 1994. The committee has identified offsets elsewhere within the defense budget request for

[32] House Report No. 103-200 (Committee on Armed Services), p. 293, accompanying H.R. 2401, 103d Congress, 1st Session (1993).

> fiscal year 1994 sufficient to fund the full 2.2 percent pay raise authorized under current law.
>
> The committee, therefore, recommends a 2.2 percent increase in basic pay, basic allowance for quarters and basic allowance for subsistence, for military personnel.[33]

For fiscal year 1995, the Clinton Administration proposed a 1.6 percent military pay raise, one percentage point less than the 2.6 percent pay raise that would have been automatically authorized under the pay adjustment mechanism of 37 U.S.C. §1009. Noting that it had "identified offsets elsewhere within the defense budget request" made by the Clinton Administration, the House Armed Services Committee recommended the full 2.6 percent increase,[34] and the Senate Armed Services Committee agreed.[35] President Clinton approved the 2.6 percent military pay raise incorporated in the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §601(b), 108 Stat. 2663, 2779 (1994), on October 5, 1994.

The National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §601(c), 110 Stat. 186, 356 (1996), provided a 5.2 percent increase in basic allowance for quarters while at the same time providing a 2.4 percent increase in basic pay and basic allowance for subsistence. In explanation of the increase, the House Committee on National Security noted:

> This section [Section 601 of H.R. 1530, 104th Congress, 1st Session (1995)] would provide a 2.4 percent military pay raise as proposed in the President's budget. The committee has reservations about this level of raise because it would institutionally sanction a one-half of one percent lower level of

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[33] House Report No. 103-499 (Committee on Armed Services), p. 249, accompanying H.R. 4301, 103d Congress, 2d Session (1994).

[34] Senate Report No. 103-282 (Committee on Armed Services), p. 193, and House Report No. 103-701 (Committee of Conference), p. 711, accompanying S. 2182, 103d Congress, 2d Session (1994).

[35] House Report No. 104-131 (Committee on National Security), p. 229, accompanying H.R. 1530, 104th Congress, 1st Session (1995); see Senate Report No. 104-112 (Committee on Armed Services), p. 253, accompanying S. 1026, 104th Congress, 1st Session (1995), House Report No. 104-406 (Committee of Conference), p. 813, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), p. 803, accompanying S. 1124, 104th Congress, 2d Session (1996).

increase than is expected within the private sector. The committee expects the ongoing Eighth Quadrennial Review of Military Compensation (QRMC) to evaluate the importance of the cumulative gap that exists between military and private sector pay levels and to reassess the process for determining the level of pay increases. The committee looks forward to receiving the recommendations of the QRMC for changes that will protect readiness and the ability of the armed services to recruit and retain quality personnel.

The committee notes that the President's budget request included a provision designed to incrementally reduce the out-of-pocket housing costs for service members, but that the proposal is inadequately funded to achieve the intended level of benefit. Accordingly, section 601 would provide a 5.2 percent increase in the basic allowance for quarters which will fully fund the initiative to achieve the President's original objective to reduce out-of-pocket housing costs for service members to 19.5 percent.[36]

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[36] The National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, 110 Stat. 186 (1996), made two other notable changes to the BAQ program effective July 1, 1996. First, Section 603 of the 1996 Authorization Act, Public Law 104-106, *id*., §603, 110 Stat. at 357-358, provided that unmarried personnel in pay grade E-6 who are assigned to "quarters ... that do not meet the minimum adequacy standards established by the Department of Defense" for that pay grade may elect not to occupy those quarters and instead receive basic allowance for quarters. Before enactment of this provision, personnel in pay grade E-7 and above without dependents were permitted to elect not to occupy public quarters independently of whether those quarters were "adequate" or not. Under the subject amendment, personnel in pay grade E-6 without dependents are permitted to elect not to occupy public quarters to which they would otherwise have been assigned, but only if those quarters are not "adequate" for members in that pay grade. In support of extending BAQ entitlement to unmarried service members in pay grade E-6, the Senate Armed Services Committee noted:

The committee recommends a provision that would authorize payment of the basic allowance for quarters (BAQ) and variable housing allowance (VHA) (and overseas housing allowance (OHA) if assigned overseas) to single E-6 and above personnel assigned to quarters which do not meet minimum adequacy standards established by the Department of Defense. The committee believes that personnel in the career force should have the option of electing not to live in inadequate bachelor quarters.

Senate Report No. 104-112 (Committee on Armed Services), p. 253, accompanying S. 1026, 104th Congress, 1st Session (1995); *cf*., House Report No. 104-406 (Committee of Conference), p. 814, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), p. 804, accompanying S. 1124, 104th Congress, 2d Session (1996).

Second, Section 604 of the 1996 Authorization Act, Public Law 104-106, *id*., §604, 110 Stat. at 358, extended entitlement to BAQ to unmarried service members in pay grade E-6 assigned to sea duty. Before enactment of this amendment to the BAQ program, only unmarried service members in pay grade E-7 and above who were assigned to sea duty were entitled to BAQ. In support of extending BAQ entitlement to unmarried service members in pay grade E-6 assigned to sea duty, the Senate Armed Services Committee focused most heavily on equality of treatment as between members of different services:

The committee recommends a provision that would authorize payment of the basic allowance for quarters (BAQ) and variable housing allowance (VHA) (and overseas housing allowance (OHA) if assigned to a ship home- orted overseas) to single E-6 Navy personnel assigned to shipboard sea duty. Current law only permits single E-7 Navy personnel to receive BAQ, VHA and OHA (if applicable) while assigned to shipboard sea duty. The other military services already have similar BAQ/VHA/ OHA authority.

The pay raise, including the increase in basic allowance for quarters, was approved by the President on February 12, 1996, with retroactive effect to January 1, 1996.[37]

Thus, while Congress had indicated in connection with its consideration of the Department of Defense Authorization Act, 1985, Public Law 98-525, 98 Stat. 2492 (1984), cited above, an intention to frequently adjust BAQ rates for changes in national median housing costs in order to maintain the relationship established by that act between BAQ and VHA, on the one hand, and between BAQ and national median housing costs, on the other hand, as explained above, the only adjustments actually made to BAQ rates for that purpose were made by the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §601(c), 102 Stat. 1918, 1976 (1988), which increased BAQ rates by 7 percent and by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §601(c), 110 Stat. 186, 356 (1996), which provided a 5.2 percent increase in basic allowance for quarters. While the latter increase narrowed the pre-existing gap to some extent, during most of the preceding ten years BAQ rates had continued to fall behind increases in housing costs, and service members had, on Congress's own reasoning,[38] been required to absorb more and more of the difference between the amount of the housing allowance with which they had been provided and the housing costs they actually experience out of their own pockets.

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Senate Report No. 104-112 (Committee on Armed Services), pp. 253-254, accompanying S. 1026, 104th Congress, 1st Session (1995); cf. House Report No. 104-131 (Committee on National Security), p. 230, accompanying H.R. 1530, 104th Congress, 1st Session (1995), House Report No. 104-406 (Committee of Conference), p. 814, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), p. 804, accompanying S. 1124, 104th Congress, 2d Session (1996).

[37] See Senate Report No. 98-500 (Committee on Armed Services), p. 205, accompanying S. 2773, 98th Congress, 2d Session (1984), quoted in text accompanying footnote 23 of this chapter, above, and House Report No. 104-131 (Committee on National Security), p. 229, accompanying H.R. 1530, 104th Congress, 1st Session (1995), quoted in text accompanying footnote 34, above.

[38] Part II of the schedule attached to Executive Order 12990 of February 29, 1996, 66 *Fed. Reg.* 8467, 8470 (March 5, 1996), set out as a note under 5 U.S.C.A. §5332 and 37 U.S.C.A. §1009; see Section 1 of Executive Order 12990, *id*., 61 *Fed.Reg.* at 8467.

**Selected conditions relating to the basic housing entitlement**: In general, the entitlement of any member of the Armed Forces to the basic housing allowance depends on whether the member is assigned to public housing that are both "appropriate" and "adequate" for the member and his dependents, if any. Subject to a number of exceptions highlighted below, if a member is assigned to adequate and appropriate housing, there is no entitlement to a housing allowance; if not, there is. The basic provision restricting entitlement to the basic housing allowance is set out at 37 U.S.C. §403(e)(1) (prior to 1998, §403(b)(1)):

> Except as otherwise provided by law, a member of the uniformed services who is assigned to quarters of the United States or a housing facility under the jurisdiction of a uniformed service, appropriate to his grade, rank, or rating and adequate for himself and his dependents, if with dependents, is not entitled to basic allowance for housing.

Under this provision, a member who is assigned to public quarters that are both appropriate and adequate for the member and his dependents, if any, is not entitled to a housing allowance. The major exception to this general rule is that members without dependents who are in pay grades above E-6, *i.e.*, enlisted members in pay grades E-7, E-8, and E-9, as well as all warrant and commissioned officers, may elect, under 37 U.S.C. §403(e)(2) (prior to 1998, §403(b)(1)), not to occupy quarters to which they have been assigned, even through those quarters are both appropriate and adequate for them, and instead to receive a basic allowance for housing. Questions regarding the entitlement of members of the Armed Forces without dependents to basic allowance for housing when they are assigned to field or sea duty are dealt with at 37 U.S.C. §403(f)(1) and §403(f)(2), respectively (prior to 1998, §403(c)(1) and (2)). In addition, under the provisions of 10 U.S.C. §2830, a member of the Armed Forces with dependents may choose to occupy substandard family housing without losing entitlement to basic housing allowance, providing that a charge in the amount of the "fair rental value" of the housing, not to exceed 75 percent of the member's BAH entitlement, may be made. For members occupying substandard family housing under the provisions of 10 U.S.C. §2830, the difference between a member's entitlement and the "fair rental value" of the housing occupied is sometimes referred to as the member's "substandard housing allowance."

Under 37 U.S.C. §403(l) as added by the Act of December 28, 1985, Public Law 99-227, §1, 99 Stat. 1745 (1985), and amended by the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §604, 108 Stat. 2663, 2779 (1994), the survivors of a member of the Armed Forces who died in the line of duty are entitled, if in assigned quarters at the time of the member's death, to remain in those quarters without charge for 180 days following the member's death. Prior to changes in the law in 1998, if the decedent was receiving a basic allowance for quarters, variable housing allowance, or overseas housing allowance at the time of death, a survivor was entitled to a continuation of the decedent's entitlement for 180 days following the member's death. Beginning in 1998, this entitlement pertained to survivors of deceased members who had been receiving a basic allowance for housing for either domestic or overseas duty (see Basic Allowance for Housing, below).

### Variable Housing Allowance

In the 1970s, housing costs for members assigned in the United States began to diverge significantly according to region. Because the BAQ was an invariable allowance, the out-of-pocket housing costs of members assigned in high-cost regions began to increase. Reportedly, such costs caused some members to refuse assignment in high-cost regions. To address the inequality of out-of-pocket costs that had crept into the housing allowance system, the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §4, 94 Stat. 1123, 1125-1126 (1980) added a “variable housing allowance program.”[39]

The variable housing allowance program, which was a very significant change in the structure of housing allowances, entitled a member of the uniformed services who was eligible to receive BAQ to the new variable housing allowance whenever assigned to duty in any part of the United States that was a "high housing cost area with respect to such member." The only exceptions were duty stations in Alaska and Hawaii, where the

[39] See discussion of "Overseas Housing Allowance," below.

overseas housing allowance program then applied.[40] See former 37 U.S.C. §403(a)(2)(A), as added by §4(a)(1)(B) of the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, *id*. and Overseas Housing Allowance, below. A given area was a "high housing cost area" with respect to a particular member whenever the average monthly cost of housing in the area for members serving in the same pay grade exceeded 115 percent of the member's BAQ entitlement. See former 37 U.S.C. §403(a)(2)(C), as added by §4(a)(1)(B) of the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, *id*. The amount of the allowance to which any given member was entitled was measured by the difference between the average monthly housing costs for members in the member's pay grade and 115 percent of the BAQ the member received. See former 37 U.S.C. §403(a)(2)(B), as added by §4(a)(1)(B) of the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, *id*. The allowance also was payable to members assigned to unaccompanied tours of duty outside the United States whose dependents lived in "high cost areas" in the United States.

As previously indicated, the Department of Defense Authorization Act, 1985, Public Law 98-525, §602, 98 Stat. 2492, 2534-2537 (1984), substantially amended the variable housing allowance program in order to better enable it to serve the purposes for which it had originally been intended, namely, "assisting service members [to] defray housing expenses in high cost areas."[41] At the same time as variable housing allowance authority was removed from 37 U.S.C. §403, where it formerly resided, and was transferred to new 37 U.S.C. §403a, the basis for determining the amount of the allowance payable was changed. Under the revised variable housing allowance program, the amount of the allowance to which a member is entitled is measured by the difference between the median monthly cost of housing in the "high-cost" area in question for members in the member's pay grade and 80 percent of the median monthly costs of housing in the United States for members in the same pay grade. Since the basic allowance for quarters program was also amended by the 1985 Authorization Act to set BAQ rates at 65 percent of nation-wide median monthly housing costs of members in the

[40] House Report No. 98-691 (Committee on Armed Services), p. 256, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[41] See footnotes 22 and 23 together with accompanying text to this chapter, above.

same pay grade,[42] a member was effectively required to absorb the difference between 80 percent of median nation-wide monthly housing costs for members in the same pay grade and 65 percent of such costs before becoming entitled to any variable housing allowance. Congress's stated reasons for adopting this amendment to the variable housing allowance program are set out in the text accompanying footnotes 21 and 22 to this chapter, above.

In addition to changing the basis for determining when an area is a high-cost area for a particular member, and the basis for determining the amount of the allowance to which any member is entitled, the Department of Defense Authorization Act, 1985, Public Law 98-525, §602, 98 Stat. 2492, 2534-2537 (1984), made the variable housing allowance program applicable to members stationed in Alaska and Hawaii. Because the overseas housing allowance generally was more favorable, the amendatory language included a saved pay provision to protect personnel from a drop in pay.[43] Transitional provisions enabled personnel receiving overseas housing allowance in Alaska and Hawaii on the effective date of the Defense Authorization Act for Fiscal Year 1985 to continue to receive that allowance, provided they did not receive variable housing allowance.[44]

The Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985), also made several other changes to the variable housing allowance program--many of which were designed to reduce or eliminate what were characterized as "windfalls" or "imperfections."[45] Section 602(c)(1) of the 1986 Authorization Act, 99

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[42] For a discussion of the reasons underlying the switch from the overseas housing allowance program to the variable housing allowance program for personnel in Alaska and Hawaii, see discussion of overseas housing allowance in this chapter, below.

[43] See House Report No. 99-81 (Committee on Armed Services), p. 217, accompanying H.R. 1872, and Senate Report No. 99-41 (Committee on Armed Services), pp. 190-191, accompanying S. 1029, 99th Congress, 1st Session (1985).

[44] See, *e.g.*, House Report No. 99-81 (Committee on Armed Services), pp. 216-217, accompanying H.R. 1872, and Senate Report No. 99-41 (Committee on Armed Services), p. 191, accompanying S. 1029, 99th Congress, 1st Session (1985). Cf., Senate Report No. 118 (Committee of Conference), pp. 426-427, and House Report No. 99-235 (Committee of Conference), pp. 426-427, accompanying S. 1160, 99th Congress, 1st Session (1985).

[45] House Report No. 99-81 (Committee on Armed Services), p. 217, accompanying H.R. 1872, 99th Congress, 1st Session (1985). *cf.* Senate Report No. 118 (Committee of Conference), p. 427, and House Report No. 235 (Committee of Conference), p. 427, accompanying S. 1160, 99th Congress, 1st Session (1985).

Stat. at 636, amended 37 U.S.C. §403a(c)(1) to authorize separate variable housing allowance rates for members with dependents and for members without dependents. Before amendment, only one rate of VHA had been authorized for a particular "high housing cost area" and pay grade. Under the variable housing allowance program as amended, the monthly amount of variable housing allowance for a member of a uniformed service with respect to a given "high housing cost area" was measured 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. 37 U.S.C. §403a(c)(1), as amended by Section 602(c)(1) of the 1986 authorization act. As explained by the House Armed Services Committee, which had been responsible for the amendment in question, the provision authorizing separate rates of variable housing allowance for members with and for members without dependents had been intended to "correct another imperfection" in the variable housing allowance program as it had previously existed.[46]

Sections 602(a) and (b) of the 1986 Authorization Act, Public Law 99-145, *id*., 99 Stat. at 636, were both addressed to the question of variable housing allowance payments to personnel who were entitled to basic allowance for quarters at the "with-dependents" rate "solely by reason of the payment of child support by the member." Section 602(a) of the act added a new provision, codified at 37 U.S.C. §403a(a)(4), to deal with the case of a member not provided with government quarters who was entitled to basic allowance for quarters at the "with-dependents" rate because, but only because, the member was paying child support. In dealing with this case, Congress provided that such a member was entitled to variable housing allowance at the "without-dependents" rate. Section 602(b) of the act dealt with the slightly different case of a member assigned to government quarters who was entitled to basic allowance for quarters at the "with-dependents" rate because, but only because, the member was paying child support. In dealing with this case,

[46] House Report No. 99-81 (Committee on Armed Services), pp. 216-217, accompanying H.R. 1827, 99th Congress, 1st Session (1985). *cf*. Senate Report No. 99-118 (Committee of Conference), p. 427, and House Report No. 99-235 (Committee of Conference), p. 427, accompanying S. 1160, 99th Congress, 1st Session (1985).

Congress amended former 37 U.S.C. §403a(b) to provide that such a member was not entitled to variable housing allowance at all, whether at the "with-dependents" or "without-dependents" rate. Both changes were characterized as having been intended to eliminate "windfalls" that Congress had not intended in the first place.[47]

The fourth of the major changes to the variable housing allowance program effected by the 1986 Authorization Act, Public Law 99-145, *id*., was addressed to curing the problem of what was characterized by the Senate Armed Services Committee as "excess housing cost payments" under VHA.[48] Under the VHA program in effect before enactment of the 1986 Authorization Act, a member in a "high housing cost area" was entitled to both basic allowance for quarters and the variable housing allowance appropriate to the area in question and the member's grade independently of the amount of money the member was in fact spending on housing.[49] For members who had been able to obtain inexpensive housing or who otherwise happened to have relatively low housing costs for any of a number of possible reasons, the sum of their basic allowance for quarters and their variable housing allowance could exceed their actual housing costs, and it was this excess that was, for members fortunate enough to have low housing costs, for whatever combination of reasons, characterized as a "windfall."[50] In originally addressing the problem, the Senate bill (S. 1029, §503, 99th Congress, 1st Session (1985)) proposed to totally eliminate the "excess" payments by providing, in essence, that the maximum amount of variable housing allowance a member could receive could not, when added to the member's basic allowance for quarters, exceed the member's "actual" housing costs. The Senate proposal was amended in conference to provide that, in the words of the conference committee:

> ... the sum of a member's variable and basic housing allowances is permitted to exceed the member's housing costs by up to half the difference between the [member's]

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[47] Senate Report No. 99-41 (Committee on Armed Services), p. 191, accompanying S. 1029, 99th Congress, 1st Session (1985). Cf., Senate Report No. 99-118 (Committee of Conference), p. 426, and House Report No. 99-235 (Committee of Conference), p. 426, accompanying S. 1160, 99th Congress, 1st Session (1985).

[48] Under the VHA program in effect before enactment of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., members of the uniformed services were entitled to variable housing allowance at a rate that did not take into account dependency status. See text preceding and accompanying footnotes 44 and 45 to this chapter, above, Section 602(c)(1) of the 1986 Authorization Act, *id*., §602(c)(1), 99 Stat. at 636, provided for dependency status to be taken into account in determining a member's variable housing allowance.

[49] Senate Report No. 99-41 (Committee on Armed Services), p. 191, accompanying S. 1029, 99th Congress, 1st Session (1985). Also see Senate Report No. 99-118 (Committee of Conference), p. 426, and House Report No. 99-235 (Committee of Conference), p. 426, accompanying S. 1160, 99th Congress, 1st Session (1985).

[50] House Report No. 99-235 (Committee of Conference), p. 426, and Senate Report No. 99-118 (Committee of Conference), p. 426, accompanying S. 1160, 99th Congress, 2d Session (1985).

housing costs and the sum of the prescribed housing allowances for the member's pay grade and area.[51]

This change was made by Section 602(c)(2) of the 1986 Authorization Act, Public Law 99-145, *id*., §602(c)(2), 99 Stat. at 636-637. In fact, the amount, if any, by which the sum of a member's basic allowance for quarters and variable housing allowance was reduced came entirely out of the member's variable housing allowance. That is, no matter how low a particular member's "actual housing costs" were, the member never would receive less than full BAQ.[52] In addition, in determining a member's "housing costs," the House-Senate conferees indicated their intention that personnel administering the new provision include within the category of "housing costs" such housing-related items as utilities and maintenance costs.[53] Inclusion of these items within the category of "housing costs" that were to be taken into consideration in implementing the provision in question had the effect of limiting the reduction in variable housing allowance payments over what would otherwise occur.

A fifth change to the variable housing allowance program effected by Section 604(b) of the 1986 authorization act, Public Law 99-145, *id*., §604(b), 99 Stat. at 638, permitted VHA, together with BAQ, to be paid in advance. As indicated by the Senate Armed Services Committee, which was responsible for the advanced payment authority:

> More and more military personnel who are not provided Government quarters are confronted with a requirement to pay large initial sums of money when renting or leasing private housing. In many areas, it is becoming customary to require that renters pay the first and last month's rent, along with a security

[51] Just as is true in the case of a member whose housing costs are below the sum of the member's basic allowance for quarters and (unreduced) variable housing allowance, it could be argued that a member fortunate enough to have housing costs below the member's basic allowance for quarters entitlement was getting a "windfall" or an "excess housing allowance payment" of some form or other. Be that as it may, the amendment made to the variable housing allowance program by Section 602(c)(2) of the 1986 Authorization Act, Public Law 99-145, *id*., §602(c)(2), 99 Stat. at 636-637, did not address that question.

[52] For the purpose of computing a member's housing costs, the House-Senate Conferees indicated their intention to permit statistical generalization with respect to housing costs other than rent or mortgage payments, such as utilities and maintenance. Senate Report No. 99-118 (Committee of Conference), p. 426, and House Report No. 99-235 (Committee of Conference), p. 426, accompanying S. 1160, 99th Congress, 1st Session (1985). The Conferees went on to indicate that they contemplated "use of the 80th percentile of surveyed utilities and maintenance costs for a pay grade in a variable housing allowance area" in computing a member's "housing costs" for purposes of reducing what would otherwise be a "windfall" to the member. *Id*.

[53] Senate Report No. 99-41 (Committee on Armed Services), pp. 191-192, accompanying S. 1029, 99th Congress, 1st Session (1985). Cf., Senate Report No. 99-118 (Committee of Conference), p. 427, and House Report No. 99-235 (Committee of Conference), p. 427, accompanying S. 1160, 99th Congress, 1st Session (1985).

> deposit, at the time housing is obtained. For military personnel who have just completed a permanent change of station move, this requirement can present an almost insurmountable financial hurdle.
>
> There presently is no authority to pay either BAQ or VHA in advance. Such authority does exist for the payment of a station housing allowance under the rent-plus system outside the continental United States.
>
> The committee believes that authority to pay BAQ and VHA in advance could be used to help members meet the high financial demands often imposed upon them when renting or leasing private housing…. The committee expects that this authority will not be used routinely and that it will be limited to those cases where needed because of housing market costs.[54]

In 1993, Congress effectively amended part of the change to the VHA program made by Section 602 of the Department of Defense Authorization Act, 1986, Public Law 99-145, §602, 99 Stat. 583, 636 (1985). As previously indicated, in Section 602(b) of the 1986 Authorization Act, Public Law 99-145, *id*., 99 Stat. at 583, Congress provided that a member of the uniformed services assigned to public housing who was entitled to BAQ at the "with-dependents" rate solely because the member was paying child support would not be entitled to any form of VHA, whether at the "with-dependents" or "without-dependents" rate.[55] In Section 602(a) of the 1986 authorization act, *id*., however, Congress had provided that a member not assigned to government quarters who was entitled to BAQ at the "with-dependents" rate only because the member was paying child support would be entitled to VHA at the "without-dependents" rate. In Section 604 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §604, 107 Stat. 1547, 1679 (1993), Congress effectively determined to treat members on sea duty who elected not to occupy assigned public quarters and who were entitled to BAQ because they were in pay grade E-7 or above in the same way as members not assigned to

[54] See text accompanying footnotes 44 and 45 of this chapter, above.

[55] Under 37 U.S.C. §403(b), a member of a uniformed service without dependents who is in pay grade E-7 or above may elect not to occupy assigned public quarters and instead to receive the basic allowance for quarters. See current 37 U.S.C. §403(b)(2) as amended by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §603(a), 110 Stat. 186, 357 (1996).

public quarters at all.[56] Under the 1994 authorization act, a member in pay grade E-7 or above assigned to sea duty who elected not to occupy assigned quarters and was entitled to BAQ at the "with-dependents" rate solely by reason of paying child support was entitled to VHA at the "without-dependents" rate in the same way as a similarly circumstanced member not assigned to public quarters.[57]

The National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §605(a), 110 Stat. 186, 358 (1996), further modified the variable housing allowance program by protecting against allowance reductions caused by declining housing costs in a member's area of assignment. Under the new provision, which was called individual ate protection, a member's allowance would not be reduced from year to year as long as the member retained uninterrupted eligibility for variable housing allowance payments in that area and the member's housing costs did not themselves actually decline.[58]

As originally adopted, the variable housing allowance program provided that a member of a reserve component called to active duty could not be paid variable housing allowance unless under a call or order specifying a period of active duty of 140 days or more. See Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §4, 94 Stat. 1123, 1125-1126 (1980), originally codified at 37 U.S.C. §403 and subsequently recodified at 37 U.S.C. §403a(b)(3).[59] This result was temporarily modified by the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §1111(b), 104 Stat. 1485, 1635 (1990), which provided, *inter alia*, that members of

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[56] See, *e.g.*, House Report No. 103-200 (Committee on Armed Services), p. 293, and House Report No. 103-357 (Committee of Conference), p. 682, both accompanying H.R. 2401, 103d Congress, 1st Session (1993). Also see footnote 34 to this chapter, above.

[57] See House Report No. 104-131 (Committee on National Security), p. 230, accompanying H.R. 1530; Senate report No. 104-112 (Committee on Armed Services), p. 254, accompanying S. 1026; and House Report No. 104-406 (Committee of Conference), pp. 814-815, accompanying H.R. 1530, 104th Congress, 1st Session (1995); and House report No. 104-450 (Committee of Conference), pp. 804-805, accompanying S. 1124, 104th Congress, 2d Session (1996).

[58] See footnote 38 to this chapter and accompanying text, above.

[59] See House Report No. 102-60 (Committee on Armed Services), p. 249, accompanying H.R. 2100, and Senate Report No. 102-113 (Committee on Armed Services), p. 226, accompanying S. 1507, 102d Congress, 1st Session (1991).

reserve components called to active duty "in connection with Operation Desert Shield" would be entitled to variable housing allowance without regard to the 140 day limitation. Under amendments to the variable housing allowance program made by the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §603, 105 Stat. 1290, 1373 (1991), this temporary authority was made permanent by providing an exception for members of reserve components called to active duty "in support of a contingency operation."[60] [61] In addition to the changes noted above, the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §603, 105 Stat. 1290, 1373 (1991), made an additional provision to determine the amount of variable housing allowance that a member of a reserve component called to active duty is paid if not authorized transportation of household goods from the member's place of principal residence to the member's duty station. In that case, the member would be considered as assigned to duty at his place of principal residence. As a result, the member's VHA

[60] For the purposes of Title 37, United States Code, the term "contingency operation" is defined by reference to 10 U.S.C. §101, in particular §101(a)(13). See 37 U.S.C. §101(26), as added by the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §631(b), 105 Stat. 1290, 1380 (1991), and amended by the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §1052(b)(2), 106 Stat. 2315, 2498 (1992), and the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §1182(c)(1), 107 Stat. 1547, 1772 (1993). As added by the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §631(a), 105 Stat. 1290, 1380 (1991), and thereafter amended, "contingency operation" is defined at 10 U.S.C. §101(a)(13) as follows:

The term "contingency operation" means a military operation that--

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force;
or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under sections 688, 12301(a), 12302, 12304, 12305, or 12406 of this title, chapter 15 of this title, or any other provision of law during a war or during a national emergency declared by the President or Congress.

See House Report No. 102-60 (Committee on Armed Services), p. 249, accompanying H.R. 2100; Senate Report No. 102-113 (Committee on Armed Services), p. 225, accompanying S. 1507; and House Report No. 102-311 (Committee of Conference), pp. 551-552, accompanying H.R. 2100, 102d Congress, 1st Session (1991).

[61] See House Report No. 102-60 (Committee on Armed Services), p. 247, accompanying H.R. 2100, and Senate Report No. 102-113 (Committee on Armed Services), p. 226, accompanying S. 1507, 102d Congress, 1st Session (1991).

entitlement would be determined by reference to the place of principal residence rather than the duty station.[62]

## Basic Allowance for Housing (BAH)

Because of concern about the inadequacy of housing allowances, in 1995 and 1996 Congress increased BAQ funding in an effort to reduce out-of-pocket housing costs. In conjunction with this measure, the Clinton Administration announced a goal of reducing out-of-pocket housing expenditures to a maximum of 15 percent. However, in both 1995 and 1996 the apparent gains from these measures fell far short of expectations because of the reporting system on which the VHA system based its allotments. When members received larger BAQ sums, average spending on housing also grew, and thus so did the housing costs that members reported the following year. As larger BAQ budgets drove actual housing costs upward instead of reducing members' out-of-pocket costs, another solution was sought.

By 1997 housing-cost inflation, which was particularly serious in the 1980s, had driven the average out-of-pocket housing expense for members of the Armed Forces above 20 percent. In the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85, 111 Stat. 1775), Congress responded to increasing expressions of dissatisfaction with the BAQ and VHA allotment systems. Public Law 105-85 included a revision of the formulas that determined housing allowances for members within and outside the United States, and a separation of housing and subsistence increase rates from basic pay increase rates. The initial separation of the increase rates of basic pay and housing allowances had occurred in 1996, for which year the National Defense Authorization Act (Public Law 104-106, 110 Stat. 186,356) authorized a BAQ increase (5.2 percent) that was more than twice the basic pay increase (2.4 percent).

In FY 1998, the basic allowances for quarters and the variable allowance for housing within the United States were merged into a single sum, to be

[62] See, *e.g.*, House Report No. 96-1233 (Committee of Conference), pp. 16-17, accompanying H.R. 5168, 96th Congress, 2d Session (1980).

adjusted according to a member's grade, dependency status, and location.[63] In subsequent years, the object of the reform was to provide market-based allowances consistent with the average lifestyle of civilians at job levels equivalent to the military ranks. In order to make allowances match more closely the local housing costs encountered by members living outside government-provided quarters, the 1998 legislation prescribed a new formula for computing a "basic allowance for housing" (BAH) that accounted for variations in local housing costs. This approach was an extension of the variable housing allowance (VHA) concept, which had provided additional housing funds for members assigned duty in locations where the cost of housing exceeded a specified ceiling. The VHA program was subject to distortions because allowances were based on reported individual expenditures. The most serious result of this systemic flaw was that housing allowances were relatively non-responsive to market changes as members, especially in junior grades, tried to keep their spending below their housing allowances. Members' reports of the unrealistically low costs that they had incurred depressed housing allowances in ensuing years. The "market-based" approach of the BAH, based strictly on average costs by area, eliminated such distortion. (See the explanations of VHA computations on previous pages.) The basic conditions for housing allowance eligibility remained the same for the BAH as they had been for the BAQ. (See Selected Conditions Relating to Entitlement to BAQ, above).

Public Law 105-85 stipulated three factors in the computation of a BAH for every member eligible for a housing allowance: pay grade, dependency status, and geographic location. For every grade, dependency status, and geographic location where eligible members were assigned, the Department of Defense was to establish a BAH figure based on the difference between average monthly housing costs in the area for individuals of a given grade and dependency status, as determined by the department, and 15 percent of the national median monthly cost of housing for that grade and dependency status, also as determined by the department. Percentages of annual adjustments were to be determined by a ratio of the national monthly housing cost index for June of the previous year to the

[63] An exception to this formula is the so-called BAH II rate, which is paid to National Guard and reserve members on duty for less than 140 days. That rate, like the original BAQ rate, does not vary according to duty location.

same index for June of the year preceding that year. In other words, the trend of national housing cost growth established over the previous year (June-to-June) would determine annual BAH increases and decreases in all areas. However, Public Law 105-85 also stipulated that no member who had established BAH eligibility in an area and retained that eligibility uninterrupted would suffer a subsequent reduction in housing allowance, no matter what changes occurred in the annual rate. (The VHA system guaranteed that a member's allowance would not be reduced if regional costs declined, but only if the member's actual housing cost did not decline.) Eligibility would be interrupted by a permanent change of station, reduction in grade, or change in dependency status. During the period of transition from the BAQ/VHA system to the BAH system (1998-2005), members were guaranteed that no housing allowance would drop below the level of the final BAQ/VHA allowance. Beginning in 2005, however, local market costs would be the exclusive determinant of the BAH.

The establishment and yearly updating of specific local housing costs was facilitated by substantial improvements in data gathering and processing that occurred during the 1990s. Based on housing rental cost data collected from military housing offices by the Runzheimer International management consultant firm and from a number of local civilian sources, the Department of Defense compiled a listing of BAH rates in about 400 military housing areas (MHAs) within the United States (including Alaska and Hawaii), covering the entire country regardless of the current presence of military personnel in a particular area. In the 2003 listing, Texas (20) and California (18) were the states with the largest number of MHAs. Data also was collected on local insurance and utility rates, which are included in an area's BAH. The rates for each MHA were to be updated annually as new data is gathered. Rates are based on average local rental costs for types of housing deemed "appropriate" for civilians earning salaries similar to those of the Armed Services pay grades. For example, in 2003 the local rate for an E-5 with dependents was based on the average rental cost of a 2-bedroom townhouse, but for an E-6 with dependents the rate was based on average rental cost for a 3-bedroom townhouse. Rate formulas for other grades include percentages of the cost difference between one type of housing and another. An amendment in the National Defense Authorization Act for FY2001 (Public Law 106-398) stipulated that the Defense Department could not

differentiate among the lowest four enlisted grades (E-1 through E-4) in establishing these standards. The housing standard for these grades was increased to be the sum of the average rental cost of a two-bedroom apartment and one-half the difference between that cost and the rental cost of a two-bedroom townhouse in the member's MHA.

According to the National Defense Authorization Act for Fiscal Year 1998, a member's BAH would be the established monthly cost for the given MHA by grade and dependency status, minus 15 percent of the national average monthly housing cost for those categories. However, the 15 percent difference ensured that members would continue to incur substantial out-of-pocket housing expenses.

Beginning in 2001, annual funding in successive years moved steadily toward fully eliminating members' out-of-pocket housing expenses by 2005, a goal announced by Secretary of Defense William Cohen in 2000. In support of this goal, the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) removed the "15 percent formula" that had been added to 37 U.S.C. 403 three years earlier. The amended legislation simply authorized the Department of Defense to prescribe housing allowance rates applicable to grade, dependency status, and location, and comparable to costs incurred by civilians with similar income levels.

Prior to the repeal of the "15 percent formula," Public Law 106-65 provided for an additional $225 million to fund the BAH program for Fiscal Year 2000. That figure was a conference compromise between the Senate version, which offered no such funding, and the initial house position, which provided $442,500,000.[64] At least two bills introduced and referred to the House Armed Services Committee in 2001 would have advanced the deadline for eliminating out-of-pocket housing expenses from 2005 to 2003. Neither bill reached a vote in the full House. The Senate version of the National Defense Authorization Act for FY 2002 (Public Law 107-107) contained a provision that would have increased the BAH enough to accelerate completion of the original five-year plan by two years. This provision was dropped from the legislation in conference, but with this statement:

> The conferees believe that service members should not be required to pay out-of-pocket a percentage of their housing costs when they are unable to live in government quarters. The conferees support the plan to eliminate these out-of-

[64] House Conference Report 106-301, p. 750, accompanying S. 1059, 106th Congress, 1st Session (1999).

pocket expenses and strongly encourage the Secretary of Defense to accelerate this plan.[65]

Between the 2002 and 2004 budgets, the average out-of-pocket housing expense for members dropped from 11.7 percent to 3.5 percent of total average costs. To achieve this reduction, beginning in 1998 annual BAH increases were twice or even three times the increases in off-base housing costs for a given area. Between 1998 and 2002, national rental costs increased by a cumulative average of 16.2 percent; in the same period, average cumulative increases in the BAH for enlisted personnel varied from 32.2 percent for an E-8 to 60.5 percent for an E-1. During the same period, the lowest average increase for an officer grade was 27.8 percent (for an O-1). The average BAH increase between 2002 and 2003 was 8 percent. [66]

### Overseas Housing Allowance

"Overseas Station Allowance" is the collective title of the payment authorized by law as "a *per diem*, considering all elements of the cost of living to members ... and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses, to ... a member who is on duty outside of the United States or in Hawaii or Alaska, whether or not he is in a travel status." 37 U.S.C. §405(a). Until the definition was amended by the National Defense Authorization Act for 2001, Public Law 106-398, this *per diem* consisted of four main components: (1) a housing allowance--termed "overseas housing allowance" or "overseas station housing allowance;"[67] (2) a cost of living allowance; (3) a temporary lodging allowance; and (4) an interim housing allowance. The 2000 amendment to 37 U.S.C. §405 made the more general provision that a *per diem* "consider all elements of the cost of living….including the cost of quarters, subsistence, and other necessary incidental expenses," without prescribing particular kinds of housing allowances. Overseas station allowances are considered in greater depth in Chapter V.C.3., "Overseas Station Allowances," below.

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[65] *U.S. Code Congressional and Administrative News*, 2001, v. 3, 1101.

[66] Tom Philpott, "Stateside Housing Pay to Rise an Average of 8 Percent," *Military Update*, 7 November 2002. <http://www.fra.org/mil-up/milup-archive/11-07-02.milup.htm>

[67] Hearings before a Subcommittee of the House Appropriations Committee on the Second Supplemental National Defense Appropriation Bill for 1943, pp. 93-94, 77th Congress, 2d Session (1942).

The overseas housing allowance is traceable to a provision in the Act of July 2, 1942 (Military Appropriations Act for Fiscal Year 1943), ch. 477 [Public Law 649, 76th Congress], §1, 56 Stat. 611 (1942), which authorized the expenditure of funds appropriated for "Contingencies of the Army" for the "actual and necessary expenses or *per diem* in lieu thereof, as may be determined and approved by the Secretary of War, of military and civilian personnel in and under the Military Establishment on special duty in foreign countries." The Act of October 26, 1942 (Second Supplemental National Defense Appropriation Act for Fiscal Year 1943), ch. 629 [Public Law 763, 77th Congress], §102, 56 Stat. 990, 993 (1942), provided that Navy appropriations for fiscal year 1943 were available to make similar payments to military and civilian personnel of the naval establishment. A Navy representative explained the need for overseas allowances generally, including overseas housing allowance, in these terms:

> The reason it is necessary to make provision for these personnel is that the cost of living in many places abroad has risen steeply and rapidly. It is estimated that in London the average rental costs are about 63 percent higher than in Washington, and other costs are about 41 percent higher.... In Chunking [sic, presently known as Chongqing under the Pinyin zimu system for romanization of Chinese place names], China, the costs of everything are reported by our naval attache as rising vertically. Rentals are high, but food is higher. A State Department estimate in July indicates that rental was 123 percent higher than in Washington and it is understood that the State Department is granting special allowances to their personnel assigned to Chunking. [The representative went on to list 37 other foreign countries in which rental or other living costs were 25 percent or more in excess of Washington rates.][68]

Until 1946, the expenditure of funds for overseas station allowances generally was authorized in annual appropriations acts for personnel on special duty in foreign countries. The first permanent legislative authority for overseas station allowances was incorporated in the Act of August 2, 1946, ch. 756 [Public Law 604, 79th Congress], §203, 60 Stat. 853, 859 (1946), characterized as "An Act to enact certain provisions now included in the Naval Appropriation Act, 1946, and for other purposes." This act changed the pre-existing overseas station allowances program in that it permitted payments to personnel on duty "outside continental United States or in Alaska," whereas the annual

[68] H.R. 5007, §303(b), 81st Congress, 1st Session (1949).

authority under the appropriation acts had authorized payment only to those on duty in "foreign countries."

Section 303(b) of the bill [69] that was later to become the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §303(b), 63 Stat. 802, 814 (1949), restated the overseas station allowances authority but in somewhat altered terms. It established overseas station allowances as per diem payments, thereby withdrawing authority to defray actual expenses. Further, it expressly provided that the extra living costs experienced overseas by dependents, as well as by members themselves, could be included in computing the amount of the allowance entitlement.[70]

Section 303(b) of H.R. 5007, 81st Congress, 1st Session (1949), was enacted in the Career Compensation Act of 1949, ch. 681, *id*., exactly as initially drafted. This legislation is the source of the overseas station allowance provisions of Title 37, United States Code, including overseas housing allowances.[71] As enacted, the law authorized the payment of overseas station allowances under regulations to be prescribed by the secretaries of the various services. Since the law classifies these allowances as "travel and transportation" allowances, the secretarial regulations are prescribed in Volume 1 of the Joint Federal Travel Regulations (JFTR). In implementing overseas station allowance authority generally, the JFTR established a housing allowance, frequently referred to as "overseas housing allowance," which in its original form was designed to reimburse military personnel for overseas housing costs in excess of their basic allowance for quarters, and the level of which was to be based on cost of living data from overseas commands. The amount of overseas housing allowance paid to a member varied geographically because the excess costs the allowance is intended to partially defray vary

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[69] Section 303(b) of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress, §303(b), 63 Stat. 802, 814 (1949), was classified to 37 U.S.C. §253(b). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat 451 (1962), the overseas station allowance provisions were codified at 37 U.S.C. §405 (76 Stat. at 473). See 37 U.S.C. §405.

[70] See, *e.g*., "Hearings before a Subcommittee of the House Armed Services Committee on H.R. 2553," p. 1711, 81st Congress, 1st Session (1949), and "Hearings before the House Armed Services Committee on H.R. 5007," p. 280, 81st Congress, 1st Session (1949).

[71] See text accompanying footnote 47 to this chapter, above.

from locality to locality. The overseas housing allowance also includes intra-pay-grade differentials for each locality, on the theory that a member's standard of living--including housing costs--is related to income level. And, since dependents' expenses were taken into account in determining the level of the allowances, the overseas housing allowance contained a within-grade differential based on dependency status, just as the variable housing allowance did after the amendments to the latter program effected by the Department of Defense Authorization Act, 1986, Public Law 99-145, §602, 99 Stat. 583, 636 (1985).[72]

The Department of Defense Authorization Act, 1985, Public Law 98-525, §602(e), 98 Stat. 2492, 2536 (1984), amended both the variable housing allowance program and the overseas housing allowance program. Before January 1, 1985, all manifestations of overseas station allowances, specifically including housing allowances, were available to Armed Forces personnel stationed in Alaska and Hawaii, as well as to personnel stationed in Tokyo, London, Rome, *etc*. Without disturbing other aspects of the overseas station allowance program, the 1985 authorization act withdrew overseas housing allowance entitlements from armed forces personnel stationed in Alaska and Hawaii. At the same time, authority to make overseas housing allowance payments to armed forces personnel in Alaska and Hawaii was being withdrawn, however, authority to make variable housing allowance payments to such personnel was being extended.

While the 1985 National Defense Authorization Act, Public Law 98-525, *id*., thus replaced overseas housing allowance authority for military personnel stationed in Alaska or Hawaii with variable housing allowance authority, the Act of October 12, 1984 (Continuing Appropriations for Fiscal Year 1985), Public Law 98-473, §8108, 98 Stat. 1837, 1943 (1984), which was enacted before the 1985 Authorization Act, provided that, notwithstanding the proposed amendment to the variable housing allowance program, personnel stationed in Alaska or Hawaii could be paid a station housing allowance under 37 U.S.C. §405(b), provided they did not also receive variable housing allowance payments under the then-current 37 U.S.C. §403 or under the then-proposed 37 U.S.C.

[72] See text accompanying footnote 44 to this chapter, above.

§403a.[73] This limitation on variable housing allowance authority for personnel stationed in Alaska and Hawaii was rescinded by the Department of Defense Authorization Act, 1986, Public Law 99-145, §603, 99 Stat. 583, 637-638 (1985). Transitional provisions enabled personnel receiving overseas housing allowance in Alaska and Hawaii on the date of enactment of the 1986 authorization act--*i.e.*, on November 8, 1985--to continue to receive that allowance, which was generally more liberal than the variable housing allowance, but prohibited such personnel from also receiving variable housing allowance.[74]

Pursuant to amendments to 37 U.S.C. §405 made by the Department of Defense Authorization Act, 1980, Public Law 96-107, §807(a), 93 Stat. 803, 813 (1979), overseas housing allowances may be paid in advance. As explained in the relevant Congressional report, the advance payment authority was adopted to enable members to meet the added costs that the overseas housing allowance was intended to defray, at the time the expenses were incurred, "in order to minimize the financial impact on service members assigned to high-cost overseas areas."[75]

Until 1998, the overseas housing allowance (OHA) was the second of a two-part housing allowance received by members assigned overseas and housed in non-government quarters; the first part was the basic allowance for quarters (BAQ). The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, consolidated the OHA into a single payment, under the same principle as that applied by the 1998 legislation for members assigned in the United States.[76] Basic elements of the

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[73] See House Report No. 99-81 (Committee on Armed Services), p. 217, accompanying H.R. 1872, and Senate Report No. 99-41 (Committee on Armed Services), pp. 190-191, accompanying S. 1029, 99th Congress, 1st Session (1985).

[74] That Congress was aware that the substitution of VHA entitlements for overseas housing allowances would decrease program costs by reducing entitlements of individual members of the armed forces is shown by the grandfathering of overseas housing allowances for members assigned to permanent duty stations in Alaska or Hawaii on December 31, 1984, the day before the effective date of the provisions in issue. See Section 602(f)(2) of the Department of Defense Authorization Act, 1985, Public Law 98-525, §602(f)(2), 98 Stat. 2492, 2537 (1984), reprinted at 37 U.S.C. §403a note.

[75] House Report No. 96-166 (Committee on Armed Services), p. 139, accompanying H.R. 4040, 96th Congress, 1st Session (1979).

[76] In one case, however, a two-part housing allowance remained in effect. Members serving overseas unaccompanied tours, with dependents remaining in the United States, receive a with-dependents BAH for

previous legislation, such as variable payments to match geographic differences in housing expenses, differentiation according to grade and dependency status, and use of directly reported cost figures, were retained in the new system. As with the new system introduced concurrently for housing allowances within the United States, a principle goal of the overseas reform was to increase flexibility and minimize members' out-of-pocket housing expenses.

As it was constituted in 2004, the OHA included three component allowances: rent, utilities and recurring maintenance, and a lump-sum move-in allowance. The rent allowance, based on actual rental expenses reported to local finance centers by members, was computed so that 80 percent of members with dependents were fully reimbursed for their monthly rent outlay. Members without dependents received 90 percent of the with-dependent rate. About 80 percent of total OHA payments went to fund the rent component of the program. The allowance for utilities and recurring maintenance, which was based on expenses reported by members, was computed to cover the full expenses of 80 percent of members receiving OHA. The move-in housing allowance (MIHA) covered items such as upgrades necessary to make a dwelling habitable, rental agent fees, and security-related upgrades. MIHA accounted for the remaining 2 percent of the program's outlays.

For each overseas country, uniform country-wide rates are established for utilities/maintenance and MIHA; rental rates are established by locality within the country. Rental rates are revised every six months to account for currency fluctuations and cost changes. Utility/maintenance allowances are revised every year and MIHA every three years. In 2003 about 44,000 members, assigned in 430 overseas locations, received a total of $519 million in OHA payments.[77]

**Cost**: For the cost of housing allowances from 1972 to 2004, see Table II-2 of *Military Compensation Statistics Tables*, volume II of this edition.

their dependents' housing cost and the unaccompanied OHA for themselves, if they do not occupy government quarters.

[77] Defense Technical Information Center, Per Diem Travel and Transportation Allowance Committee, "Overseas Housing Allowance (OHA)." <http://www.dtic.mil/perdiem/allooha.html>

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-10** | Jun 1958 | $136.80 | $171.00 |
| | Oct 1963 | 160.20 | 201.00 |
| | Sep 1967 | 160.20 | 201.00 |
| | 1971 | 230.40 | 288.00 |
| | Oct 1974 | 243.00 | 303.90 |
| | Oct 1975 | 255.30 | 319.20 |
| | Oct 1976 | 297.00 | 371.40 |
| | Oct 1977 | 339.30 | 424.20 |
| | Oct 1978 | 357.90 | 447.60 |
| | Oct 1979 | 383.10 | 479.10 |
| | Oct 1980 | 427.80 | 535.20 |
| | Oct 1981 | 489.00 | 611.70 |
| | Oct 1982 | 508.50 | 636.30 |
| | Jan 1984 | 528.90 | 661.80 |
| | Jan 1985 | 537.30 | 660.90 |
| | Oct 1985 | 553.50 | 680.70 |
| | Jan 1987 | 570.00 | 701.10 |
| | Jan 1988 | 581.40 | 715.20 |
| | Jan 1989 | 613.20 | 754.50 |
| | Jan 1990 | 635.40 | 781.80 |
| | Jan 1991 | 661.50 | 813.90 |
| | Jan 1992 | 689.40 | 848.10 |
| | Jan 1993 | 714.90 | 879.60 |
| | Jan 1994 | 730.50 | 899.10 |
| | Jan 1995 | 749.40 | 922.50 |
| | Jan 1996 | 788.40 | 970.50 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-9** | Jul 1922 | 80.00 | 120.00 |
| | Jun 1942 | 105.00 | 120.00 |
| | Oct 1949 | 120.00 | 150.00 |
| | May 1952 | 136.80 | 171.00 |
| | Jun 1958 | 136.80 | 171.00 |
| | Oct 1963 | 160.20 | 201.00 |
| | Oct 1967 | 160.20 | 201.00 |
| | 1971 | 230.40 | 288.00 |
| | Oct 1974 | 243.00 | 303.90 |
| | Oct 1975 | 255.30 | 319.20 |
| | Oct 1976 | 297.00 | 371.40 |
| | Oct 1977 | 339.30 | 424.20 |
| | Oct 1978 | 357.90 | 447.60 |
| | Oct 1979 | 383.10 | 479.10 |
| | Oct 1980 | 427.80 | 535.20 |
| | Oct 1981 | 489.00 | 611.70 |
| | Oct 1982 | 508.50 | 636.30 |
| | Jan 1984 | 528.90 | 661.80 |
| | Jan 1985 | 537.30 | 660.90 |
| | Oct 1985 | 553.50 | 680.70 |
| | Jan 1987 | 570.00 | 701.10 |
| | Jan 1988 | 581.40 | 715.20 |
| | Jan 1989 | 613.20 | 754.50 |
| | Jan 1990 | 635.40 | 781.80 |
| | Jan 1991 | 661.50 | 813.90 |
| | Jan 1992 | 689.40 | 848.10 |
| | Jan 1993 | 714.90 | 879.60 |
| | Jan 1994 | 730.50 | 899.10 |
| | Jan 1995 | 749.40 | 922.50 |
| | Jan 1996 | 788.40 | 970.50 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-8** | Jul 1922 | $80.00 | $120.00 |
| | Jun 1942 | 105.00 | 120.00 |
| | Oct 1949 | 120.00 | 150.00 |
| | May 1952 | 136.80 | 171.00 |
| | Jun 1958 | 136.80 | 171.00 |
| | Oct 1963 | 160.20 | 201.00 |
| | Oct 1967 | 160.20 | 201.00 |
| | 1971 | 230.40 | 288.00 |
| | Oct 1974 | 243.00 | 303.90 |
| | Oct 1975 | 255.30 | 319.20 |
| | Oct 1976 | 297.00 | 371.40 |
| | Oct 1977 | 339.30 | 424.20 |
| | Oct 1978 | 357.90 | 447.60 |
| | Oct 1979 | 383.10 | 479.10 |
| | Oct 1980 | 427.80 | 535.20 |
| | Oct 1981 | 489.00 | 611.70 |
| | Oct 1982 | 508.50 | 636.30 |
| | Jan 1984 | 528.90 | 661.80 |
| | Jan 1985 | 537.30 | 660.90 |
| | Oct 1985 | 553.50 | 680.70 |
| | Jan 1987 | 570.00 | 701.10 |
| | Jan 1988 | 581.40 | 715.20 |
| | Jan 1989 | 613.20 | 754.50 |
| | Jan 1990 | 635.40 | 781.80 |
| | Jan 1991 | 661.50 | 813.90 |
| | Jan 1992 | 689.40 | 848.10 |
| | Jan 1993 | 714.90 | 879.60 |
| | Jan 1994 | 730.50 | 899.10 |
| | Jan 1995 | 749.40 | 922.50 |
| | Jan 1996 | 788.40 | 970.50 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-7** | Jul 1922 | $80.00 | $120.00 |
| | Jun 1942 | 105.00 | 120.00 |
| | Oct 1949 | 120.00 | 150.00 |
| | May 1952 | 136.80 | 171.00 |
| | Jun 1958 | 136.80 | 171.00 |
| | Oct 1963 | 160.20 | 201.00 |
| | Oct 1967 | 160.20 | 201.00 |
| | 1971 | 230.40 | 288.00 |
| | Oct 1974 | 243.00 | 303.90 |
| | Oct 1975 | 255.30 | 319.20 |
| | Oct 1976 | 297.00 | 371.40 |
| | Oct 1977 | 339.30 | 424.20 |
| | Oct 1978 | 357.90 | 447.60 |
| | Oct 1979 | 383.10 | 479.10 |
| | Oct 1980 | 427.80 | 535.20 |
| | Oct 1981 | 489.00 | 611.70 |
| | Oct 1982 | 508.50 | 636.30 |
| | Jan 1984 | 528.90 | 661.80 |
| | Jan 1985 | 537.30 | 660.90 |
| | Oct 1985 | 553.50 | 680.70 |
| | Jan 1987 | 570.00 | 701.10 |
| | Jan 1988 | 581.40 | 715.20 |
| | Jan 1989 | 613.20 | 754.50 |
| | Jan 1990 | 635.40 | 781.80 |
| | Jan 1991 | 661.50 | 813.90 |
| | Jan 1992 | 689.40 | 848.10 |
| | Jan 1993 | 714.90 | 879.60 |
| | Jan 1994 | 730.50 | 899.10 |
| | Jan 1995 | 749.40 | 922.50 |
| | Jan 1996 | 788.40 | 970.50 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-6** | Jul 1922 | $80.00 | $120.00 |
| | Jun 1942 | 105.00 | 120.00 |
| | Oct 1949 | 105.00 | 120.00 |
| | May 1952 | 119.70 | 136.80 |
| | Jun 1958 | 119.70 | 136.80 |
| | Oct 1963 | 140.10 | 170.10 |
| | Oct 1967 | 140.10 | 170.10 |
| | 1971 | 211.80 | 258.30 |
| | Oct 1974 | 223.50 | 272.70 |
| | Oct 1975 | 234.60 | 286.20 |
| | Oct 1976 | 268.00 | 327.90 |
| | Oct 1977 | 304.50 | 371.40 |
| | Oct 1978 | 321.30 | 391.80 |
| | Oct 1979 | 343.80 | 419.40 |
| | Oct 1980 | 364.00 | 468.60 |
| | Oct 1981 | 438.90 | 535.50 |
| | Oct 1982 | 456.60 | 556.80 |
| | Jan 1984 | 474.90 | 579.00 |
| | Jan 1985 | 493.20 | 599.40 |
| | Oct 1985 | 507.90 | 617.40 |
| | Jan 1987 | 523.20 | 636.00 |
| | Jan 1988 | 533.70 | 648.60 |
| | Jan 1989 | 562.50 | 679.80 |
| | Jan 1990 | 582.90 | 704.40 |
| | Jan 1991 | 606.90 | 733.20 |
| | Jan 1992 | 632.40 | 764.10 |
| | Jan 1993 | 655.80 | 792.30 |
| | Jan 1994 | 670.20 | 809.70 |
| | Jan 1995 | 687.60 | 830.70 |
| | Jan 1996 | 723.30 | 873.90 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-5** | Jul 1922 | (<20 yrs) $60.00 | $100.00 |
| | | (>20 yrs) 80.00 | 120.00 |
| | Jun 1942 | 105.00 | 120.00 |
| | Oct 1949 | 90.00 | 120.00 |
| | May 1952 | 102.60 | 136.80 |
| | Jun 1958 | 102.60 | 136.80 |
| | Oct 1963 | 130.20 | 157.50 |
| | Oct 1967 | 130.20 | 157.50 |
| | 1971 | 198.30 | 238.80 |
| | Oct 1974 | 209.10 | 252.00 |
| | Oct 1975 | 219.60 | 264.60 |
| | Oct 1976 | 249.30 | 300.30 |
| | Oct 1977 | 280.80 | 338.10 |
| | Oct 1978 | 296.10 | 356.70 |
| | Oct 1979 | 316.80 | 381.60 |
| | Oct 1980 | 354.00 | 426.30 |
| | Oct 1981 | 404.70 | 487.20 |
| | Oct 1982 | 420.90 | 506.70 |
| | Jan 1984 | 437.70 | 527.10 |
| | Jan 1985 | 465.30 | 552.30 |
| | Oct 1985 | 479.40 | 568.80 |
| | Jan 1987 | 493.80 | 585.90 |
| | Jan 1988 | 503.70 | 597.60 |
| | Jan 1989 | 562.50 | 679.80 |
| | Jan 1990 | 582.90 | 704.40 |
| | Jan 1991 | 584.40 | 706.50 |
| | Jan 1992 | 609.00 | 736.20 |
| | Jan 1993 | 631.50 | 763.50 |
| | Jan 1994 | 645.30 | 780.30 |
| | Jan 1995 | $662.10 | $800.70 |
| | Jan 1996 | 696.60 | 842.40 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-4** | Jul 1922 | | (<14 yrs) $80.00 |
| | | (<23 yrs) $60.00 | (>14 yrs) 100.00 |
| | | (>23 yrs) 80.00 | (>23 yrs) 120.00 |
| | Jun 1942 | (<23 yrs) 90.00 | (<23 yrs) 105.00 |
| | | (>23 yrs) 105.00 | (>23 yrs) 120.00 |
| | Oct 1949 | 82.50 | 105.00 |
| | May 1952 | 94.20 | 119.70 |
| | Jun 1958 | 94.20 | 119.70 |
| | Oct 1963 | 120.00 | 145.05 |
| | Oct 1967 | 120.00 | 145.05 |
| | 1971 | 178.80 | 215.40 |
| | Oct 1974 | 188.70 | 227.40 |
| | Oct 1975 | 198.00 | 238.80 |
| | Oct 1976 | 222.90 | 269.10 |
| | Oct 1977 | 249.90 | 301.80 |
| | Oct 1978 | 263.70 | 318.30 |
| | Oct 1979 | 282.30 | 340.50 |
| | Oct 1980 | 315.30 | 380.40 |
| | Oct 1981 | 360.30 | 434.70 |
| | Oct 1982 | 374.70 | 452.10 |
| | Jan 1984 | 389.70 | 470.10 |
| | Jan 1985 | 426.60 | 504.90 |
| | Oct 1985 | 439.50 | 519.90 |
| | Jan 1987 | 452.70 | 535.50 |
| | Jan 1988 | 461.70 | 546.30 |
| | Jan 1989 | 502.20 | 577.80 |
| | Jan 1990 | 520.20 | 598.50 |
| | Jan 1991 | 541.50 | 623.10 |
| | Jan 1992 | 564.30 | 649.20 |
| | Jan 1993 | 585.30 | 673.20 |

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|---|---|---|
| Jan 1994 | 598.20 | 687.90 |
| Jan 1995 | 613.80 | 705.90 |
| Jan 1996 | 645.60 | 742.50 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-3** | Jul 1922 | (<7 yrs) $40.00 | (<7 yrs) $60.00 |
| | | (>7 yrs) 60.00 | (>7 yrs) 80.00 |
| | | | (>17 yrs)100.00 |
| | Jun 1942 | (<17 yrs) 75.00 | (<17 yrs) 90.00 |
| | | (>17 yrs) 90.00 | (>17 yrs)105.00 |
| | Oct 1949 | 75.00 | 90.00 |
| | May 1952 | 85.50 | 102.60 |
| | Jun 1958 | 85.50 | 102.60 |
| | Oct 1963 | 105.00 | 130.05 |
| | Oct 1967 | 105.00 | 130.05 |
| | 1971 | 158.40 | 195.60 |
| | Oct 1974 | 167.10 | 206.40 |
| | Oct 1975 | 175.50 | 216.60 |
| | Oct 1976 | 196.80 | 242.70 |
| | Oct 1977 | 219.90 | 271.20 |
| | Oct 1978 | 231.90 | 286.20 |
| | Oct 1979 | 248.10 | 306.30 |
| | Oct 1980 | 277.20 | 342.00 |
| | Oct 1981 | 316.80 | 390.90 |
| | Oct 1982 | 329.40 | 406.50 |
| | Jan 1984 | 342.60 | 422.70 |
| | Jan 1985 | 345.30 | 420.90 |
| | Oct 1985 | 355.80 | 433.50 |
| | Jan 1987 | 366.60 | 446.40 |
| | Jan 1988 | 373.80 | 455.40 |
| | Jan 1989 | 402.60 | 478.20 |
| | Jan 1990 | 417.00 | 495.30 |
| | Jan 1991 | 434.10 | 515.70 |
| | Jan 1992 | 452.40 | 537.30 |
| | Jan 1993 | 469.20 | 557.10 |

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|---|---|---|
| Jan 1994 | 479.40 | 569.40 |
| Jan 1995 | 492.00 | 584.10 |
| Jan 1996 | 517.50 | 614.40 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-2** | Jul 1922 | (<10 yrs) $40.00 | (<3 yrs) $40.00 |
| | | (>10 yrs) 60.00 | (>3 yrs) 60.00 |
| | | | (>10 yrs) 80.00 |
| | Jun 1942 | (<10 yrs) 60.00 | (<10 yrs) 75.00 |
| | | (>10 yrs) 75.00 | (>10 yrs) 90.00 |
| | Oct 1949 | 67.50 | 82.50 |
| | May 1952 | 77.10 | 94.20 |
| | Jun 1958 | 77.10 | 94.20 |
| | Oct 1963 | 95.10 | 120.00 |
| | Oct 1967 | 95.10 | 120.00 |
| | 1971 | 138.60 | 175.80 |
| | Oct 1974 | 146.40 | 185.40 |
| | Oct 1975 | 153.60 | 194.70 |
| | Oct 1976 | 171.30 | 216.90 |
| | Oct 1977 | 190.80 | 241.50 |
| | Oct 1978 | 201.30 | 254.70 |
| | Oct 1979 | 215.40 | 272.70 |
| | Oct 1980 | 240.60 | 304.50 |
| | Oct 1981 | 275.10 | 348.00 |
| | Oct 1982 | 286.20 | 361.80 |
| | Jan 1984 | 297.60 | 376.20 |
| | Jan 1985 | 278.10 | 360.90 |
| | Oct 1985 | 286.50 | 371.70 |
| | Jan 1987 | 295.20 | 382.80 |
| | Jan 1988 | 301.20 | 390.60 |
| | Jan 1989 | 319.50 | 408.00 |
| | Jan 1990 | 330.90 | 422.70 |
| | Jan 1991 | 344.40 | 440.10 |
| | Jan 1992 | 358.80 | 458.70 |
| | Jan 1993 | 372.00 | 475.80 |

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|---|---|---|
| Jan 1994 | 380.10 | 486.30 |
| Jan 1995 | 390.00 | 498.90 |
| Jan 1996 | 410.40 | 524.70 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-1** | Jul 1922 | $40.00 | (<5 yrs) $40.00 |
| | | | (>5 yrs) 60.00 |
| | Jun 1942 | (<5 yrs) 45.00 | (<5 yrs) 60.00 |
| | | (>5 yrs) 60.00 | (>5 yrs) 75.00 |
| | Oct 1949 | 60.00 | 75.00 |
| | May 1952 | 68.40 | 85.50 |
| | Jun 1958 | 68.40 | 85.50 |
| | Oct 1963 | 85.20 | 110.10 |
| | Oct 1967 | 85.20 | 110.10 |
| | 1971 | 108.90 | 141.60 |
| | Oct 1974 | 114.90 | 149.40 |
| | Oct 1975 | 120.60 | 156.90 |
| | Oct 1976 | 133.80 | 174.30 |
| | Oct 1977 | 148.80 | 493.80 |
| | Oct 1978 | 156.90 | 204.60 |
| | Oct 1979 | 168.00 | 219.00 |
| | Oct 1980 | 187.80 | 244.50 |
| | Oct 1981 | 214.80 | 279.60 |
| | Oct 1982 | 223.50 | 290.70 |
| | Jan 1984 | 232.50 | 302.40 |
| | Jan 1985 | 238.50 | 323.70 |
| | Oct 1985 | 245.70 | 333.30 |
| | Jan 1987 | 253.20 | 343.20 |
| | Jan 1988 | 258.30 | 350.10 |
| | Jan 1989 | 268.80 | 364.50 |
| | Jan 1990 | 278.40 | 377.70 |
| | Jan 1991 | 289.80 | 393.30 |
| | Jan 1992 | 302.10 | 409.80 |
| | Jan 1993 | 313.20 | 425.10 |
| | Jan 1994 | 320.10 | 434.40 |
| | Jan 1995 | 328.50 | 445.80 |
| | Jan 1996 | 345.60 | 468.90 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-3E** | Jan 1989 | $434.40 | $513.30 |
| | Jan 1990 | 450.00 | 531.90 |
| | Jan 1991 | 468.60 | 553.80 |
| | Jan 1992 | 488.40 | 577.20 |
| | Jan 1993 | 506.40 | 598.50 |
| | Jan 1994 | 517.50 | 611.70 |
| | Jan 1995 | 531.00 | 627.60 |
| | Jan 1996 | 558.60 | 660.30 |

Note: Before 1989, members in pay grade O-3E received the same BAQ as members in pay grade O-3.

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-2E** | Jan 1989 | $369.60 | $463.20 |
| | Jan 1990 | 382.80 | 480.00 |
| | Jan 1991 | 398.40 | 499.80 |
| | Jan 1992 | 415.20 | 520.80 |
| | Jan 1993 | 430.50 | 540.00 |
| | Jan 1994 | 440.10 | 552.00 |
| | Jan 1995 | 451.50 | 566.40 |
| | Jan 1996 | 474.90 | 595.80 |

Note: Before 1989, members in pay grade O-2E received the same BAQ as members in pay grade O-2.

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **O-1E** | Jan 1989 | $317.70 | $428.10 |
| | Jan 1990 | 329.10 | 443.40 |
| | Jan 1991 | 342.60 | 461.70 |
| | Jan 1992 | 357.00 | 418.80 |
| | Jan 1993 | 370.20 | 498.90 |
| | Jan 1994 | 378.30 | 510.00 |
| | Jan 1995 | 388.20 | 523.20 |
| | Jan 1996 | 408.30 | 550.50 |

Note: Before 1989, members in pay grade O-1E received the same BAQ as members in pay grade O-1.

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **W-5** | Feb 1992 | $573.00 | $626.40 |
| | Jan 1993 | 594.30 | 649.50 |
| | Jan 1994 | 607.50 | 663.90 |
| | Jan 1995 | 623.40 | 681.30 |
| | Jan 1996 | 655.80 | 716.70 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **W-4** | Oct 1949 | $82.50 | $105.00 |
| | May 1952 | 94.20 | 119.70 |
| | Jun 1958 | 94.20 | 119.70 |
| | Oct 1963 | 120.00 | 145.05 |
| | Oct 1967 | 120.00 | 145.05 |
| | 1971 | 172.50 | 207.90 |
| | Oct 1974 | 182.10 | 219.30 |
| | Oct 1975 | 191.10 | 230.40 |
| | Oct 1976 | 215.10 | 259.50 |
| | Oct 1977 | 240.90 | 290.70 |
| | Oct 1978 | 254.10 | 306.60 |
| | Oct 1979 | 271.80 | 328.20 |
| | Oct 1980 | 303.60 | 366.60 |
| | Oct 1981 | 347.10 | 419.10 |
| | Oct 1982 | 360.90 | 435.90 |
| | Jan 1984 | 375.30 | 453.30 |

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|---|---|---|
| Jan 1985 | 391.20 | 453.90 |
| Oct 1985 | 402.90 | 442.80 |
| Jan 1987 | 414.90 | 481.50 |
| Jan 1988 | 423.30 | 491.10 |
| Jan 1989 | 453.30 | 511.20 |
| Jan 1990 | 469.50 | 529.50 |
| Jan 1991 | 488.70 | 551.10 |
| Jan 1992 | 509.10 | 574.20 |
| Jan 1993 | 528.00 | 595.50 |
| Jan 1994 | 539.70 | 608.70 |
| Jan 1995 | 553.80 | 624.60 |
| Jan 1996 | 582.60 | 657.00 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **W-3** | Oct 1949 | $75.00 | $90.00 |
| | May 1952 | 85.50 | 102.60 |
| | Jun 1958 | 85.50 | 102.60 |
| | Oct 1963 | 105.00 | 130.05 |
| | Oct 1967 | 105.00 | 130.05 |
| | 1971 | 155.40 | 191.70 |
| | Oct 1974 | 164.10 | 202.20 |
| | Oct 1975 | 172.20 | 212.40 |
| | Oct 1976 | 192.60 | 237.30 |
| | Oct 1977 | 214.80 | 264.60 |
| | Oct 1978 | 226.50 | 279.30 |
| | Oct 1979 | 242.40 | 298.80 |
| | Oct 1980 | 270.90 | 333.90 |
| | Oct 1981 | 309.60 | 381.60 |
| | Oct 1982 | 321.90 | 396.90 |
| | Jan 1984 | 334.80 | 412.80 |
| | Jan 1985 | 330.30 | 405.90 |
| | Oct 1985 | 340.20 | 418.20 |
| | Jan 1987 | 350.40 | 430.80 |
| | Jan 1988 | 357.30 | 439.50 |
| | Jan 1989 | 380.70 | 468.60 |
| | Jan 1990 | 394.50 | 485.40 |
| | Jan 1991 | 410.70 | 505.20 |
| | Jan 1992 | 427.80 | 526.50 |
| | Jan 1993 | 443.70 | 546.00 |
| | Jan 1994 | 453.60 | 558.00 |
| | Jan 1995 | 465.30 | 572.40 |
| | Jan 1996 | 489.60 | 602.10 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **W-2** | Oct 1949 | $67.50 | $82.50 |
| | May 1952 | 77.10 | 94.20 |
| | Jun 1958 | 77.10 | 94.20 |
| | Oct 1963 | 95.10 | 120.00 |
| | Oct 1967 | 95.10 | 120.00 |
| | 1971 | 137.10 | 173.70 |
| | Oct 1974 | 144.60 | 183.30 |
| | Oct 1975 | 151.80 | 192.60 |
| | Oct 1976 | 168.30 | 213.60 |
| | Oct 1977 | 186.90 | 237.30 |
| | Oct 1978 | 197.10 | 250.50 |
| | Oct 1979 | 210.90 | 268.20 |
| | Oct 1980 | 235.50 | 299.70 |
| | Oct 1981 | 269.10 | 342.60 |
| | Oct 1982 | 279.90 | 356.40 |
| | Jan 1984 | 291.00 | 370.80 |
| | Jan 1985 | 297.00 | 379.50 |
| | Oct 1985 | 306.00 | 390.90 |
| | Jan 1987 | 315.30 | 402.60 |
| | Jan 1988 | 321.60 | 410.70 |
| | Jan 1989 | 337.80 | 430.80 |
| | Jan 1990 | 350.10 | 446.40 |
| | Jan 1991 | 364.50 | 464.70 |
| | Jan 1992 | 379.80 | 484.20 |
| | Jan 1993 | 393.90 | 502.20 |
| | Jan 1994 | 402.60 | 513.30 |
| | Jan 1995 | 413.10 | 526.50 |
| | Jan 1996 | 434.70 | 553.80 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | With Dependents |
|---|---|---|---|
| **W-1** | Oct 1949 | $60.00 | $75.00 |
| | May 1952 | 68.40 | 85.50 |
| | Jun 1958 | 68.40 | 85.50 |
| | Oct 1963 | 85.20 | 110.10 |
| | Oct 1967 | 85.20 | 110.10 |
| | 1971 | 123.90 | 160.80 |
| | Oct 1974 | 130.80 | 169.80 |
| | Oct 1975 | 137.40 | 178.20 |
| | Oct 1976 | 152.10 | 197.10 |
| | Oct 1977 | 168.60 | 218.40 |
| | Oct 1978 | 177.90 | 230.40 |
| | Oct 1979 | 190.50 | 246.60 |
| | Oct 1980 | 212.70 | 275.40 |
| | Oct 1981 | 243.00 | 314.70 |
| | Oct 1982 | 252.60 | 327.30 |
| | Jan 1984 | 262.80 | 340.50 |
| | Jan 1985 | 251.40 | 330.90 |
| | Oct 1985 | 258.90 | 340.80 |
| | Jan 1987 | 266.70 | 351.00 |
| | Jan 1988 | 272.10 | 357.90 |
| | Jan 1989 | 283.20 | 372.60 |
| | Jan 1990 | 293.40 | 386.10 |
| | Jan 1991 | 305.40 | 402.00 |
| | Jan 1992 | 318.30 | 418.80 |
| | Jan 1993 | 330.00 | 434.40 |
| | Jan 1994 | 337.20 | 444.00 |
| | Jan 1995 | 345.90 | 455.40 |
| | Jan 1996 | 363.90 | 479.10 |

## ENLISTED MEMBERS

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | One Dependent | Two Dependents | Three or More Dependents |
|---|---|---|---|---|---|
| **E-9** | Jun 1958 | $51.30 | $77.10 | $77.10 | $96.90 |
| | Oct 1963 | 85.20 | 120.00 | 120.00 | 120.00 |
| | Oct 1967 | 85.20 | 120.00 | 120.00 | 120.00 |
| | 1971 | 130.80 | 184.20 | 184.20 | 184.20 |
| | Oct 1974 | 138.00 | 194.40 | 194.40 | 194.40 |
| | Oct 1975 | 144.90 | 204.00 | 204.00 | 204.00 |
| | Oct 1976 | 162.60 | 228.60 | 228.60 | 228.60 |
| | Oct 1977 | 181.80 | 255.60 | 255.60 | 255.60 |
| | Oct 1978 | 191.70 | 269.70 | 269.70 | 269.70 |
| | Oct 1979 | 205.20 | 288.60 | 288.60 | 288.60 |
| | Oct 1980 | 229.20 | 322.50 | 322.50 | 322.50 |
| | Oct 1981 | 261.90 | 368.70 | 368.70 | 368.70 |
| | Oct 1982 | 272.40 | 383.40 | 383.40 | 383.40 |
| | Jan 1984 | 283.20 | 398.70 | 389.70 | 389.70 |
| | Jan 1985 | 315.30 | 429.90 | 429.90 | 429.90 |
| | Oct 1985 | 324.80 | 442.80 | 442.80 | 442.80 |
| | Jan 1987 | 334.50 | 456.00 | 456.00 | 456.00 |
| | Jan 1988 | 341.10 | 465.00 | 465.00 | 465.00 |
| | Jan 1989 | 372.00 | 490.50 | 490.50 | 490.50 |
| | Jan 1990 | 385.50 | 508.20 | 508.20 | 508.20 |
| | Jan 1991 | 401.40 | 528.90 | 528.90 | 528.90 |
| | Jan 1992 | 418.20 | 551.10 | 551.10 | 551.10 |
| | Jan 1993 | 433.80 | 571.50 | 571.50 | 571.50 |
| | Jan 1994 | 443.40 | 584.10 | 584.10 | 584.10 |
| | Jan 1995 | 454.80 | 599.40 | 599.40 | 599.40 |
| | Jan 1996 | 478.50 | 630.60 | 630.60 | 630.60 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | One Dependent | Two Dependents | Three or More Dependents |
|---|---|---|---|---|---|
| **E-8** | Jun 1958 | $51.30 | $77.10 | $77.10 | $96.90 |
| | Oct 1963 | 85.20 | 120.00 | 120.00 | 120.00 |
| | Oct 1967 | 85.20 | 120.00 | 120.00 | 120.00 |
| | 1971 | 122.10 | 172.20 | 172.20 | 172.20 |
| | Oct 1974 | 128.70 | 181.80 | 181.80 | 181.80 |
| | Oct 1975 | 135.00 | 190.80 | 190.80 | 190.80 |
| | Oct 1976 | 150.30 | 212.40 | 212.40 | 212.40 |
| | Oct 1977 | 167.40 | 236.40 | 236.40 | 236.40 |
| | Oct 1978 | 176.70 | 249.30 | 249.30 | 249.30 |
| | Oct 1979 | 189.00 | 266.70 | 266.70 | 266.70 |
| | Oct 1980 | 211.20 | 297.90 | 297.90 | 297.90 |
| | Oct 1981 | 241.50 | 340.50 | 340.50 | 340.50 |
| | Oct 1982 | 251.10 | 354.00 | 354.00 | 354.00 |
| | Jan 1984 | 261.00 | 368.10 | 368.10 | 368.10 |
| | Jan 1985 | 292.20 | 400.50 | 400.50 | 400.50 |
| | Oct 1985 | 300.90 | 412.50 | 412.50 | 412.50 |
| | Jan 1987 | 309.90 | 424.80 | 424.80 | 424.80 |
| | Jan 1988 | 316.20 | 433.20 | 433.20 | 433.20 |
| | Jan 1989 | 342.00 | 452.10 | 452.10 | 452.10 |
| | Jan 1990 | 354.30 | 468.30 | 468.30 | 468.30 |
| | Jan 1991 | 368.70 | 487.50 | 487.50 | 487.50 |
| | Jan 1992 | 384.30 | 507.90 | 507.90 | 507.90 |
| | Jan 1993 | 398.40 | 526.80 | 526.80 | 526.80 |
| | Jan 1994 | 407.10 | 538.50 | 538.50 | 538.50 |
| | Jan 1995 | 417.60 | 552.60 | 552.60 | 552.60 |
| | Jan 1996 | 439.20 | 581.40 | 581.40 | 581.40 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | One Dependent | Two Dependents | Three or More Dependents |
|---|---|---|---|---|---|
| **E-7** | Jul 1922 | | | | |
| | (1) | | | | |
| | Jun 1942 | | | | |
| | (2) | | | | |
| | Oct 1949 | $45.00 | $67.50 | $67.50 | $67.50 |
| | May 1952 | 51.30 | 77.10 | 77.10 | 96.90 |
| | Jun 1958 | 51.30 | 77.10 | 77.10 | 96.90 |
| | Oct 1963 | 75.00 | 114.90 | 114.90 | 114.90 |
| | Oct 1967 | 75.00 | 114.90 | 114.90 | 114.90 |
| | 1971 | 104.70 | 161.40 | 161.40 | 161.40 |
| | Oct 1974 | 110.40 | 170.40 | 170.40 | 170.40 |
| | Oct 1975 | 115.80 | 178.80 | 178.80 | 178.80 |
| | Oct 1976 | 128.40 | 198.30 | 198.30 | 198.30 |
| | Oct 1977 | 142.50 | 219.90 | 219.90 | 219.90 |
| | Oct 1978 | 150.30 | 231.90 | 231.90 | 231.90 |
| | Oct 1979 | 160.80 | 248.10 | 248.10 | 248.10 |
| | Oct 1980 | 179.70 | 277.20 | 277.20 | 277.20 |
| | Oct 1981 | 205.50 | 316.80 | 316.80 | 316.80 |
| | Oct 1982 | 213.60 | 329.40 | 329.40 | 329.40 |
| | Jan 1984 | 222.00 | 342.60 | 342.60 | 342.60 |
| | Jan 1985 | 249.30 | 372.60 | 372.60 | 372.60 |
| | Oct 1985 | 256.80 | 383.70 | 383.70 | 383.70 |
| | Jan 1987 | 264.60 | 395.10 | 395.10 | 395.10 |
| | Jan 1988 | 270.00 | 402.90 | 402.90 | 402.90 |
| | Jan 1989 | 291.90 | 420.30 | 420.30 | 420.30 |
| | Jan 1990 | 302.40 | 435.30 | 435.30 | 435.30 |
| | Jan 1991 | 314.70 | 453.00 | 453.00 | 453.00 |
| | Jan 1992 | 327.90 | 471.90 | 471.90 | 471.90 |
| | Jan 1993 | 339.90 | 489.30 | 489.30 | 489.30 |
| | Jan 1994 | 347.40 | 500.10 | 500.10 | 500.10 |
| | Jan 1995 | 356.40 | 513.00 | 513.00 | 513.00 |
| | Jan 1996 | 375.00 | 539.70 | 539.70 | 539.70 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | One Dependent | Two Dependents | Three or More Dependents |
|---|---|---|---|---|---|
| **E-6** | Jul 1922 | | | | |
| | (1) | | | | |
| | Jun 1942 | | | | |
| | (2) | | | | |
| | Oct 1949 | $45.00 | $67.50 | $67.50 | $67.50 |
| | 1950 | 45.00 | 67.50 | 67.50 | 85.00 |
| | May 1952 | 51.30 | 77.10 | 77.10 | 96.90 |
| | Jun 1958 | 51.30 | 77.10 | 77.10 | 96.90 |
| | Oct 1963 | 70.20 | 110.10 | 110.10 | 110.10 |
| | Oct 1967 | 70.20 | 110.10 | 110.10 | 110.10 |
| | 1971 | 95.70 | 150.00 | 150.00 | 150.00 |
| | Oct 1974 | 101.10 | 158.40 | 158.40 | 158.40 |
| | Oct 1975 | 106.20 | 166.20 | 166.20 | 166.20 |
| | Oct 1976 | 117.00 | 183.00 | 183.00 | 183.00 |
| | Oct 1977 | 129.30 | 202.20 | 202.20 | 202.20 |
| | Oct 1978 | 136.50 | 213.30 | 213.30 | 213.30 |
| | Oct 1979 | 136.50 | 228.30 | 228.30 | 228.30 |
| | Oct 1980 | 163.20 | 255.00 | 255.00 | 255.00 |
| | Oct 1981 | 186.60 | 291.60 | 291.60 | 291.60 |
| | Oct 1982 | 194.10 | 303.30 | 303.30 | 303.30 |
| | Jan 1984 | 201.90 | 315.30 | 315.30 | 315.30 |
| | Jan 1985 | 221.40 | 337.80 | 337.80 | 337.80 |
| | Oct 1985 | 228.00 | 348.00 | 348.00 | 348.00 |
| | Jan 1987 | 234.90 | 358.50 | 358.50 | 358.50 |
| | Jan 1988 | 239.70 | 365.70 | 365.70 | 365.70 |
| | Jan 1989 | 264.00 | 387.90 | 387.90 | 387.90 |
| | Jan 1990 | 273.60 | 402.00 | 402.00 | 402.00 |
| | Jan 1991 | 284.70 | 418.50 | 418.50 | 418.50 |
| | Jan 1992 | 296.70 | 436.20 | 436.20 | 436.20 |
| | Jan 1993 | 307.80 | 452.40 | 452.40 | 452.40 |
| | Jan 1994 | 314.70 | 462.30 | 462.30 | 462.30 |
| | Jan 1995 | 322.80 | 474.30 | 474.30 | 474.30 |
| | Jan 1996 | 339.60 | 498.90 | 498.90 | 498.90 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | One Dependent | Two Dependents | Three or More Dependents |
|---|---|---|---|---|---|
| **E-5** | Jul 1922 | | | | |
| | (1) | | | | |
| | Jun 1942 | | | | |
| | (2) | | | | |
| | Oct 1949 | $45.00 | $67.50 | $67.50 | $67.50 |
| | 1950 | 45.00 | 67.50 | 67.50 | 85.00 |
| | May 1952 | 51.30 | 77.10 | 77.10 | 96.90 |
| | Jun 1958 | 51.30 | 77.10 | 77.10 | 96.90 |
| | Oct 1963 | 70.20 | 105.00 | 105.00 | 105.00 |
| | Oct 1967 | 70.20 | 105.00 | 105.00 | 105.00 |
| | 1971 | 92.70 | 138.60 | 138.60 | 138.60 |
| | Oct 1974 | 97.80 | 146.40 | 146.40 | 146.40 |
| | Oct 1975 | 102.60 | 153.60 | 153.60 | 153.60 |
| | Oct 1976 | 112.50 | 168.30 | 168.30 | 168.30 |
| | Oct 1977 | 124.20 | 185.70 | 185.70 | 185.70 |
| | Oct 1978 | 131.10 | 195.90 | 195.90 | 195.90 |
| | Oct 1979 | 140.40 | 209.70 | 209.70 | 209.70 |
| | Oct 1980 | 156.90 | 234.30 | 234.30 | 234.30 |
| | Oct 1981 | 179.40 | 267.90 | 267.90 | 267.90 |
| | Oct 1982 | 186.60 | 278.70 | 278.70 | 278.70 |
| | Jan 1984 | 194.10 | 289.80 | 289.80 | 289.80 |
| | Jan 1985 | 204.90 | 300.30 | 300.30 | 300.30 |
| | Oct 1985 | 210.90 | 309.30 | 309.30 | 309.30 |
| | Jan 1987 | 217.20 | 318.60 | 318.60 | 318.60 |
| | Jan 1988 | 221.40 | 324.90 | 324.90 | 324.90 |
| | Jan 1989 | 243.60 | 348.90 | 348.90 | 348.90 |
| | Jan 1990 | 252.30 | 361.50 | 361.50 | 361.50 |
| | Jan 1991 | 262.50 | 376.20 | 376.20 | 376.20 |
| | Jan 1992 | 273.60 | 392.10 | 392.10 | 392.10 |
| | Jan 1993 | 283.80 | 406.50 | 406.50 | 406.50 |
| | Jan 1994 | 290.10 | 415.50 | 415.50 | 415.50 |
| | Jan 1995 | 297.60 | 426.30 | 426.30 | 426.30 |
| | Jan 1996 | 313.20 | 448.50 | 448.50 | 448.50 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | One Dependent | Two Dependents | Three or More Dependents |
|---|---|---|---|---|---|
| **E-4** | Jul 1922 | | | | |
| | (1) | | | | |
| | Jun 1942 | | | | |
| | (2) | | | | |
| | Oct 1949 | (<7 yrs) $45.00 | $45.00 | $45.00 | $45.00 |
| | | (>7 yrs) 45.00 | 67.50 | 67.50 | 67.50 |
| | 1950 | 45.00 | 67.50 | 67.50 | 85.00 |
| | May 1952 | 51.30 | 77.10 | 77.10 | 96.90 |
| | Jun 1958 | 51.30 | 77.10 | 77.10 | 96.96 |
| | Oct 1963 | (<4 yrs) 55.20 | 83.10 | 83.10 | 105.00 |
| | | (>4 yrs) 70.20 | 105.00 | 105.00 | 105.00 |
| | Oct 1967 | (<4 yrs) 60.00 | 90.60 | 90.60 | 105.00 |
| | | (>4 yrs) 70.20 | 105.00 | 105.00 | 105.00 |
| | 1971 | (<4 yrs) 81.60 | 121.50 | 121.50 | 121.50 |
| | | (>4 yrs) 81.60 | 121.50 | 121.50 | 121.50 |
| | Oct 1974 | 86.10 | 128.10 | 128.10 | 128.10 |
| | Oct 1975 | 90.30 | 134.40 | 134.40 | 134.40 |
| | Oct 1976 | 99.30 | 147.90 | 147.90 | 147.90 |
| | Oct 1977 | 109.80 | 163.50 | 163.50 | 163.50 |
| | Oct 1978 | 115.80 | 172.50 | 172.50 | 172.50 |
| | Oct 1979 | 123.90 | 184.50 | 184.50 | 184.50 |
| | Oct 1980 | 138.30 | 206.10 | 206.10 | 206.10 |
| | Oct 1981 | 158.10 | 235.50 | 235.50 | 235.50 |
| | Oct 1982 | 164.40 | 244.80 | 244.80 | 244.80 |
| | Jan 1984 | 171.00 | 254.70 | 254.70 | 254.70 |
| | Jan 1985 | 177.60 | 259.50 | 259.50 | 259.50 |
| | Oct 1985 | 183.00 | 267.30 | 267.30 | 267.30 |
| | Jan 1987 | 188.40 | 275.40 | 275.40 | 275.40 |
| | Jan 1988 | 192.30 | 280.80 | 280.80 | 280.80 |
| | Jan 1989 | 212.10 | 303.60 | 303.60 | 303.60 |
| | Jan 1990 | 219.60 | 314.40 | 314.40 | 314.40 |
| | Jan 1991 | 228.60 | 327.30 | 327.30 | 327.30 |
| | Jan 1992 | 238.20 | 341.10 | 341.10 | 341.10 |
| | Jan 1993 | 246.90 | 353.70 | 353.70 | 353.70 |
| | Jan 1994 | 252.30 | 361.50 | 361.50 | 361.50 |
| | Jan 1995 | 258.90 | 370.80 | 370.80 | 370.80 |
| | Jan 1996 | 272.40 | 390.00 | 390.00 | 390.00 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | One Dependent | Two Dependents | Three or More Dependents |
|---|---|---|---|---|---|
| **E-3** | Jul 1922 | | | | |
| | (1) | | | | |
| | Jun 1942 | | | | |
| | (2) | | | | |
| | Oct 1949 | $45.00 | $45.00 | $45.00 | $45.00 |
| | 1950 | 45.00 | 45.00 | 67.50 | 85.00 |
| | May 1952 | 51.30 | 51.30 | 77.10 | 96.90 |
| | Jun 1958 | 51.30 | 51.30 | 77.10 | 96.90 |
| | Oct 1963 | 55.20 | 55.20 | 83.10 | 105.00 |
| | Oct 1967 | 60.00 | 60.00 | 90.60 | 105.00 |
| | 1971 | 72.30 | 105.00 | 105.00 | 105.00 |
| | Oct 1974 | 76.20 | 110.70 | 110.70 | 110.70 |
| | Oct 1975 | 80.10 | 116.10 | 116.10 | 116.10 |
| | Oct 1976 | 88.50 | 128.40 | 128.40 | 128.40 |
| | Oct 1977 | 98.10 | 142.50 | 142.50 | 142.50 |
| | Oct 1978 | 103.50 | 150.30 | 150.30 | 150.30 |
| | Oct 1979 | 110.70 | 160.80 | 160.80 | 160.80 |
| | Oct 1980 | 123.60 | 179.70 | 179.70 | 179.70 |
| | Oct 1981 | 141.30 | 205.50 | 205.50 | 205.50 |
| | Oct 1982 | 147.00 | 213.60 | 213.60 | 213.60 |
| | Jan 1984 | 153.00 | 222.00 | 222.00 | 222.00 |
| | Jan 1985 | 172.50 | 238.50 | 238.50 | 238.50 |
| | Oct 1985 | 177.60 | 245.70 | 245.70 | 245.70 |
| | Jan 1987 | 183.00 | 253.20 | 253.20 | 253.20 |
| | Jan 1988 | 186.60 | 258.30 | 258.30 | 258.30 |
| | Jan 1989 | 208.20 | 282.30 | 282.30 | 282.30 |
| | Jan 1990 | 215.70 | 292.50 | 292.50 | 292.50 |
| | Jan 1991 | 224.40 | 304.50 | 304.50 | 304.50 |
| | Jan 1992 | 233.70 | 317.40 | 317.40 | 317.40 |
| | Jan 1993 | 242.40 | 329.10 | 329.10 | 329.10 |
| | Jan 1994 | 247.80 | 336.30 | 336.30 | 336.30 |
| | Jan 1995 | 254.10 | 345.00 | 345.00 | 345.00 |
| | Jan 1996 | 267.30 | 363.00 | 363.00 | 363.00 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | One Dependent | Two Dependents | Three or More Dependents |
|---|---|---|---|---|---|
| **E-2** | Jul 1922 | | | | |
| | (1) | | | | |
| | Jun 1942 | | | | |
| | (2) | | | | |
| | Oct 1949 | $45.00 | $45.00 | $45.00 | $45.00 |
| | 1950 | 45.00 | 45.00 | 67.50 | 85.00 |
| | May 1952 | 51.30 | 51.30 | 77.10 | 96.90 |
| | Jun 1958 | 51.30 | 51.30 | 77.10 | 96.90 |
| | Oct 1963 | 52.20 | 55.20 | 83.10 | 105.00 |
| | Oct 1967 | 60.00 | 60.00 | 90.60 | 105.00 |
| | 1971 | 63.90 | 105.00 | 105.00 | 105.00 |
| | Oct 1974 | 67.50 | 110.70 | 110.70 | 110.70 |
| | Oct 1975 | 70.80 | 116.10 | 116.10 | 116.10 |
| | Oct 1976 | 78.30 | 128.40 | 128.40 | 128.40 |
| | Oct 1977 | 86.70 | 142.50 | 142.50 | 142.50 |
| | Oct 1978 | 91.50 | 150.30 | 150.30 | 150.30 |
| | Oct 1979 | 97.80 | 160.80 | 160.80 | 160.80 |
| | Oct 1980 | 109.20 | 179.70 | 179.70 | 179.70 |
| | Oct 1981 | $124.80 | $205.50 | $205.50 | $205.50 |
| | Oct 1982 | 129.90 | 213.60 | 213.60 | 213.60 |
| | Jan 1984 | 135.00 | 222.00 | 222.00 | 222.00 |
| | Jan 1985 | 146.40 | 238.50 | 238.50 | 238.50 |
| | Oct 1985 | 150.90 | 245.70 | 245.70 | 245.70 |
| | Jan 1987 | 155.40 | 253.20 | 253.20 | 253.20 |
| | Jan 1988 | 158.40 | 258.30 | 258.30 | 258.30 |
| | Jan 1989 | 169.20 | 268.80 | 268.80 | 268.80 |
| | Jan 1990 | 175.20 | 278.40 | 278.40 | 278.40 |
| | Jan 1991 | 182.40 | 289.80 | 289.80 | 289.80 |
| | Jan 1992 | 190.20 | 302.10 | 302.10 | 302.10 |
| | Jan 1993 | 197.10 | 313.20 | 313.20 | 313.20 |
| | Jan 1994 | 201.30 | 320.10 | 320.10 | 320.10 |
| | Jan 1995 | 206.40 | 328.50 | 328.50 | 328.50 |
| | Jan 1996 | 217.20 | 345.60 | 345.60 | 345.60 |

## MONTHLY RATES BASIC ALLOWANCE FOR QUARTERS

| Pay Grade | Date | Without Dependents | One Dependent | Two Dependents | Three or More Dependents |
|---|---|---|---|---|---|
| **E-1** | Jul 1922 (1) | | | | |
| | Jun 1942 (2) | | | | |
| | Oct 1949 | $45.00 | $45.00 | $45.00 | $45.00 |
| | 1950 | 45.00 | 45.00 | 67.50 | 85.00 |
| | May 1952 | 51.30 | 51.30 | 77.10 | 96.90 |
| | Jun 1958 | 51.30 | 51.30 | 77.10 | 96.90 |
| | Oct 1963 | 55.20 | 55.20 | 83.10 | 105.00 |
| | Oct 1967 | 60.00 | 60.00 | 90.60 | 105.00 |
| | 1971 | 60.00 | 105.00 | 105.00 | 105.00 |
| | Oct 1974 | 63.30 | 110.70 | 110.70 | 110.70 |
| | Oct 1975 | 66.60 | 116.10 | 116.10 | 116.10 |
| | Oct 1976 | 73.80 | 128.40 | 128.40 | 128.40 |
| | Oct 1977 | 81.90 | 142.50 | 142.50 | 142.50 |
| | Oct 1978 | 86.40 | 150.30 | 150.30 | 150.30 |
| | Oct 1979 | 92.40 | 160.80 | 160.80 | 160.80 |
| | Oct 1980 | 103.20 | 179.70 | 179.70 | 179.70 |
| | Oct 1981 | 117.90 | 205.50 | 205.50 | 205.50 |
| | Oct 1982 | 122.70 | 213.60 | 213.60 | 213.60 |
| | Jan 1984 | | | | |
| | (>4 mo.) | 127.50 | 222.00 | 222.00 | 222.00 |
| | (<4 mo.) | 122.70 | 213.60 | 213.60 | 213.60 |
| | Jan 1985 | 133.50 | 238.50 | 238.50 | 238.50 |
| | Oct 1985 | 137.40 | 245.70 | 245.70 | 245.70 |
| | Jan 1987 | 141.60 | 253.20 | 253.20 | 253.20 |
| | Jan 1988 | 144.30 | 258.30 | 258.30 | 258.30 |
| | Jan 1989 | 150.30 | 268.80 | 268.80 | 268.80 |
| | Jan 1990 | 155.70 | 278.40 | 278.40 | 278.40 |
| | Jan 1991 | 162.00 | 289.80 | 289.80 | 289.80 |
| | Jan 1992 | 168.90 | 302.10 | 302.10 | 302.10 |
| | Jan 1993 | 175.20 | 313.20 | 313.20 | 313.20 |
| | Jan 1994 | 179.10 | 320.10 | 320.10 | 320.10 |
| | Jan 1995 | 183.90 | 328.50 | 328.50 | 328.50 |
| | Jan 1996 | 193.50 | 345.60 | 345.60 | 345.60 |

(1) The Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §11, 42 Stat. 625, 630 (1922), provided that each enlisted member not furnished quarters or rations in kind was to be granted an allowance for quarters and subsistence; the amount of the allowance depended on the conditions under which duty was being performed, but could not exceed $4.00 per day.

(2) The Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §10, 56 Stat. 359, 363-364 (1942), provided a maximum of $5.00 per day for quarters.

## GENERAL NOTES TO TABLES

Note 1: Dependents Assistance Act legislation rates for enlisted personnel are quoted where they are applicable between the years 1950 to 1973.

Note 2: Section 601(c)(5) of the National Defense Authorization Act for Fiscal Year 1989, Public Law 100-456, §601(c)(5), 102 Stat. 1918, 1976 (1988), enacted on September 29, 1988, authorized the Secretary of Defense to prescribe separate rates of basic allowance for quarters for commissioned officers credited with more than four years of active service as enlisted members or warrant officers, thereby in effect permitting the Secretary of Defense to authorize rates of basic allowance for quarters differentially higher than those applicable to commissioned officers in the same pay grades without a combination of such enlisted or warrant officer service. Pursuant to that authority, commissioned officers in pay grades O-1E, O-2E, and O-3E, all of whom are necessarily credited with more than four years of active service as enlisted members or warrant officers, were authorized separate and higher rates of basic allowance for quarters beginning January 1, 1989. Executive Order No. 12663, 54 FED. REG. 791 (1989), set out as a note under 5 U.S.C. §5332. See Chapter II.B.1 hereof, "Basic Pay", above. Differentially higher rates of partial basic allowance for quarters have not, however, been established for commissioned officers in pay grades O-1E, O-2E, and O-3E. See Note 4 of General Notes to Tables, below, and Part II of the schedule attached to Executive Order 12990 of February 29, 1996, published at 61 FED. REG. 8467, 8470 (March 5, 1996).

Note 3: Section 1111(b) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §1111(b), 105 Stat. 1290, 1491 (1991), established the new warrant officer pay grade, Chief Warrant Officer, W-5, effective February 1, 1992, and subsection (c) of that section, §1111(c), 105 Stat. at 1491-1492, established new rates of basic allowance for quarters for that pay grade, also effective February 1, 1992. The BAQ rates thus established for the new pay grade have been increased each year since then in keeping with increases in BAQ rates for all service members. See Chapter II.B.1 hereof, "Basic Pay", above.

Note 4: Payment of a partial basic allowance for quarters is authorized by 37 U.S.C. §1009(c)(2) and Part IV of Executive Order 11157, as amended, to members without dependents not entitled to receive the full rate under 37 U.S.C. §403(b) or (c). Partial basic allowance for quarters is payable at the following monthly rates pursuant to Part II of the schedule attached to Executive Order 12990 of February 29, 1996, 61 FED. REG. 8467, 8470 (March 5, 1996), set out as notes under 5 U.S.C.A. §5332 and 37 U.S.C.A. §1009:

| Pay Grade | Rate | Pay Grade | Rate | Pay Grade | Rate |
|---|---|---|---|---|---|
| O-10 | $50.70 | O-3E | $22.20 | E-9 | $18.60 |
| O-9 | 50.70 | O-2E | 17.70 | E-8 | 15.30 |
| O-8 | 50.70 | O-1E | 13.20 | E-7 | 12.00 |
| O-7 | 50.70 | W-5 | 25.20 | E-6 | 9.90 |
| O-6 | 39.60 | W-4 | 25.50 | E-5 | 8.70 |
| O-5 | 33.00 | W-3 | 20.70 | E-4 | 8.10 |
| O-4 | 26.70 | W-2 | 15.90 | E-3 | 7.80 |
| O-3 | 22.20 | W-1 | 13.80 | E-2 | 7.20 |
| O-2 | 17.70 | E-1 | 6.90 | | |
| O-1 | 13.20 | | | | |

## Monthly Partial Housing Allowance Rates by Rank, 1997

| Pay Grade | Rate |
|---|---|
| O-10 | 53.00 |
| O-9 | 53.00 |
| O-8 | 53.00 |
| O-7 | 53.00 |
| O-6 | 41.40 |
| O-5 | 34.50 |
| O-4 | 28.00 |
| O-3 | 23.20 |
| O-2 | 18.50 |
| O-1 | 13.80 |
| W-5 | 26.40 |
| W-4 | 26.40 |
| W-3 | 21.70 |
| W-2 | 16.60 |
| W-1 | 14.40 |
| E-9 | 19.50 |
| E-8 | 16.00 |
| E-7 | 12.60 |
| E-6 | 10.40 |
| E-5 | 9.10 |
| E-4 | 8.50 |
| E-3 | 8.20 |
| E-2 | 7.50 |
| E-1 | 7.20 |

## Monthly Rates, Basic Allowance for Quarters by Rank, 1997

| Rank | With Dependents | No Dependents |
|---|---|---|
| O-10 | 1015.10 | 824.70 |
| O-9 | 1015.10 | 824.70 |
| O-8 | 1015.10 | 824.70 |
| O-7 | 1015.10 | 824.70 |
| O-6 | 914.10 | 756.60 |
| O-5 | 881.20 | 728.60 |
| O-4 | 776.70 | 675.30 |
| O-3 | 642.70 | 541.30 |

| | | |
|---|---|---|
| O-2 | 548.80 | 429.30 |
| O-1 | 490.50 | 361.50 |
| O-3E | 690.70 | 584.30 |
| O-2E | 623.20 | 496.70 |
| O-1E | 575.80 | 427.10 |
| W-5 | 749.70 | 686.00 |
| W-4 | 687.20 | 609.40 |
| W-3 | 629.80 | 512.10 |
| W-2 | 579.30 | 454.70 |
| W-1 | 501.10 | 380.60 |
| E-9 | 659.60 | 500.50 |
| E-8 | 608.10 | 459.40 |
| E-7 | 564.50 | 382.30 |
| E-6 | 521.80 | 355.20 |
| E-5 | 469.10 | 327.60 |
| E-4 | 407.90 | 284.90 |
| E-3 | 379.70 | 279.50 |
| E-2 | 361.50 | 227.20 |
| E-1 | 361.50 | 202.40 |

**Chapter II.B.3.**

## Basic Allowance for Subsistence

**Legislative Authority:** 37 U.S.C. §402.

**Purpose**: To provide a cash allowance to members of the Armed Forces to defray a portion of the cost of subsistence, such allowance being payable to all enlisted and officer personnel, with variations to account for the unavailability of adequate messing facilities at some duty stations.

**Background**: Until 1870, officers were normally required to arrange for their own subsistence and received a cash allowance for this purpose in addition to their primary, or base, pay. At first this allowance had a direct relationship to food costs, at bottom being premised on the contract price of a ration at different duty stations. Under this relationship, an officer's ration allowance was a multiple of the daily ration cost at his duty station, with the number of rations to which the officer was entitled varying from two for lower ranking officers to 15 for general officers.[1] Beginning with the Act of April 12, 1808, ch. 43, §6, 2 Stat. 481, 483 (1808), however, the price of a ration was fixed at a uniform rate of 20 cents a day, and being adjusted only twice between then and 1870, the ration allowance soon lost its theretofore existing relationship to food costs.

The Army and Navy Appropriation Acts for 1871 (Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, §24, 16 Stat. 315, 320 (1870) and Act of July 15, 1870 (Navy Appropriation Act of 1871), ch. 295, §§3-4, 16 Stat. 321, 330-333 (1870)) established a salary system for officers and abolished separate allowances for subsistence or rations. This so-called "salary system" remained in effect until 1922, when subsistence allowances again became a separate part of officers' compensation.

The Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §5, 42 Stat. 625, 628 (1922), reestablished the

[1] Officers holding the grade of lieutenant general, which sometimes did and sometimes did not exist during this period, were authorized 40 rations.

subsistence allowance for officers at a rate of 60 cents a day. Officers without dependents were entitled to one subsistence allowance; those with dependents were, with a minor exception, entitled to either two or three allowances, depending on grade. The purpose of the extra allowances was to help defray the food expenses of the officer's family. Married officers in junior or senior grades received an extra allowance and those in middle grades two extra allowances regardless of actual family size, on the premise that family expenses were greater during the middle state of an officer's career and less both before and after. The period from 1922 until 1949, when extra allowances for officers' dependents were ended, was the only time in the history of subsistence allowances that an additional sum has been payable expressly to help defray the food costs of a member's dependents.

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §302, 63 Stat. 802, 812 (1949), replaced the officer subsistence allowance of the Joint Service Pay Readjustment Act of 1922, ch. 212, *id*., with an allowance called the "basic allowance for subsistence" (BAS).[2] In contrast to the preexisting subsistence allowance, only one rate of BAS was authorized for officers, and this amount was payable to all officers regardless of dependency status or pay grade. As enunciated in testimony delivered on behalf of the Department of Defense by the Deputy Chief of Naval Operations Personnel), who was then serving as Chairman of the Pay Committee of the Armed Services Personnel Board, the purpose of providing a BAS allowance was to provide subsistence for the officer himself, not for his dependents:

The officer would receive $42 a month to subsist himself regardless of his rank, pay grade, or state of dependency.[3]

[2] Section 301 of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §301, 63 Stat. 802, 812 (1949), was initially classified to 37 U.S.C. §251. Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat 451 (1962), the BAS provisions were codified at 37 U.S.C. §402 (76 Stat. at 470). See 37 U.S.C. §402.

[3] Career Compensation Act of 1949: Hearings on H.R. 5007 before the Senate Armed Services Committee, p. 252, 81st Congress, 1st Session (1949) (testimony of Admiral Fechteler, U.S.N., Deputy Chief of Naval Operations for Personnel).

Despite the clarity of this testimony, however, an additional theoretical underpinning for officer BAS was advanced in testimony delivered by the Deputy Director of the Personnel and Administrative Division, U.S. Army, and also a member of the Pay Committee of the Armed Services Personnel Board, who stated:

> We are not paying an officer for what he eats, we are paying the officer for the unusual expenses he is put to in his service, because his condition continuously changes. With the enlisted man, we are giving him a subsistence allowance.
>
> . . .
>
> The justification of the ration allowance for an officer is not to compensate him for completely subsisting himself, but to pay him over the years for unusual expense--the extra expense--that he is put to throughout the career in his occupation.[4]

No documentation has, however, been found to support this "unusual expense" theory. Even the name, "basic allowance for subsistence," argues against the unusual expense theory. Nor does the theory receive any support in the recommendations made to the Secretary of Defense in 1948 by the Advisory Commission on Service Pay (the so-called "Hook Commission"), which recommendations led to the introduction and enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), the basic source of present BAS authority.

Under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st §302, Congress], §301, 63 Stat. 802, 812 (1949), officer BAS rates of $42 a month were established in 1949 and subsequently raised, through legislation, to $47.88 a month in 1952. These rates were further increased, again legislatively, to $50.52 in 1974 and $53.05 in 1975, when all cash elements of Regular Military Compensation,[5] which

[4] Career Compensation for the Uniformed Forces: Hearings on H.R. 2553 before a Subcommittee of the House Armed Services Committee, pp. 1665 and 1666, 81st Congress, 1st Session (1949) (testimony of General Dahlquist, U.S.A., Deputy Director of Personnel and Administration).

[5] "Regular Military Compensation," also known as "RMC," is currently defined as basic pay, BAH, BAS, overseas housing allowance, and the Federal tax advantage deriving from the nontaxable status of all the allowances. 37 U.S.C. §101(25). (For further background on the development of "regular military compensation" as an operational pay construct and why overseas housing allowance is now included within

includes BAS, were increased proportionately with increases in General Schedule salaries of Federal civil service employees. As a result of the relative inflexibility of this legislative BAS adjustment mechanism, officer BAS quickly lost most of whatever relationship it originally had to food costs, whether those of the officer himself or of the government.

In contrast to the shifting and not wholly clear basis underlying the authority for paying a subsistence allowance to officers, the Government has always taken the position that it is obligated to provide subsistence for enlisted personnel or, if subsistence in kind is not furnished, to provide them with a cash substitute. Legislative authority for BAS for enlisted personnel, including the authority currently in effect, has reflected that understanding. The rate of the most common form of enlisted BAS--commuted and leave rations--was fixed at $1.05 a day by the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §301(e), 63 Stat. 802, 812 (1949). In 1951 and 1952, the secretary of defense was authorized by annual appropriation acts to adjust the commuted ration rate administratively to approximate the raw food cost of daily rations. Such authority was made permanent by the Act of August 1, 1953, ch. 305 [Public Law 179, 83d Congress], §617, 67 Stat. 336, 352 (1953).

The Act of December 16, 1967, Public Law 90-207, §8, 81 Stat. 649, 654 (1967), provided that whenever the general schedule of compensation for federal classified employees was increased, a comparable increase was to be effected in the regular military compensation (RMC) of military personnel. The use of RMC--which at the time consisted of basic pay, basic allowance for quarters, basic allowance for subsistence, and the Federal tax advantage deriving from the nontaxable status of those allowances[6]--as the base for determining comparable increases between military and general schedule pay raises had the effect of imputing an increase in all four of these elements of military compensation each time a comparable General schedule increase occurred. However,

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the RMC construct, see Chapter II.B., "Regular Military Compensation/Basic Military Compensation," Chapter II.B.1., "Basic Pay," and Chapter II.B.2., "Basic Allowance for Quarters, Variable Housing Allowance, and Overseas Housing Allowance," above. In particular, see footnote 63 to Chapter II.B.2., "Basic Allowance for Housing and Overseas Housing Allowance," above.)

[6] See footnote 5 to this chapter, above.

since the entire increase had traditionally been allocated only to basic pay, the increases in the BAQ, BAS, and tax advantage elements were implicit only. (For coverage of the other components of the RMC and its impact, see Chapter II.B., "Regular Military Compensation/Basic Military Compensation" and Chapter II.B.1., "Basic Pay," above, and Chapter II.B.4., "Federal Income Tax Advantage," below.)

The Act of September 28, 1974, Public Law 93-419, §4, 88 Stat. 1152, 1152-1153 (1974), discontinued the method by which the entire military increase was incorporated in basic pay. Instead, under 37 U.S.C. §1009 as added to Title 37, United States Code, by Section 4 of the 1974 Act, Public Law 93-419, *id*., raises were to be equally distributed among the three cash elements of RMC--namely, basic pay, BAQ, and BAS.[7]

The Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, §303, 90 Stat. 923, 925-926 (1976), permitted a further change in the method of distributing military pay increases by authorizing the President to allocate future overall increases among the three cash elements of RMC on other than an equal percentage basis whenever he determined such action to be "in the best interest of the Government." The Act provided, however, that the amount allocated to basic pay could not be less than 75 percent of the amount that would have been allocated on an equal percentage allocation basis. The purpose of providing for a discretionary "reallocation" of compensation increases among the three elements of RMC was to enable progressive adjustments to be made to the two basic allowance elements so that these allowances would, over time, more nearly cover the costs of the items they were originally intended to defray, as well as to provide for more adequate quarters and subsistence allowances in general. Under the Act, the President was required to advise Congress regarding any planned reallocation at the earliest practicable time before the effective date of a military pay increase. Furthermore, all allocations of increases among the different elements of RMC were to be assessed in conjunction with quadrennial reviews of military compensation required by

[7] Even today, with RMC defined to include variable housing allowance (VHA) and overseas housing allowance (OHA or SHA), pay raises are distributed only among basic pay, BAS, and BAQ. See footnote 5 to this chapter together with references there cited and 37 U.S.C. §1009. (Assuming that VHA or SHA is authorized for a given locale, the amount of VHA or SHA a specific member is entitled to depends, among other things, on prevailing housing costs in that locale. For this reason, VHA and SHA rates do not necessarily increase when there is a general pay raise.)

37 U.S.C. §1008(b), and a full report was to be made to Congress summarizing the objectives and results of those allocations.[8]

After several years experience with the adjustment mechanisms incorporated in the Act of September 28, 1974, Public Law 93-419, *id*., and the Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, *id*., Congress effectively preempted them by legislatively mandating a 10 percent increase in BAS, effective September 1, 1980, in the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §7, 94 Stat. 1123, 1128 (1980). The increase was adopted, essentially over the objections of the Carter Administration,[9] to bring the level of the allowance into closer alignment with food costs.[10] [11]

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[8] The Act of August 21, 1965, Public Law 89-132, §2, 79 Stat. 544, 546-547 (1965), adopted a special provision, codified at 37 U.S.C. §1008, requiring the President to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system. Pursuant to Section 2(a) of the Act, *id*., as codified at 37 U.S.C. §1008(b), the first such review was to be undertaken "[w]henever the President considers it appropriate, but in no event later than January 1, 1967." In the House and Senate Reports on the bill, H.R. 9075, 89th Congress, 1st Session (1965), the required Presidential review was referred to as a "quadrennial review ... of military compensation," House Report No. 89-549 (Committee on Armed Services), pp. 1 and 50, and Senate Report No. 89-544 (Committee on Armed Services), p. 1, accompanying H.R. 9075, 89th Congress, 1st Session (1965); and the seven reviews of military compensation that have been completed under the direction of 37 U.S.C. §1008(b) have been referred to, successively, as the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Quadrennial Review of Military Compensation, respectively. The First Quadrennial Review was convened in 1966; the Ninth Quadrennial Review of Military Compensation was issued pursuant to Presidential directive in the spring of 2002.

[9] See, *e.g*., Hearings on H.R. 5168, H.R. 7626, and S. 1454 before the Military Compensation Subcommittee of the House Committee on Armed Services, "Miscellaneous Military Personnel Management and Military Compensation Legislation," House Armed Services Committee Document No. 96-64, p. 55, 96th Congress, 2d Session (1980).

[10] Hearings on H.R. 5168, H.R. 7626, and S. 1454 before the Military Compensation Subcommittee of the House Committee on Armed Services, "Miscellaneous Military Personnel Management and Military Compensation Legislation," House Armed Services Committee Document No. 96-64, pp. 55, 78, 96th Congress, 2d Session (1980).

[11] The September 1, 1980, 10 percent increase in BAS rates effected by the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §7, 94 Stat. 1123, 1128 (1980), was followed on October 1 by an 11.7 percent across-the-board increase in basic pay, BAS, and BAQ--expressly made subject to the President's reallocation authority contained in 37 U.S.C. §1009(c)(1)--by the Department of Defense Authorization Act, 1981, Public Law 96-342, §801(b), 94 Stat. 1077, 1090-1091 (1980). (The Military Personnel and Compensation Amendments of 1980 and the 1981 Authorization Act were both enacted on September 8, 1980, with an effective date of September 1, 1980, for the increases authorized by the Personnel and Compensation Amendments and an effective date of October 1, 1980, for the increases authorized by the 1981 Authorization Act.)

In 1981, Congress again suspended the pay-adjustment mechanism incorporated in 37 U.S.C. §1009 and further legislatively increased BAS. In the Uniformed Services Pay Act of 1981, Public Law 97-60, §101(b)(2), 95 Stat. 989, 992 (1981), BAS rates were increased by 14.3 percent--with a similar increase in BAQ and a 10 to 17 percent increase in basic pay, depending on pay grade--to "restore, in current dollars, the relative relationship of military compensation to pay in the private sector that existed in 1972" when Congress adopted the "all-volunteer force" construct as the manning principle for the armed services.[12] In short, Congress felt it necessary to increase the three cash elements of RMC--namely, basic pay, BAS, and BAQ--to restore lost purchasing power and thereby improve retention and manning objectives in the armed services.[13]

Under 37 U.S.C. §402 and the BAS rates effective January 1, 1996, commissioned and warrant officers were entitled to basic allowance for subsistence at the rate of $149.67 per month. At the same time, enlisted personnel entitled to BAS received $10.67 a day when assigned to duty under emergency conditions where government messing facilities were not available, $8.06 a day when rations in kind were not available, and $7.15 a day when authorized to mess separately (commuted rations) or while on leave (leave rations).[14] [15] Having been legislatively adjusted over the years, these rates, like officer BAS rates, bore little relationship to the cost of food.

In 1996 BAS rates continued to be lower for enlisted members in pay grade E-1 with less than four months of service. Those personnel were entitled to basic allowance for subsistence in the amount of $6.59 per day when on leave or when authorized to mess separately, to $7.43 per day when rations in-kind were not available, and to $9.86 per day

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[12] See *e.g.*, House Report No. 97-109 (Committee on Armed Services), pp. 1 and 4, accompanying H.R. 3380, and Senate Report No. 97-146 (Committee on Armed Services), pp. 2 and 3, accompanying S. 1181, 97th Congress, 1st Session (1981).

[13] For a more detailed description of the reasons underlying adoption of the increase in all three cash elements of RMC in the Uniformed Services Pay Act of 1981, Public Law 97-60, 95 Stat. 989 (1981), see discussion of that Act in Chapter II.B.1., "Basic Pay," above.

[14] The corresponding rates for personnel in pay grad E-1 with less than four months of service were $9.86, $7.42, and $6.59, respectively.

[15] See Part III, “Basic Allowance for Subsistence,” of the schedule attached to Executive Order 12990 of February 29, 1996, 60 Fed. Reg. 8467 (March 5, 1996), set out as notes under 5 U.S.C.A. §5332 and 37 U.S.C.A. §1009) (see also Section 1 of Executive Order 12990, *id*., 60 *Fed. Reg*. at 8467).

when assigned to duty under emergency conditions where no messing facilities of the United States were available.

Like housing allowances, the basic allowance for subsistence was separated from the yearly adjustment mechanism of §1009 in the late 1990s. The last year in which §1009 was the fundamental guide for yearly BAS adjustments was 1997. (In most years between 1984 and 1997, Congress waived the automatic computation called for by §1009[16] and instead legislated a percentage increase.)[17] The National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85, 111 Stat. 1771) established a new formula for the Department of Defense to determine the BAS. The BAS reform came in response to strong Congressional sentiment that some members of the Armed Forces were not being adequately remunerated for their day-to-day costs of living. For example, an amendment proposed in the Senate Armed Services Committee to Senate Bill 936, (the Senate version of the National Defense Authorization Act for Fiscal Year 1998), was accompanied by this observation:

> Several studies have documented significant instances of members of the Armed Forces and their families relying on various forms of income support

[16] See Executive Order 12387, 47 FED. REG. 44981 (October 8, 1982).

[17] For 1984, the adjustment was effected by Section 901 of the Department of Defense Authorization Act, 1984, Public Law 98-94, §901, 97 Stat. 614, 634-635 (1983); for 1985, by Section 601 of the Department of Defense Authorization Act, 1985, Public Law 98-525, §601, 98 Stat. 2492, 2533 (1984); for 1986, by Section 601 of the Department of Defense Authorization Act, 1986, Public Law 99-145, §601, 99 Stat. 583, 635-636 (1985); for 1987, by Section 601 of the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §601(a) and (b), 100 Stat. 3816, 3873 (1986); for 1988, by Section 601(b) of the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §601(b), 101 Stat. 1019, 1092 (1987), as amended by Section 110(b) of the Act of December 22, 1987 (Continuing Appropriations for Fiscal Year 1988), Public Law 100-202, §110(b), 101 Stat. 1329, 1329-436 (1987); for 1989, by Section 601(b) of the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §601(b), 102 Stat. 1918, 1976 (1988); for 1990, by Section 601(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, 601(b), 103 Stat. 1352, 1444 (1989); for 1991, by Section 601(b) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §601(b), 104 Stat. 1485, 1575 (1990); for 1992, by Section 601(b) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §601(b), 105 Stat. 1290, 1372 (1991); for 1993, by Section 601(b) of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §601(b), 106 Stat. 2315, 2420 (1992); for 1994, by Section 601(b) of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §601(b), 107 Stat. 1547, 1677 (1993); for 1995, by Section 601(b) of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §601(b), 108 Stat. 2663, 2779 (1994); for 1996, by Section 601(b) of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §601(b), 110 Stat. 186, 356 (1996); and for 1997, by Section 601(b) of the National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, 110 Stat. 2538.

> under programs of the Federal Government….under the Food Stamp Act of 1977….and under section 17 of the Child Nutrition Act of 1966….

Because of this situation, the amendment called for a Department of Defense study including:

> An analysis of potential solutions for mitigating or eliminating the need for members of the Armed Forces and their families to subsist at, near, or below the poverty level, including potential solutions involving changes in the systems and rates of basic allowances for subsistence….

The new plan established by Public Law 105-85 moved enlisted members from a daily to a monthly payment schedule, ending a disparity between officer and enlisted payment calculations that had existed since enactment of the Career Compensation Act of 1949. However, the starting points for determining the BAS of enlisted and officer personnel remained different under the 1998 reform. Enlisted BAS amounts in a given year were to be based on Department of Agriculture average food cost figures in effect the previous October 1. The enlisted BAS was to be an amount halfway between the monthly cost of a "moderate-cost food plan" and the monthly cost of a "liberal food plan" for a male in the United States between ages 20 and 50, as established by the Department of Agriculture. The officer BAS was to be based on the rate in effect for officers when the new legislation went into effect, then increased yearly by the same percentage as that by which the enlisted BAS increased. However, the 1998 legislation limited this yearly increase to 1 percent for both enlisted and officer personnel. The 1998 law also made it possible for enlisted personnel on temporary assignment away from their permanent duty station to receive full BAS allotments.

The National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398, 114 Stat. 1654A-144) changed the formula for the enlisted BAS. Because officers' annual increase rates remained the same as those for enlisted personnel, this change had the same effect for both categories. Under the revised formula, beginning January 1, 2002, monthly BAS rates were to be adjusted at the beginning of every calendar year by the same percentage as that by which the Department of Agriculture estimated that the cost of a "liberal food plan" for a male age 20 to 50 had increased over the previous year. In other words, the increase would match the national inflation rate for food. By

eliminating the 1 percent stipulation, this change made possible substantially larger annual increases. The 2001 legislation also brought the BAS rates of enlisted personnel with less than four months of service equal with those of all other enlisted personnel, rectifying an inequality in the 1998 law.

Noting that more than 6,000 members still were depending on food stamps for subsistence,[18] Congress provided a BAS supplement, the Family Subsistence Supplemental Allowance (FSSA), for targeted personnel in the National Defense Authorization Act for Fiscal Year 2001. That provision was encoded in 37 U.S. Code 402(a). The supplement would raise the subsistence allowance of a member with dependents who was eligible to receive food stamps, to the point where food stamps no longer were necessary, as long as the monthly payment did not exceed $500. A member's eligibility for food stamps would be determined by the standards of the Food Stamp Act of 1977 (7 U.S.Code 201(c), taking into consideration the amount of BAH for which the member was eligible by virtue of grade, location, and dependency status. The BAH amount would be considered whether or not the member was receiving such an allowance by virtue of not living in government quarters. The supplement would be curtailed by a promotion, permanent change of station, or after payment had been made for twelve consecutive months.

The National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314, 116 Stat. 2566) provided that enlisted members assigned government quarters not containing or served by an adequate messing facility receive a BAS twice the amount called for by the standard formula. This legislation refined the language of the National Defense Authorization Act for Fiscal Year 2001, which had authorized payment of amounts higher than those called for by the legislative formula in cases where messing facilities were not available to enlisted personnel. The legislation for 2001, however, had set as a maximum the highest rate that had been available to enlisted personnel in previous years.

[18] See, for example, House Report No. 106-616 (House Armed Services Committee, p. 375, accompanying H.R. 5408, 106th Congress, 2d Session (2000).

Among its comments on the National Defense Authorization Act for FY2003, the House Armed Services Committee expressed reservations about the equity of the BAS system and suggested that another reform might be useful:

> Based on the type of deployment and service-unique policies, some service members receive their full BAS while others serving at the same duty location receive only a portion of their BAS. While the committee remains committed to resolving such inequities, this concern has prompted the committee to question the larger issue of whether BAS continues to be a useful management tool. It occurs to the committee that the services would benefit from eliminating the administrative burden and structure associated with managing BAS and integrating the value of the allowance into basic pay for all personnel.[19]

The National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, made no further reforms in the BAS.

In summary, both officer and enlisted subsistence allowances were at first intended to be a cash equivalent of the approximate raw food cost to the Government of feeding its military personnel. Such equivalency did not long survive except with respect to enlisted commuted and leave ration allowances. A 1974 change in the law abandoned even this last remaining link between Government food costs and subsistence allowances in favor of an annual increase in BAS rates under the adjustment mechanism found in 37 U.S.C. §1009. In the 1990s, Congress began to express a stronger concern that the level of BAS more nearly reflect food costs, and by 1997 the linkage with §1009 had ended. Congressional comments early in the 21st century indicated that additional revisions could be expected to follow the significant changes made in the BAS in legislation of 1998 and 2001.

**Current rates**: The National Defense Authorization Act for Fiscal Year 2001 established the monthly BAS rate for enlisted members as $233. In 2004 the formulas for enlisted and officer BAS resulted in three monthly rates: of $254.46 for enlisted members authorized to mess separately, $262.50 for enlisted members when rations-in-kind are not available, and $175.23 for officers. Enlisted members in government quarters lacking adequate messing facilities received twice the separate messing rate, or $508.92 per month.

[19] House Report No. 107-436 (House Armed Services Committee), p. 316, accompanying HR 4546, 107th Congress, 2d Session (2002).

**Cost**: For the cost of basic subsistence allowances from 1972 to 2004, see Table II-3 of *Military Compensation Statistics Tables*, volume II of this edition.

# OFFICER BAS RATES FROM 1958 TO 1996 BY PAY GRADE

| Pay Grade | Year | With Dependents | Without Dependents |
|---|---|---|---|
| **O-10** | Jun 1958 | $47.88 | $47.88 |
| | Oct 1974 | 50.52 | 50.52 |
| | Oct 1975 | 53.05 | 53.05 |
| | Oct 1976 | 55.61 | 55.61 |
| | Oct 1977 | 59.53 | 59.53 |
| | Oct 1978 | 62.80 | 62.80 |
| | Oct 1979 | 67.21 | 67.21 |
| | Oct 1980 | 82.58 | 82.58 |
| | Oct 1981 | 94.39 | 94.39 |
| | Oct 1982 | 98.17 | 98.17 |
| | Jan 1984 | 102.10 | 102.10 |
| | Jan 1985 | 106.18 | 106.18 |
| | Oct 1985 | 109.37 | 109.37 |
| | Jan 1987 | 112.65 | 112.65 |
| | Jan 1988 | 114.90 | 114.90 |
| | Jan 1989 | 119.61 | 119.61 |
| | Jan 1990 | 123.92 | 123.92 |
| | Jan 1991 | 129.00 | 129.00 |
| | Jan 1992 | 134.42 | 134.42 |
| | Jan 1993 | 139.39 | 139.39 |
| | Jan 1994 | 142.46 | 142.46 |
| | Jan 1995 | 146.16 | 146.16 |
| | Jan 1996 | 149.67 | 149.67 |

## OFFICER BAS RATES FROM 1958 TO 1996 BY PAY GRADE (CONTINUED)

| Pay Grade | Year | With Dependents | Without Dependents |
|---|---|---|---|
| **O-9** | Jun 1958 | $47.88 | $47.88 |
| | Oct 1974 | 50.52 | 50.52 |
| | Oct 1975 | 53.05 | 53.05 |
| | Oct 1976 | 55.61 | 55.61 |
| | Oct 1977 | 59.53 | 59.53 |
| | Oct 1978 | 62.80 | 62.80 |
| | Oct 1979 | 67.21 | 67.21 |
| | Oct 1980 | 82.58 | 82.58 |
| | Oct 1981 | 94.39 | 94.39 |
| | Oct 1982 | 98.17 | 98.17 |
| | Jan 1984 | 102.10 | 102.10 |
| | Jan 1985 | 106.18 | 106.18 |
| | Oct 1985 | 109.37 | 109.37 |
| | Jan 1987 | 112.65 | 112.65 |
| | Jan 1988 | 114.90 | 114.90 |
| | Jan 1989 | 119.61 | 119.61 |
| | Jan 1990 | 123.92 | 123.92 |
| | Jan 1991 | 129.00 | 129.00 |
| | Jan 1992 | 134.42 | 134.42 |
| | Jan 1993 | 139.39 | 139.39 |
| | Jan 1994 | 142.46 | 142.46 |
| | Jan 1995 | 146.16 | 146.16 |
| | Jan 1996 | 149.67 | 149.67 |

## OFFICER BAS RATES FROM 1958 TO 1996 BY PAY GRADE (CONTINUED)

| Pay Grade | Year | With Dependents | Without Dependents |
|---|---|---|---|
| **O-8** | Jul 1922 | (<26 Yrs)$54.00 | $18.00 |
| | | (26 Yrs)36.00 | |
| | Jun 1942 | 42.00 | 21.00 |
| | Oct 1949 | 42.00 | 42.00 |
| | May 1952 | 47.88 | 47.88 |
| | Jun 1958 | 47.88 | 47.88 |
| | Oct 1974 | 50.52 | 50.52 |
| | Oct 1975 | 53.05 | 53.05 |
| | Oct 1976 | 55.61 | 55.61 |
| | Oct 1977 | 59.53 | 59.53 |
| | Oct 1978 | 62.80 | 62.80 |
| | Oct 1979 | 67.21 | 67.21 |
| | Oct 1980 | 82.58 | 82.58 |
| | Oct 1981 | 94.39 | 94.39 |
| | Oct 1982 | 98.17 | 98.17 |
| | Jan 1984 | 102.10 | 102.10 |
| | Jan 1985 | 106.18 | 106.18 |
| | Oct 1985 | 109.37 | 109.37 |
| | Jan 1987 | 112.65 | 112.65 |
| | Jan 1988 | 114.90 | 114.90 |
| | Jan 1989 | 119.61 | 119.61 |
| | Jan 1990 | 123.92 | 123.92 |
| | Jan 1991 | 129.00 | 129.00 |
| | Jan 1992 | 134.42 | 134.42 |
| | Jan 1993 | 139.39 | 139.39 |
| | Jan 1994 | 142.46 | 142.46 |
| | Jan 1995 | 146.16 | 146.16 |
| | Jan 1996 | 149.67 | 149.67 |

## OFFICER BAS RATES FROM 1958 TO 1996 BY PAY GRADE (CONTINUED)

| Pay Grade | Year | With Dependents | Without Dependents |
|---|---|---|---|
| **O-7** | Jul 1922 | (<26 Yrs)$54.00 | $18.00 |
| | | (26 Yrs)36.00 | |
| | Jun 1942 | 42.00 | 21.00 |
| | Oct 1949 | 42.00 | 42.00 |
| | May 1952 | 47.88 | 47.88 |
| | Jun 1958 | 47.88 | 47.88 |
| | Oct 1974 | 50.52 | 50.52 |
| | Oct 1975 | 53.05 | 53.05 |
| | Oct 1976 | 55.61 | 55.61 |
| | Oct 1977 | 59.53 | 59.53 |
| | Oct 1978 | 62.80 | 62.80 |
| | Oct 1979 | 67.21 | 67.21 |
| | Oct 1980 | 82.58 | 82.58 |
| | Oct 1981 | 94.39 | 94.39 |
| | Oct 1982 | 98.17 | 98.17 |
| | Jan 1984 | 102.10 | 102.10 |
| | Jan 1985 | 106.18 | 106.18 |
| | Oct 1985 | 109.37 | 109.37 |
| | Jan 1987 | 112.65 | 112.65 |
| | Jan 1988 | 114.90 | 114.90 |
| | Jan 1989 | 119.61 | 119.61 |
| | Jan 1990 | 123.92 | 123.92 |
| | Jan 1991 | 129.00 | 129.00 |
| | Jan 1992 | 134.42 | 134.42 |
| | Jan 1993 | 139.39 | 139.39 |
| | Jan 1994 | 142.46 | 142.46 |
| | Jan 1995 | 146.16 | 146.16 |
| | Jan 1996 | 149.67 | 149.67 |

## OFFICER BAS RATES FROM 1958 TO 1996 BY PAY GRADE (CONTINUED)

| Pay Grade | Year | With Dependents | Without Dependents |
|---|---|---|---|
| **O-6** | Jul 1922 | (<26 Yrs)$54.00 | $18.00 |
| | | (26 Yrs)36.00 | |
| | Jun 1942 | 42.00 | 21.00 |
| | Oct 1949 | 42.00 | 42.00 |
| | May 1952 | 47.88 | 47.88 |
| | Jun 1958 | 47.88 | 47.88 |
| | Oct 1974 | 50.52 | 50.52 |
| | Oct 1975 | 53.05 | 53.05 |
| | Oct 1976 | 55.61 | 55.61 |
| | Oct 1977 | 59.53 | 59.53 |
| | Oct 1978 | 62.80 | 62.80 |
| | Oct 1979 | 67.21 | 67.21 |
| | Oct 1980 | 82.58 | 82.58 |
| | Oct 1981 | 94.39 | 94.39 |
| | Oct 1982 | 98.17 | 98.17 |
| | Jan 1984 | 102.10 | 102.10 |
| | Jan 1985 | 106.18 | 106.18 |
| | Oct 1985 | 109.37 | 109.37 |
| | Jan 1987 | 112.65 | 112.65 |
| | Jan 1988 | 114.90 | 114.90 |
| | Jan 1989 | 119.61 | 119.61 |
| | Jan 1990 | 123.92 | 123.92 |
| | Jan 1991 | 129.00 | 129.00 |
| | Jan 1992 | 134.42 | 134.42 |
| | Jan 1993 | 139.39 | 139.39 |
| | Jan 1994 | 142.46 | 142.46 |
| | Jan 1995 | 146.16 | 146.16 |
| | Jan 1996 | 149.67 | 149.67 |

## OFFICER BAS RATES FROM 1958 TO 1996 BY PAY GRADE (CONTINUED)

| Pay Grade | Year | With Dependents | Without Dependents |
|---|---|---|---|
| **O-5** | Jul 1922 | (<30 Yrs)$54.00 | $18.00 |
| | | (30 Yrs)36.00 | |
| | Jun 1942 | (<30 Yrs)63.00 | 21.00 |
| | | (30 Yrs)42.00 | |
| | Oct 1949 | 42.00 | 42.00 |
| | May 1952 | 47.88 | 47.88 |
| | Jun 1958 | 47.88 | 47.88 |
| | Oct 1974 | 50.52 | 50.52 |
| | Oct 1975 | 53.05 | 53.05 |
| | Oct 1976 | 55.61 | 55.61 |
| | Oct 1977 | 59.53 | 59.53 |
| | Oct 1978 | 62.80 | 62.80 |
| | Oct 1979 | 67.21 | 67.21 |
| | Oct 1980 | 82.58 | 82.58 |
| | Oct 1981 | 94.39 | 94.39 |
| | Oct 1982 | 98.17 | 98.17 |
| | Jan 1984 | 102.10 | 102.10 |
| | Jan 1985 | 106.18 | 106.18 |
| | Oct 1985 | 109.37 | 109.37 |
| | Jan 1987 | 112.65 | 112.65 |
| | Jan 1988 | 114.90 | 114.90 |
| | Jan 1989 | 119.61 | 119.61 |
| | Jan 1990 | 123.92 | 123.92 |
| | Jan 1991 | 129.00 | 129.00 |
| | Jan 1992 | 134.42 | 134.42 |
| | Jan 1993 | 139.39 | 139.39 |
| | Jan 1994 | 142.46 | 142.46 |
| | Jan 1995 | 146.16 | 146.16 |
| | Jan 1996 | 149.67 | 149.67 |

## OFFICER BAS RATES FROM 1958 TO 1996 BY PAY GRADE (CONTINUED)

| Pay Grade | Year | With Dependents | Without Dependents |
|---|---|---|---|
| **O-4** | Jul 1922 | (<14 Yrs)$36.00 | $18.00 |
| | | (14 Yrs)54.00 | |
| | Jun 1942 | 63.00 | 21.00 |
| | Oct 1949 | 42.00 | 42.00 |
| | May 1952 | 47.88 | 47.88 |
| | Jun 1958 | 47.88 | 47.88 |
| | Oct 1974 | 50.52 | 50.52 |
| | Oct 1975 | 53.05 | 53.05 |
| | Oct 1976 | 55.61 | 55.61 |
| | Oct 1977 | 59.53 | 59.53 |
| | Oct 1978 | 62.80 | 62.80 |
| | Oct 1979 | $67.21 | $67.21 |
| | Oct 1980 | 82.58 | 82.58 |
| | Oct 1981 | 94.39 | 94.39 |
| | Oct 1982 | 98.17 | 98.17 |
| | Jan 1984 | 102.10 | 102.10 |
| | Jan 1985 | 106.18 | 106.18 |
| | Oct 1985 | 109.37 | 109.37 |
| | Jan 1987 | 112.65 | 112.65 |
| | Jan 1988 | 114.90 | 114.90 |
| | Jan 1989 | 119.61 | 119.61 |
| | Jan 1990 | 123.92 | 123.92 |
| | Jan 1991 | 129.00 | 129.00 |
| | Jan 1992 | 134.42 | 134.42 |
| | Jan 1993 | 139.39 | 139.39 |
| | Jan 1994 | 142.46 | 142.46 |
| | Jan 1995 | 146.16 | 146.16 |
| | Jan 1996 | 149.67 | 149.67 |

## OFFICER BAS RATES FROM 1958 TO 1996 BY PAY GRADE (CONTINUED)

| Pay Grade | Year | With Dependents | Without Dependents |
|---|---|---|---|
| **O-3** | Jul 1922 | (<17 Yrs)$36.00 | $18.00 |
| | | (17 Yrs)54.00 | |
| | Jun 1942 | (<17 Yrs)42.00 | 21.00 |
| | | (17 Yrs)63.00 | |
| | Oct 1949 | 42.00 | 42.00 |
| | May 1952 | 47.88 | 47.88 |
| | Jun 1958 | 47.88 | 47.88 |
| | Oct 1974 | 50.52 | 50.52 |
| | Oct 1975 | 53.05 | 53.05 |
| | Oct 1976 | 55.61 | 55.61 |
| | Oct 1977 | 59.53 | 59.53 |
| | Oct 1978 | 62.80 | 62.80 |
| | Oct 1979 | 67.21 | 67.21 |
| | Oct 1980 | 82.58 | 82.58 |
| | Oct 1981 | 94.39 | 94.39 |
| | Oct 1982 | 98.17 | 98.17 |
| | Jan 1984 | 102.10 | 102.10 |
| | Jan 1985 | 106.18 | 106.18 |
| | Oct 1985 | 109.37 | 109.37 |
| | Jan 1987 | 112.65 | 112.65 |
| | Jan 1988 | 114.90 | 114.90 |
| | Jan 1989 | 119.61 | 119.61 |
| | Jan 1990 | 123.92 | 123.92 |
| | Jan 1991 | 129.00 | 129.00 |
| | Jan 1992 | 134.42 | 134.42 |
| | Jan 1993 | 139.39 | 139.39 |
| | Jan 1994 | 142.46 | 142.46 |
| | Jan 1995 | 146.16 | 146.16 |
| | Jan 1996 | 149.67 | 149.67 |

## OFFICER BAS RATES FROM 1958 TO 1996 BY PAY GRADE (CONTINUED)

| Pay Grade | Year | With Dependents | Without Dependents |
|---|---|---|---|
| **O-2** | Jul 1922 | (<3 Yrs)$18.00 | $18.00 |
| | | (3 Yrs)36.00 | |
| | Jun 1942 | 42.00 | 21.00 |
| | Oct 1949 | 42.00 | 42.00 |
| | May 1952 | 47.88 | 47.88 |
| | Jun 1958 | 47.88 | 47.88 |
| | Oct 1974 | 50.52 | 50.52 |
| | Oct 1975 | 53.05 | 53.05 |
| | Oct 1976 | 55.61 | 55.61 |
| | Oct 1977 | 59.53 | 59.53 |
| | Oct 1978 | 62.80 | 62.80 |
| | Oct 1979 | 67.21 | 67.21 |
| | Oct 1980 | 82.58 | 82.58 |
| | Oct 1981 | 94.39 | 94.39 |
| | Oct 1982 | 98.17 | 98.17 |
| | Jan 1984 | 102.10 | 102.10 |
| | Jan 1985 | 106.18 | 106.18 |
| | Oct 1985 | 109.37 | 109.37 |
| | Jan 1987 | 112.65 | 112.65 |
| | Jan 1988 | 114.90 | 114.90 |
| | Jan 1989 | 119.61 | 119.61 |
| | Jan 1990 | 123.92 | 123.92 |
| | Jan 1991 | 129.00 | 129.00 |
| | Jan 1992 | 134.42 | 134.42 |
| | Jan 1993 | 139.39 | 139.39 |
| | Jan 1994 | 142.46 | 142.46 |
| | Jan 1995 | 146.16 | 146.16 |
| | Jan 1996 | 149.67 | 149.67 |

## OFFICER BAS RATES FROM 1958 TO 1996 BY PAY GRADE (CONTINUED)

| Pay Grade | Year | With Dependents | Without Dependents |
|---|---|---|---|
| **O-1** | Jul 1922 | (<5 Yrs)$18.00 | $18.00 |
| | | (5 Yrs)36.00 | |
| | Jun 1942 | 42.00 | 21.00 |
| | Oct 1949 | 42.00 | 42.00 |
| | May 1952 | 47.88 | 47.88 |
| | Jun 1958 | 47.88 | 47.88 |
| | Oct 1974 | 50.52 | 50.52 |
| | Oct 1975 | 53.05 | 53.05 |
| | Oct 1976 | 55.61 | 55.61 |
| | Oct 1977 | 59.53 | 59.53 |
| | Oct 1978 | 62.80 | 62.80 |
| | Oct 1979 | 67.21 | 67.21 |
| | Oct 1980 | 82.58 | 82.58 |
| | Oct 1981 | 94.39 | 94.39 |
| | Oct 1982 | 98.17 | 98.17 |
| | Jan 1984 | 102.10 | 102.10 |
| | Jan 1985 | 106.18 | 106.18 |
| | Oct 1985 | 109.37 | 109.37 |
| | Jan 1987 | 112.65 | 112.65 |
| | Jan 1988 | 114.90 | 114.90 |
| | Jan 1989 | 119.61 | 119.61 |
| | Jan 1990 | 123.92 | 123.92 |
| | Jan 1991 | 129.00 | 129.00 |
| | Jan 1992 | 134.42 | 134.42 |
| | Jan 1993 | 139.39 | 139.39 |
| | Jan 1994 | 142.46 | 142.46 |
| | Jan 1995 | 146.16 | 146.16 |
| | Jan 1996 | 149.67 | 149.67 |

Note: Beginning in 1949, BAS rates for warrant officers were the same as those for officers.

# DAILY COMMUTED RATION RATES FOR ENLISTED PERSONNEL FROM 1951 TO 1996

| Authority | Directive Date | Effective Date | CONUS Rate | Overseas Rate |
|---|---|---|---|---|
| **DOD Directive** | 8 Nov 1951 | 1 Nov 1951 | $1.20 | $1.20 |
| 1338.3 | 30 Jun 1953 | 1 Jul 1953 | 1.10 | 1.10 |
| | 27 Aug 1955 | 1 Sep 1955 | 1.05 | 1.05 |
| | 25 Jul 1956 | 1 Sep 1956 | 1.00 | 1.00 |
| | 12 Dec 1957 | 1 Jan 1958 | 1.10 | 1.10 |
| | 17 Dec 1958 | 1 Jan 1959 | 1.15 | 1.15 |
| **DOD Directive** | 30 Sep 1959 | 1 Jan 1960 | $1.10 | $1.10 |
| 1338.7 | 23 Dec 1961 | 1 Jan 1962 | 1.07 | 1.20 |
| | 14 Dec 1962 | 1 Jan 1963 | 1.03 | 1.15 |
| | 7 Dec 1963 | 1 Jan 1964 | 1.05 | 1.13 |
| | 15 Dec 1964 | 1 Jan 1965 | 1.09 | 1.13 |
| | 28 Dec 1965 | 1 Jan 1966 | 1.10 | 1.14 |
| | 31 Mar 1966 | 1 Apr 1966 | 1.17 | 1.17 |
| | 14 Dec 1966 | 1 Jan 1967 | 1.30 | 1.30 |
| | 14 Dec 1967 | 1 Jan 1968 | 1.32 | 1.32 |
| | 2 Dec 1969 | 1 Jan 1970 | 1.39 | 1.30 |
| | 3 Dec 1970 | 1 Jan 1971 | 1.52 | 1.52 |
| | 9 Dec 1971 | 1 Jan 1972 | 1.46 | 1.46 |
| | 4 Dec 1972 | 1 Jan 1973 | 1.65 | 1.65 |
| | 4 Jan 1974 | 1 Jan 1974 | 2.28 | 2.28 |
| **Executive Order No.** | | | | |
| 11812 | 7 Oct 1974 | 1 Oct 1974 | $2.41 | $2.41 |
| 11883 | 6 Oct 1975 | 1 Oct 1975 | 2.53 | 2.53 |
| 11941 | 1 Oct 1976 | 1 Oct 1976 | 2.65 | 2.65 |
| 12010 | 28 Sep 1977 | 1 Oct 1977 | 2.84 | 2.84 |
| 12087 | 7 Oct 1978 | 1 Oct 1978 | 3.00 | 3.00 |
| 12165 | 9 Oct 1979 | 1 Oct 1979 | 3.21 | 3.21 |
| 12248 | 16 Oct 1980 | 1 Oct 1980 | 3.94 | 3.94 |
| 12330 | 15 Oct 1981 | 1 Oct 1981 | 4.50 | 4.50 |
| 12387 | 8 Oct 1982 | 1 Oct 1982 | 4.68 | 4.68 |
| 12456 | 30 Dec 1983 | 1 Jan 1984 | 4.87 | 4.87 |

**Executive Order No.** cont.:

| | | | | |
|---|---|---|---|---|
| | | | (E-1 <4 Mo) 4.68 | |
| 12496 | 28 Dec 1984 | 1 Jan 1985 | 5.06 | 5.06 |
| | | | (E-1 <4 Mo) 4.68 | |
| 12540 | 30 Dec 1985 | 1 Oct 1985 | 5.21 | 5.21 |
| | | | (E-1 <4 Mo) 4.82 | |
| 12578 | 31 Dec 1986 | 1 Jan 1987 | 5.37 | 5.37 |
| | | | (E-1 <4 Mo) 4.96 | |
| 12622 | 31 Dec 1987 | 1 Jan 1988 | 5.48 | 5.48 |
| | | | (E-1 <4 Mo) 5.06 | |
| 12663 | 6 Jan 1989 | 1 Jan 1989 | 5.70 | 5.70 |
| | | | (E-1 <4 Mo) 5.27 | |
| 12698 | 23 Dec 1989 | 1 Jan 1990 | 5.91 | 5.91 |
| | | | (E-1 <4 Mo) 5.46 | |
| 12736 | 12 Dec 1990 | 1 Jan 1991 | 6.15 | 6.15 |
| | | | (E-1 <4 Mo) 5.68 | |
| 12786 | 26 Dec 1991 | 1 Jan 1992 | 6.41 | 6.41 |
| | | | (E-1 <4 Mo) 5.92 | |
| 12826 | 30 Dec 1992 | 1 Jan 1993 | 6.65 | 6.65 |
| | | | (E-1 <4 Mo) 6.14 | |

**Executive Order No.** cont.:

| | | | | |
|---|---|---|---|---|
| 12886 | 23 Dec 1993 | 1 Jan 1994 | 6.80 | 6.80 |
| | | | (E-1 <4 Mo) 6.28 | |
| 12944 | 28 Dec 1994 | 1 Jan 1995 | 6.98 | 6.98 |
| | | | (E-1 <4 Mo) 6.44 | |
| 12990 | 29 Feb 1996 | 1 Jan 1996 | 7.15 | 7.15 |
| | | | (E-1 <4 Mo) 6.59 | |

## Chapter II.B.4

### Federal Income Tax Advantage

**Legal Basis**: *Jones v. United States*, 60 Ct.Cl. 552 (1925); Section 134 of the Internal Revenue Code of 1986, 26 U.S.C. §134; 37 U.S.C. §101(25).

**Purpose**: The federal income tax advantage attributed to members of the Armed Forces derives from the non-taxable status of the basic allowance for subsistence (BAS) and basic and overseas housing allowances (BAH and OHA, respectively), and Congress's determination that those allowances be treated as part of regular military compensation, along with basic pay. The origin of the tax advantage attributed to military personnel can be traced to a 1925 decision of the United States Court of Claims that held that neither the provision of certain items in kind to Armed Forces personnel, nor the payment of an allowance in commutation thereof, was subject to federal income taxation under a remote precursor of the present-day Internal Revenue Code.[1] With the subsequent extension of the rationale underlying this decision both to other items provided in kind and to allowances paid in lieu thereof, the tax advantage is appropriately seen as a more or less incidental by-product of the way Congress has chosen to pay military personnel– namely, the pay plus non-taxable allowances system of military compensation.

**Background**: The first federal income tax law, adopted as the Act of August 5, 1861, ch. 45, §§49-58, 12 Stat. 292, 309-313 (1861), was enacted to help finance the Civil War. Until then, customs receipts and, to a lesser extent, funds from the sale of public lands had provided by far the greatest portion of Federal Government revenues. With the advent of the war, however, more revenue was needed than could be provided from then standard sources, and the Federal Government adopted an income tax to meet its revenue needs. Tax rates under the Act were graduated by source of income and residence of the taxpayer – three percent of income over $800 for United States residents

[1] *The Internal Revenue Code of 1986*, classified to Title 26, United States Code.

and five percent for citizens living abroad, subject to a limit of one and one-half percent on income from government securities.[2]

The Act of July 1, 1862, ch. 119, §§86-93, 12 Stat. 432, 472-475 (1862), extended the income tax provisions adopted in the Act of August 5, 1861, ch. 45, *id*., and effectively increased the tax income of the United States by making a "duty of three per centum" payable on incomes exceeding $600.[3] Section 86 of the 1862 Act, ch. 119, §86, *id*., 12 Stat. at 472, specifically provided that the "duty" should be "levied, collected, and paid on all salaries of officers, or payments to persons in the civil, military, naval, or other employment of the United States." Thus, although the Act of August 5, 1861, ch. 45, *id*., had been interpreted to apply to members of the military and naval establishments of the United States, the Act of July 1, 1862, ch. 119, *id*., became the first Congressional enactment to specifically provide for taxation of members of the military and naval establishments of the United States. The Civil War income tax measures were, despite several intervening amendments and extensions, allowed to expire in 1872.

From 1873 until 1913, customs receipts were the primary source of federal revenue, though excise taxes on liquor and tobacco became increasingly important. The Act of August 27, 1894, ch. 349, §§27-31, 28 Stat. 509, 553-556 (1894), did, however, impose another--albeit short-lived--individual income tax. This tax resulted more from the "Populist" political movement than from pressing financial need and was primarily a sectional victory of the South and Middle West over the Northeast. In *Pollock v. Farmers' Loan and Trust Company*, 157 U.S. 429 (1895), the Supreme Court held that, to the extent the Act taxed income from real estate, it was unconstitutional. The Court divided equally (one justice not sitting) on the broader issue of the validity of income taxes in general. On rehearing, *Pollock v. Farmers' Loan and Trust Company*, 158 U.S.

[2] The Confederacy also had an income tax, which carried higher rates but produced a lower yield than that of the Union.

[3] The Act of August 5, 1861, ch. 45, §49, 12 Stat. 292, 309 (1861), spoke in terms of a "tax" on incomes exceeding $800 per year, whereas the Act of July 1, 1862, ch. 119, §§86 and 90, 12 Stat. 432, 472-473 (1862), spoke in terms of a "duty" on incomes exceeding $600 per year. The purpose of the distinction in terminology--"tax" as opposed to "duty"--was nowhere made clear.

601 (1895), the Court decided, on a five to four division,[4] that none of the income taxes of the 1894 law met the test of constitutionality.

After the *Pollock* decisions, *supra*, income tax advocates successfully pressed for a Constitutional amendment as a means of reviving an income tax. The 16th Amendment, which gives Congress the "power to lay and collect taxes on incomes, from whatever source derived," became effective on February 25, 1913, having been ratified by three-fourths of the States.[5] Shortly thereafter, the Act of October 3, 1913, ch. 16 [Public Law 16, 63d Congress], Sec. II, 38 Stat. 114, 166-181 (1913), levied another individual income tax.[6] Income taxes have been on the national stage ever since.

From their secondary revenue role of the early years, income taxes have evolved into an engine of national taxation that directly affects nearly everyone who earns money from labor or capital and indirectly affects the rest of the populace. Through the process of amendment and reenactment, the relatively simple tax law of 1913 has evolved into the extraordinarily complex and lengthy tax law--the Internal Revenue Code of 1986[7]--of today. Having grown from 15 pages in 1913, the Code currently takes up more than 1,000 pages of Title 26, United States Code, together with several thousand additional pages of regulations. The early tax, with its primitive rate graduation, has been refined into a "progressive" tax, with the now familiar tax "brackets."

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[4] The "swing" vote did not come from the justice who had not participated in the first action. One of the justices who had originally upheld the constitutionality of the income tax reversed himself.

[5] Ratification of the Sixteenth Amendment was completed by the thirty-sixth of the forty-eight States then belonging to the United States on February 3, 1913--thereby meeting the requirement of Article V of the Constitution, U.S. CONST. art. V, that three-quarters of the States ratify an amendment before it become effective--but the Secretary of State did not issue a proclamation declaring ratification until February 25, 1913.

[6] The income tax provision was a rider to a tariff bill, which President Wilson allowed to become law without his signature.

[7]The Internal Revenue Code of 1954 as "heretofore, hereby, or hereafter amended" was redesignated as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, Public Law 99-514, §2(a), 100 Stat. 2085, 2095 (1986).

When income tax rates began to soar during World War II, the old method of waiting until March 15th of each year to collect the tax was shelved by the Current Tax Payment Act of 1943, ch. 120 [Public Law 68, 78th Congress], §2(a), 57 Stat. 126, 126-139 (1943).[8] This law, which established a collection system that is still in effect, put wage and salary earners on a current withholding basis of tax collections.[9] The withholding system is buttressed by a requirement that certain taxpayers estimate their tax for the current year and pay in quarterly installments any estimated tax not covered by withholding.

As previously indicated, the Act of July 1, 1862, ch. 119, §86, 12 Stat. 432, 472 (1862), specifically provided for a "duty of three per centum" to be "levied, collected, and paid on all salaries of officers, or payments [the sum of which exceeded $600 per year] to persons in the civil, military, naval, or other employment of the United States," and this language was employed in the succession of Civil War tax acts that were in effect before 1872. The Act of August 27, 1894, ch. 349, §27, 28 Stat. 509, 553 (1894), similarly provided that an income tax was to be "levied, collected, and paid on all salaries of officers, or payments to persons in the civil, military, naval, or other employment of the United States." Under the express language of these enactments, the question of the tax treatment of military pay and allowances was resolved in favor of taxing all "payments" received by military and naval officers, including payments, if any, received in commutation of quarters, subsistence, and the like.[10] Construing the language of the Act

[8] The filing date for individual taxpayers was extended to April 15th by the Internal Revenue Code of 1954, and this situation still obtains under the Internal Revenue Code of 1986.

[9] There was no individual income tax withholding from 1916 to 1943. Tax laws before 1916 did require withholding-at-source; however, unlike the modern system with periodic withholding based on an assumed constant level of income throughout the year, withholding under the old laws occurred only when an individual had income in excess of the exempt amount specified in the tax law.

[10] In this connection, however, it should be recalled that the Army and Navy Appropriation Acts for 1871 (Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, §24, 16 Stat. 315, 320 (1870) and Act of July 15, 1870 (Navy Appropriation Act of 1871), ch. 295, §§3-4, 16 Stat. 321, 330-333 (1870)) prescribed annual "pay" rates for officers of the Army and Navy, respectively, which rates, in the case of Army officers, were provided to be "in full of all commutation of quarters, fuel, forage, servants' wages and clothing, longevity rations, and all allowances of every name and nature whatsoever," Army Appropriation Act of 1871, *id*., §24, 16 Stat. at 320, and, in the case of Navy officers, were provided to be their "full and entire compensation" with "no additional allowance" being permitted "on any account whatever," Navy

of August 27, 1894, ch. 349, id., and applicable Treasury Regulations thereunder in the context of mileage and quarters commutations paid to Army officers, an 1895 opinion of the Attorney General dealt with the question as follows:

> ... [P]aymasters and disbursing officers shall deduct the 2 per cent [income tax imposed by the Act of August 27, 1894, ch. 349, *id*.] "from *all salaries and payments of every kind* made in money to officers or other persons in the civil, military, naval, and any other employment in the service of the United States upon the excess of said salaries over the rate of $4,000 per annum."
>
> . . .
>
> ... [C]ommutation moneys received by an officer are to be added to other income (including a salary of $4,000 or less) in order to ascertain the total income, the excess of which over $4,000 is subject to a tax of 2 per cent.[11]

This opinion was effectively mooted when the Supreme Court declared the Act of August 27, 1894, ch. 349, *id*., unconstitutional in *Pollock v. Farmers' Loan and Trust Company*, 158 U.S. 601 (1895), *supra*.

With adoption of the Sixteenth Amendment to the Constitution, U.S. CONST. amend. XVI, which expressly sanctioned federal income taxation, and the subsequent enactment of an income tax in the Act of October 3, 1913, ch. 16 [Public Law 16, 63d Congress], Sec. II, 38 Stat. 114, 166-181 (1913),[12] and various later revenue enactments, the question again arose as to the proper tax treatment of quarters, subsistence, and other commutations. The Treasury Department took the position that the Treasury Regulations adopted under the Act of August 27, 1894, ch. 349, *id*., effectively governed the question, and that the rental value of quarters, the value of subsistence provided in kind, and monetary commutations thereof should be included in the income on which income taxes were to be paid.

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Appropriation Act of 1871, *id*., §4, 16 Stat. at 332. See text accompanying footnotes 3 and 4 to Chapter II.B.1., "Basic Pay," above.

[11]21 *Op.Att'y Gen*. 112, 113-114 (1895).

[12] See footnotes 5 and 6 and accompanying text to this chapter, above.

In 1925 the United States Court of Claims had occasion to address the question and reached a decision contrary to that taken by the Treasury Department. In a case involving an Army major named Clifford Jones, the Court of Claims pointed out that the controlling language of the Revenue Act of 1921, ch. 136 [Public Law 98, 67th Congress], §213(a), 42 Stat. 227, 237-238 (1921), which governed Major Jones's case, differed significantly from that of the Act of August 27, 1894, ch. 349, id., on which the Treasury Regulations[13] were based. Under the Revenue Act of 1921, ch. 136, §213(a), *id*., the term "gross income" was defined to include

> ... gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of ... all other officers and employees, whether elected or appointed, of the United States ... the compensation received as such) of whatever kind and in whatever form paid....

In Major Jones's case, the direct issue under review was whether an officer was required to include as income subject to taxation the fair rental value of government quarters furnished him in kind during part of a tax year and/or the cash rental allowances he received for the part of the year he did not occupy public quarters. The Court held that, within the meaning of the income tax law, neither the provision of government quarters nor the commutation thereof was an allowance of a "compensatory" character, with the result that neither was "gross income" subject to taxation. *Jones v. United States*, 60 Ct.Cl. 552 (1925).

In reaching this decision, the Court of Claims drew a fundamental distinction between "pay" and "allowances" in the military compensation system created by Congress.[14] The Court held that, while "pay" was income of a "compensatory" character, "allowances" were not. Analogizing quarters and quarters allowances provided to

[13] Quoted in the text accompanying footnote 11 to this chapter, above.

[14] When Title 37, United States Code, “Pay and Allowances of the Uniformed Services,” was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), Congress arguably followed the Court of Claims decision in the Jones case in adopting the following definition of "pay," which is presently codified at 37 U.S.C. §101(21):

The term "pay" includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.

members of the armed services to reimbursements of various expenses authorized for members of the executive and legislative branches of the Government, the Court stated:

> ... Clearly such allowances [paid to members of the executive and legislative branches] are for purposes of reimbursement.... It is not even suggested that allowances of this character are compensation. In what respect, then, is the allowance of public quarters or commutation of quarters to an Army officer different in character from one [an allowance] intended as a reimbursement? We are quite firmly convinced that not only are they not allowances of a compensatory character, but they are not income as well. It is common knowledge that the President of the United States receives as compensation $75,000 per annum. The compensation of Federal judges is their fixed annual salary. Generally, and almost without exception, including the Army and Navy, the Federal statutes fix a certain specified pay for each employee or officer of the Government, known as his compensation. This is a fixed and definite sum annually appropriated for and to which the occupant of the office is by law fully entitled so long as he remains in office, and entitled to whether sick or well, unless separated from the office, and it is this sum, this annual salary, to which Congress and all others refer when they speak of the officer's compensation, and manifestly, unless there is some qualification of the term, some legislative expression that Congress intended to reach out and tax what has continuously and notoriously been regarded as an allowance, distinct from compensation, the just inference is an intent to limit the gross income of the officers mentioned to their pay proper, their fixed compensation. We have said we do not believe the allowance of quarters or commutation thereof to an officer of the Army is income.

*Jones v. United States, id., 60 Ct.Cl. at 567-568.*

In view of this distinction, the *Jones* case, although it specifically dealt only with quarters allowances, served as a precedent for the exemption of other military allowances from taxation. In particular, at least in part in reliance on the *Jones* case, the Treasury Department subsequently adopted regulations under Section 61 of the Internal Revenue Code of 1954, 26 U.S.C. §61 (1982), that specifically excluded both basic allowance for quarters and basic allowance for subsistence from inclusion within an individual's "gross income," with the ultimate result that federal income tax was not imposed upon either allowance, whether received as a cash payment or as an in-kind benefit.[15] Later still,

[15]Section 61 of the Internal Revenue Code of 1954 and 1986, I.R.C. §61, 26 U.S.C. §61, deals with the definition of "gross income," and the Tax Regulations in issue--adopted under authority of the Internal Revenue Code of 1954--excluded basic allowance for quarters and basic allowance for subsistence, among other things, from the definition of "gross income," with the obvious result that they were tax-exempt. See, *e.g.*, Section 1.61-2(b) of the *Federal Income Tax Regulations*, 26 C.F.R. §1.61-2(b), as in effect under the

Congress, in the Tax Reform Act of 1986, Public Law 99-514, §1168(a), 100 Stat. 2085, 2512 (1986), specifically excluded "any qualified military benefit"--including basic allowance for quarters and basic allowance for subsistence, among other military benefits--from inclusion within "gross income."[16] [17] [18]

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Internal Revenue Code of 1954 prior to the redesignation of the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, Public Law 99-514, §2(a), 100 Stat. 2085, 2095 (1986).

[16] In Section 1168(a) of the Tax Reform Act of 1986, Public Law 99-514, §1168(a), 100 Stat. 2085, 2512 (1986), Congress added a new provision to the *Internal Revenue Code*--classified to Section 134 of the *Internal Revenue Code of 1986*, I.R.C. §134, 26 U.S.C. §134--that specifically excluded "any qualified military benefit" from inclusion in "gross income." The term, "qualified military benefit," was in turn defined as:

> ... any allowance or in-kind benefit which--
>
> (A) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of the uniformed services, and
>
> (B) was excludable from gross income on September 8, 1986, under any provision of law or regulation thereunder which was in effect on such date....

As clarified by the relevant Congressional report--which, because of its overall importance to the general topic of military compensation, is quoted *in extenso* immediately hereafter--basic allowance for quarters and basic allowance for subsistence were included within the class of "qualified military benefit[s]":

> The conferees believe that rules for the tax treatment of military benefits should be consolidated and set forth in one statutory provision. This will better enable taxpayers and the IRS [Internal Revenue Service] to understand and administer the tax rules. Also, consolidation of these rules will make clear the intent of the conferees that, consistent with the treatment of benefits generally in the Tax Reform Act of 1984, any benefits for military personnel that are not expressly excluded under the new provision or under other statutory provisions of the Code (*e.g.*, sec. 132) are includible in gross income. The provision does not alter the definition of wages for withholding tax purposes.
>
> The conference agreement excludes from income benefits which were authorized by law on September 9, 1986, and which were excludable from income on such date. Benefits are excludable only to the extent of the amount authorized and excludable on September 9, 1986, except that adjustments may be made pursuant to a provision of law or regulation in effect on September 9, 1986, if the adjustments are determined by reference to fluctuations in cost, price, currency or other similar index.
>
> The conferees understand that the allowances which were authorized on September 9, 1986, and excludable from gross income on such date are limited to the following: veteran's benefits authorized under 28 U.S.C. [*sic*] sec. 3101; medical benefits authorized under 50 U.S.C. sec. 2005 or 10 U.S.C. secs. 1071-1083; combat zone compensation and combat related benefits authorized under 37 U.S.C. sec. 310; disability benefits authorized under 10 U.S.C. chapter 61; professional education authorized under 10 U.S.C. secs. 203, 205, or 141; moving and storage authorized under 37 U.S.C. secs. 404-412; group term life insurance authorized under 38 U.S.C. secs. 404-412 [should read 38 U.S.C. secs. 765-779?]; premiums for survivor and retirement protection plans authorized under 10 U.S.C. secs. 1445-1447; mustering out payments authorized under 10 U.S.C. sec.771a(b)(3); subsistence allowances authorized under 37 U.S.C.

secs. 209, 402; uniform allowances authorized under 37 U.S.C. secs. 415-418; housing allowances authorized under 37 U.S.C. secs. 403, 403a, or 405; overseas cost-of-living allowances authorized under 37 U.S.C. sec. 405; evacuation allowances authorized under 37 U.S.C. sec. 405a; family separation allowances authorized under 37 U.S.C. sec. 427; death gratuities authorized under 10 U.S.C. secs. 1475-1480; interment allowances authorized under 10 U.S.C. secs.1481-1482; travel for consecutive overseas tours authorized under 37 U.S.C. sec. 411; emergency assistance authorized under 10 U.S.C. sec. 133 and 37 U.S.C. chapter 1; family counseling services authorized under 10 U.S.C. sec. 133; defense counsel authorized under 10 U.S.C. secs. 133, 801-940, or 1181-1187; burial and death services authorized under 10 U.S.C. secs. 1481-1482; educational assistance authorized under 10 U.S.C. [sec.] 141 and 37 U.S.C. secs. 203, 209; dependent education authorized under 20 U.S.C. sec. 921 and 10 U.S.C. sec. 7204; dental care for military dependents authorized under 10 U.S.C. secs. 1074 or 1078; temporary lodging in conjunction with certain orders authorized under 37 U.S.C. sec. 404a; travel to a designated place in conjunction with reassignment in a dependent-restricted status authorized under 37 U.S.C. sec. 406; travel in lieu of moving dependents during ship overhaul or inactivation authorized under 37 U.S.C. sec. 406b; annual round trip for dependent students authorized under 37 U.S.C. sec. 430; travel for consecutive overseas tours (dependents) authorized under 37 U.S.C. sec. 411b; and travel of dependents to a burial site authorized under 37 U.S.C. sec. 411f.

The conferees intend this list to be an exhaustive list of the allowances excludable under the new provision. The list is not intended, however, to limit benefits which are excludable under another section of the Code. Further, the conferees understand that there may be benefits which may have been unintentionally omitted from the list. Accordingly, the Secretary of the Treasury is authorized to expand the list if the Secretary finds that a benefit should have been included, i.e., that the benefit is a cash or reimbursement benefit which was authorized on September 9, 1986, and excludable from income on such date. Except as provided in the preceding sentence, the Secretary of the Treasury may not, by regulation or otherwise, expand the definition of excludable military benefits.

House Report No. 99-841 (Committee of Conference), Vol. II, pp. II-548 and II-549, accompanying H.R. 3838, 99th Congress, 2d Session (1986) (emphasis added).

[17] The Tax Reform Act of 1986, Public Law 99-514, §144, 100 Stat. 2085, 2121 (1986), also dealt with another tax issue affecting the basic allowance for quarters. In 1983, the Internal Revenue Service ruled that a minister could not deduct mortgage interest and property taxes on an owned home if the minister received a parsonage allowance that was excludable from gross income under Section 107 of the *Internal Revenue Code. Rev. Rul*. 83-3, 1983-1 C.B. 72. The ruling was based on former Section 265(1) of the Internal Revenue Code of 1954, now Section 265(a)(1) of the *Internal Revenue Code of 1986*, I.R.C. §265(a)(1), 26 U.S.C. §265(a)(1), which disallows deductions for expenses allocable to tax-exempt income. Based on that provision, the IRS took the position that a minister who bought rather than rented a home while receiving a tax-exempt parsonage rental allowances was precluded from deducting at least some portion of home ownership expenses--including home mortgage interest and property taxes--on the grounds that such home ownership expenses were properly allocable to a tax-exempt parsonage allowance. In 1984, the Internal Revenue Service proposed extending the effect of the ruling regarding parsonage allowances to military personnel receiving quarters allowances who also sought to deduct mortgage interest and property taxes on their owner-occupied homes. Congress, in the Tax Reform Act of 1986, Public Law 99-514, §§144 and 151(e), 100 Stat. 2085, 2121 (1986), retroactively amended the Internal Revenue Code specifically to provide that ministers receiving excludable parsonage allowances and uniformed services personnel receiving excludable quarters allowances are not precluded from deducting mortgage interest and property taxes on their residences. Internal Revenue Code of 1986, I.R.C. §265(a)(6), 26 U.S.C. §265(a)(6). In discussing the provision in question, Congress specifically characterized "military housing allowances" as "excludable" from income for federal income tax purposes, House Report No. 99-841 (Committee of Conference), Vol. II, p. II-23, accompanying H.R. 3838, 99th Congress, 2d Session (1986), although as indicated in footnote 16 and its accompanying text, supra, basic allowance for quarters was, among other allowances and benefits, including basic allowance for subsistence, specifically excluded from gross income by the same act.

Whatever the basis for the exclusion of the basic allowances for quarters and subsistence from inclusion within "gross income," it is this exclusion that intellectually underlies the creation of the so-called "Federal income tax advantage" and its attribution, as an element of military compensation, to individual members of the uniformed services. Conceptually, an individual service member's "tax advantage" is the added amount of taxable income the member would have to receive in cash if his quarters and subsistence allowances were suddenly to become subject to federal income taxation in order for him to be as well off in after-federal-tax income as he currently is under the existing system of taxable pay and non-taxable allowances.[19]

Until 1948, the tax advantage, as thus understood, was of relatively minor significance to any individual member of the uniformed services. Before World War II, tax rates and the level of military pay and allowances were such that most military personnel would have had to pay little or no income tax even if their quarters and subsistence allowances had been included within the category of taxable income. From 1941 through 1947, even though tax rates rose and military pay and allowances increased, the financial advantage flowing from the tax-exempt status of quarters and subsistence allowances was effectively negated for enlisted personnel and substantially diminished for officers by "emergency" tax-relief legislation that excluded from income subject to taxation the entire annual military compensation of enlisted members and $1,500 of the annual compensation of officers.

Although the federal income tax advantage had existed in fact since 1925, had become significant in 1948, and had become increasingly more important with each

[18] Since the cost-of-living allowance for the continental United States (CONUS COLA) authorized by the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §602(a)(1), 108 Stat. 2663, 2779-2781 (1994), and codified at 37 U.S.C. §403b, was adopted well after enactment of Section 134 of the Internal Revenue Code, CONUS COLA should not gain treatment as a "qualified military benefit," with the result that, unlike most other allowances, it should be fully taxable. See footnote 16 hereof, above.

[19] This understanding of "tax advantage" does not take into account the additional amount of taxable income a member would have to receive to leave him as well off in terms of after-tax income if, in addition to having to pay federal income tax on the additional amount of such income, the member also had to pay Social Security tax, *i.e.*, Old-Age, Survivors, and Disability Insurance (OASDI) and Health Insurance (HI) taxes, and state income tax on that additional income.

succeeding increase in basic pay,[20] allowances,[21] or tax rates,[22] it was first given formal Congressional recognition in connection with the Act of August 21, 1965 (Uniformed Services Pay Act of 1965), Public Law 89-132, 79 Stat. 545 (1965). The House Armed Services Committee in its report on the pay increase effected by that Act stated:

> After determination was made of the level of pay (including allowances) considered appropriate for each military grade, account was taken of ... the amount of the Federal income tax advantage (using 1965 tax rates) on the basic allowances for quarters and subsistence. The importance of this step is that it would set out "in the record" the actual amounts by which military pay scales are lowered because of ... the tax-free status of the basic allowances for quarters and subsistence.[23]

Documentation of the Federal income tax advantage in the legislative history of the 1965 pay bill was followed by its formal incorporation into law. The Act of December 16, 1967, Public Law 90-207, §1, 81 Stat. 649, 649-650 (1967), provided that

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[20] For historical data on basic pay rates by pay grade and longevity step dating to as early as 1922, see the schedules of basic pay accompanying Chapter II.B.1 hereof, "Basic Pay", above.

[21] For historical data on basic allowance for quarters and basic allowance for subsistence rates dating to as early as 1922, see the schedules of basic allowance for quarters and basic allowance for subsistence rates accompanying Chapters II.B.2 and II.B.3 hereof, "Housing Allowances" and "Basic Allowance for Subsistence", respectively, above.

[22] Whenever tax rates change, a member's "tax advantage" changes also. Assuming no concomitant change in rates of pay, an increase in tax rates causes an increase in the tax advantage attributed to individual members of the Armed Forces, with a resulting increase in a member's "regular military compensation," or "RMC"--and this despite the fact that, because of the tax increase, the member's after-tax income will decrease. Conversely, a decrease in tax rates causes a decrease in the tax advantage, and hence RMC--although a member's after-tax income will increase. In short, whether for good or bad, a change in tax rates affects the level of a member's "regular military compensation." With respect to the most important recent tax legislation adopted by Congress, the tax rate reductions associated with the Tax Reform Act of 1986, Public Law 99-514, §101, 100 Stat. 2085, 2096-2099 (1986), see House Report No. 99-841 (Committee of Conference), Vol. II, pp. II-1 through II-5, accompanying H.R. 3838, 99th Congress, 2d Session (1986), generally had the effect of decreasing the tax advantage attributed to individual members of the uniformed services, with a resulting decrease in their "regular military compensation." In this connection, see the table titled "Annualized Tax Advantage" at the end of this chapter, which shows a decrease in the aggregate tax advantage attributed to all members of the Armed Forces for years immediately following adoption of the Tax Reform Act in 1986-- especially 1987 and 1988, when aggregate "formal" tax advantage for members of the Armed Forces declined significantly while membership remained nearly constant. (For a discussion of "regular military compensation," or "RMC," its statutory derivation, and what it consists of, see Chapter II.B., "Regular Military Compensation/Basic Military Compensation," hereof, above.)

[23] House Report No. 549 (Committee on Armed Services), p. 24, accompanying H.R. 9075, 89th Congress, 1st Session (1965). Parenthetically, it may be noted that this statement by the House Armed Services Committee amounts to the first unequivocal Congressional recognition of--and, arguably, acquiescence in--the treatment of quarters and subsistence allowances as tax-free allowances. In this same connection, however, also see footnote 14 to this chapter, above.

whenever the General Schedule of compensation for federal classified employees--*i.e*. civil servants--was increased, a comparable increase was to be effected in the basic pay of members of the Armed Forces. The law required that the comparable increase be determined by equating "regular military compensation," or "RMC," to General Schedule salaries. RMC was, in turn, defined as basic pay plus quarters and subsistence allowances (whether provided in cash or in-kind), together with the tax advantage deriving from, and attributable to, the non-taxable status of the allowances.[24] This use of the federal tax advantage as one of the elements for determining comparable increases between civilian and military pay raises continued until 1974.

The Act of September 19, 1974, Public Law 93-419, §4, 88 Stat. 1152, 1152-1153 (1974), while retaining the principle of military pay raises linked to civil service increases, required that military raises be distributed to basic pay, BAQ, and BAS, each of which was to be increased by the same percentage as General Schedule salaries. Under the changes to the pay adjustment mechanism adopted in Public Law 93-419, therefore, the federal income tax advantage was not taken into account in calculating the amount of any given military pay increase. Despite changing the way the amount of any military pay increase was to be computed, this change in the law did not, of course, eliminate the tax advantage imputed to members of the armed services because of the non-taxable status of quarters and subsistence allowances; individual members still benefited from the tax-exempt status of these items of compensation, just as they had under the preceding adjustment mechanism, but now not only because the increase in basic pay rates resulted in military personnel being moved into higher tax brackets, but also because part of the raise went into non-taxable allowances. In addition to changing the mechanism by which the various elements of military pay were to be adjusted, Public Law 93-419, *id*., §1, 88 Stat. at 1152, added Section 101(25) to Title 37, United States Code, formally defining RMC, albeit somewhat awkwardly:

> "regular compensation" or "regular military compensation (RMC)" means the total of the following elements that a member of a uniformed service accrues

[24]For a more complete discussion of "regular military compensation," its statutory incorporation into Title 37, United States Code, and its role in structuring pay increases since 1965, see Chapter II.B., "Regular Military Compensation/Basic Military Compensation," hereof, above.

> or receives, directly or indirectly, in cash or in kind every payday: basic pay, basic allowance for quarters, basic allowance for subsistence; and Federal tax advantage accruing to the aforementioned allowances because they are not subject to Federal income tax.[25] [26]

As noted earlier, the "federal income tax advantage" is, conceptually, the additional amount of taxable income a member of the uniformed services would have to receive under given tax rates,[27] in a system in which cash and in-kind housing and subsistence allowances were fully taxable, to produce the same after-federal-income-tax regular military compensation as the member receives under the present system of military compensation in which housing and subsistence allowances are tax-exempt. As may be expected, a great many factors can influence any given member's actual tax advantage-- including, for example, his filing status (married, single, head of household, etc.), additional family income, number of dependents, and so forth as set out more fully below. In practice, the number of factors is simply too great--in addition in many instances to being too non-reflective of relevant military and personal characteristics on which Congress has determined that military pay should be premised--to be of any practical benefit in determining the aggregate tax advantage accruing to members of the Armed Forces. For that reason, certain simplifying assumptions have been employed to

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[25] This definition was amended in 1980 by Section 11 of the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §11, 94 Stat. 3359, 3368-3369 (1980), by the insertion of the parenthetical phrase "(including any variable housing allowance or station housing allowance)" after "basic allowance for quarters." As explained in the relevant Congressional report, this change in the definition of RMC was made to "insure that these [variable and station housing] allowances are included in the information on Regular Military Compensation presented to the Congress each year." Senate Report No. 96-1051 (Committee on Armed Services), p. 8, accompanying H.R. 7626, 96th Congress, 2d Session (1980). The Senate Report noted, however, that the change in the definition "will not affect the pay received by any Service member." *Id*. To the extent that variable and station housing allowances (the latter also referred to as "overseas" housing allowance), both of which are non-taxable, are included in the RMC attributed to individual service members, however, the effect of the amendment to the definition is to increase the federal income tax advantage attributed to such members, and hence their RMCs, above the level of the additional cash payments received in hand on account of such allowances, with an obvious potential effect on comparisons between military and civilian pay scales.

[26] Although subject to legal debate, it could be argued that this amendment to Section 101 of Title 37, United States Code, statutorily codified the tax-free status of quarters and subsistence allowances and that the subsequent amendment to 37 U.S.C. §101(25) made by the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §11, 94 Stat 3359, 3368-3369 (1980), as referred to in the preceding footnote, similarly codified the tax-free status of variable and station housing allowances.

[27] See footnote 22 to this chapter, above.

enable the calculation to be made at all. The resultant construct--termed the "formal" tax advantage--takes into account only a few of the factors relevant to determining an individual's "true" tax advantage. For the purposes of calculating the "formal" tax advantage accruing to differently situated members of the uniformed services, the following factors are taken into account:

1. the member's basic pay, which in turn depends on pay grade and length of service;

2. whether the member receives housing and subsistence in cash or in kind, and the value thereof, respectively;

3. the number of the member's personal tax exemptions; and

4. the members' marital status.

(The range and average of the "formal" federal income tax advantage by pay grade is set out following the "cost" discussion below.)

This "formal" tax advantage, reflecting the narrow range of tax characteristics deemed relevant for purposes of the computation, is in practice quantified using the following simplifying assumptions: basic pay is a member's sole source of taxable income; the member takes the "standard" deduction on his or her tax return, i.e., the member does not "itemize" deductions; if married, the member files a joint return and the member's spouse has no income; if unmarried, the member does not qualify as a head of household and is entitled to an income tax exemption for him- or herself only. While arguably necessary to permit the tax advantage to be quantified in the large, the assumptions abstract from reality so significantly as to vitiate the calculation for the vast majority of affected service members. Indeed, whenever any one of the assumptions is invalid for a particular individual, the "formal" tax advantage attributed to the member does not in fact measure the "true" tax advantage accruing as a result of the tax-exempt status of quarters and subsistence allowances. A member's "true" federal income tax advantage in fact depends on such factors as:

1. whether the member receives any taxable pays in addition to basic pay, such as incentive or special pay, proficiency pay, sea or foreign duty pay, reenlistment bonus, etc.;

2. whether the member has income from nonmilitary sources, no matter whether earned or unearned (interest, dividends, capital gains, net rental income, income from secondary employment, etc.);

3. the member's tax-filing status (single, married filing jointly, married filing separately, unmarried head of household);

4. whether the member's spouse (if the member has a spouse) receives income in his or her own right, no matter whether earned or unearned;

5. whether the member claims the standard deduction for federal income tax purposes or itemizes deductions and, if the latter, the amount of such itemized deductions; and

6. whether the member is entitled to a tax exclusion not related to the tax advantage, such as the combat zone exclusion.

Other things being equal, the "true" tax advantage accruing to a member of the armed services is greater than the "formal" tax advantage imputed in the standard calculation to the extent that (i) the member receives taxable pay in addition to basic pay, (ii) the member has additional earned or unearned income, such as interest, dividends, capital gains, net rental income, income from secondary employment, and the like, (iii) the member's spouse, if any, has earned or unearned income subject to federal income taxation; on the other hand, the member's "true" tax advantage is less than the "formal" tax advantage to the extent that (i) the member itemizes deductions exceeding the standard deduction otherwise allowed--including such common deductions as mortgage interest payments, state and local income and property taxes, alimony payments, etc.,[28] (ii) the member is entitled to tax exclusions of one sort or another, e.g., the combat zone tax exclusion.[29]

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[28] In the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085 (1986), Congress repealed the deductions for state and local sales taxes, id., §134, 100 Stat. at 2116, and for interest (except for mortgage interest), id., §511(b), 100 Stat. At 2246-2248. Other things being equal, the repeal of a provision allowing a deduction has the effect of increasing taxable income, *i.e.*, the "income" on which federal income tax is assessed, which in turn has the effect of increasing an individual's "true" federal income tax advantage. For reasons previously given, however--namely, the assumption that members of the uniformed services take the standard deduction--repeal of these deductions has no effect on the "formal" tax advantage imputed to individual members of the uniformed services.

[29] See Section 112 of the Internal Revenue Code, 26 U.S.C. §112, "Certain combat pay of members of the Armed Forces", included in Part III, "Items Specifically Excluded from Gross Income", of Subchapter B, "Computation of Taxable Income", of the *Internal Revenue Code.*

Because of the open-ended nature of the factors that control the determination of a member's "true" tax advantage, its range may vary widely. Only by coincidence is the "formal" tax advantage the same for any two individual members--even for members with such identical military characteristics as pay grade, years of service, hazardous-duty-incentive- or special-pay statuses, etc. Even more rarely, if ever, is the "true" tax advantage the same for such members.

Finally, it should be emphasized that, as currently defined by statute, i.e., 37 U.S.C. §101(25), the amount of "tax advantage" attributed to members of the uniformed services is based on federal income tax effects only. It does not take into account any additional Social Security tax, *i.e.*, the sum of old-age, survivors, and disability insurance (OASDI) tax and health insurance (HI) tax, on the one hand, or state and local income taxes, on the other hand, that service members would almost certainly have to pay if their "tax advantage" were monetized. If the basic allowances for housing and subsistence were suddenly to become taxable for federal income tax purposes, they would almost certainly become part of the "income" upon which Social Security taxes, *i.e.*, OASDI and HI, are imposed under IRC §3101(a) and (b), 26 U.S.C. §3101(a) and (b) (dealing, respectively, with OASDI taxes, on the one hand, and HI taxes, on the other), and state and local income taxes are imposed under the income tax laws of the various states. If this were in fact the way monetization of the "tax advantage" were treated by federal and state governments, service members would have to be given an additional amount, over and above the "tax advantage" currently attributed to them, to leave them as well off in terms of after-tax income as they currently are.

**Cost**: The Federal income tax advantage--conceptually, the added amount of income subject to Federal income tax a member of the uniformed services would have to receive to leave him with the same after-tax income he has under the present system of pay and non-taxable allowances if his present non-taxable allowances were suddenly to become taxable--is not paid to any member of the uniformed services in cash. As such, it is not a cost item in the Federal budget for the Department of Defense. Any "cost" to the Government arising out of the tax advantage attributed to members of the uniformed services is in the nature of an "opportunity cost," reflecting the loss to the Federal treasury of revenue that would be collected if military quarters and subsistence, whether

provided in cash or in kind, were subject to income taxation.[30] Because of the wide range of individual circumstances confronting members of the uniformed services that also affect the amount or "value" of the tax advantage to specific individuals, it is difficult to appraise the "true" tax advantage resulting from the non-taxable status of quarters and subsistence allowances. With the aid of various simplifying assumptions concerning the distribution of certain tax characteristics among members of the Armed Forces, and discounting certain other real-world complications, aggregate "formal" tax advantage computations can be made. The results of such computations for 1971 to 2004 are set out in Table II-4 of *Military Compensation Statistics Tables*, volume II of this edition.

[30] The amount of such "cost," or revenue loss, to the Government is less than the aggregate "formal" tax advantage attributed to members of the uniformed services. That is, if the Government were simply to make quarters and subsistence allowances taxable without providing any additional offsetting income with which to pay the taxes resulting from such action, the additional amount of tax collected would be less than that collected if additional taxable income--measured by the tax advantage—were provided in moving to a system of taxable pay plus allowances. Moreover, if the allowances for quarters and subsistence were made taxable without providing additional income with which to pay the increased taxes due and owing, members of the uniformed services would suffer a decrease in after-tax income. On the other hand, if additional income were provided so as to leave members of the uniformed services with the same after-tax income, the Government would stand neither to gain nor lose revenue as a result, and the net effect, both for the Government and members of the armed services, would be a wash. (In practice, of course, taking into account all of the complexities of the tax system and doing away with the simplifying assumptions employed in calculating the "formal" tax advantage imputed to members of the uniformed services, it is unlikely that a decision to tax the allowances in question while at the same time increasing military compensation by the amount of the aggregate "formal" tax advantage would in fact result in a revenue wash.)

## Chapter II.C.1.

### Overview of Compensation for Non-Regular Service: Reserve Components Pay

Members of the reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, including members of the Army National Guard and the Air National Guard, all receive compensation for the performance of inactive-duty training.[1] [2]

[1] The term "inactive-duty training" is defined for compensation purposes at 37 U.S.C. §101(22) to mean:

(A) duty prescribed for members of a reserve component by the Secretary concerned under section 206 of [Title 37, United States Code] or any other law; or

(B) special additional duties authorized for members of a reserve component by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and includes those duties when performed by members of a reserve component in their status as members of the National Guard, but does not include work or study in connection with a correspondence course of a uniformed service.

(A similar definition of "inactive-duty training"--although one that is not relevant to the grant or receipt of compensation for reserve service under 37 U.S.C. §206--is found at 10 U.S.C. §101(d)(7):

The term "inactive-duty training" means--

> (A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 [United States Code] or any other provision of law; and
>
> (B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.
>
> Such term includes those duties when performed by Reserves in their status as members of the National Guard.)

[2] Members of the reserve components of the armed forces who are on full-time "active duty," as that term is defined at 37 U.S.C. §101(18), are entitled to compensation that is essentially the same as that authorized for members of the regular components of the armed forces who are on full-time "active duty"--although there are some differences, see, e.g., 37 U.S.C. §302(h) concerning the entitlement of reserve officers who are officers of the Medical Corps of the Army or Navy or who are officers of the Air Force designated as medical officers and who are on active duty under a call or order to active duty for a period of less than one year. Similarly, members of the reserve components who are performing active duty for training also are entitled to compensation, although the form and nature of the compensation and compensation-related benefits to which they are entitled differs to some extent from that authorized for members of the regular components of the armed forces who are on full-time "active duty." Such entitlements include leave accrual, medical care benefits for dependents, and housing allowances. The compensation entitlements of these two groups of reserve members of the armed forces are not the types of compensation entitlements with which this Subsection C of Section II of Military Compensation Background Papers is concerned. (Exceptions to the differences in treatment outlined above were temporarily authorized with respect to certain compensation elements for reserves called to active duty in connection with Operation Desert Shield/Storm during the Persian Gulf Conflict. See, *e.g.*, Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §304(a), 105 Stat. 75, 81 (1991) (“Reserve health

Legislative authority for inactive-duty training compensation is set out at 37 U.S.C. §206(a):

> Under regulations prescribed by the Secretary concerned, and to the extent provided for by appropriations, a member of the National Guard or a member of a reserve component of a uniformed service who is not entitled to basic pay under section 204 of this title [dealing generally with the basic pay entitlements of members of the uniformed services on active duty[3]], is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay--
>
> (1) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday;
>
> (2) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe; or
>
> (3) for a regular period of instruction that the member is scheduled to perform but is unable to perform because of physical disability resulting from an injury, illness, or disease incurred or aggravated--
>
> (A) in line of duty while performing--
>
> (i) active duty; or
>
> (ii) inactive-duty training;
>
> (B) while traveling directly to or from that duty or training (unless such injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member).

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care officers entitled to special pays for medical officers of the armed forces even though not under a call or order to active duty for one year or more"). In this same connection, also see Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, *id*., §303, 105 Stat. at 81("Variable housing allowance entitlement for reserves called to active duty"); §309, 105 Stat. at 83 ("Accrued leave entitlements of members, including reserves, who die while on active duty"); §310A, 105 Stat. at 84 ("Basic allowance for quarters entitlements for certain members of reserve components without dependents called to active duty".)

[3] For the purposes of Title 37, United States Code, the term "active duty" is defined as meaning:

> . . . full-time duty in the active service of a uniformed service, and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary concerned. 37 U.S.C. §101(18).

(C) in line of duty while remaining overnight immediately before the commencement of inactive-duty training, between successive periods of inactive-duty training, at or in the vicinity of the site of inactive-duty training.

Such personnel may also be entitled to receive special and incentive pays or attraction and retention pays of one sort or another for the performance of inactive-duty training.

The entitlement of reserve forces personnel to inactive-duty training pay as authorized by 37 U.S.C. §206 is covered in Chapter II.C.2., "Compensation for Inactive-Duty Training," below. Entitlement to special and incentive pays and attraction and retention pays is covered under Subsections D and E, respectively, of this Section II of *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items--Their Purposes and Legislative Backgrounds*, below.

The principles and concepts of military compensation developed in Chapter I of *Military Compensation Background Papers* apply to the compensation of reserve forces personnel as well as to the compensation of active duty forces personnel. As a general proposition, the fundamental purpose underlying the reserve force structure is to have a pre-trained force that is capable of augmenting the active duty forces of the United States during time of war or national emergency. To meet this purpose, the reserve force compensation system must exemplify the compensation principles of effectiveness, in the sense of working equally well in time of peace as well as war, and equity. It must also support the interrelationship between the manpower requirements of the armed forces and national defense objectives.

## Chapter II.C.2.

### Compensation for Inactive-Duty Training

**Legislative Authority:** 37 U.S.C. §206.

**Purpose**: To provide a special pay as an incentive for qualified personnel to enter and remain in the reserve components of the military services of the United States, and to encourage them to maintain and improve their military skills through regular training or distributed learning activities in order to provide a pool of skilled, trained, and readily available manpower to augment active duty forces in times of national emergency.

**Background**: The origin of inactive-duty training pay[1] can be traced to the militia system of the American colonies, incorporated into Federal law in the Act of May 8, 1792 (Militia Act of 1792), ch. 33, 1 Stat. 271 (1792), "establishing an Uniform Militia throughout the United States."[2] [3] Under that act, all free, able-bodied, white male citizens

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[1] Technically, members of the reserve components participating in inactive-duty training are entitled to "compensation" under 37 U.S.C. §206(a)(1) and (2), respectively, for "each regular period of instruction, or period of appropriate duty" in which they are engaged for at least two hours or "for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. In common usage, these various duties for which members of reserve components are entitled to "compensation" under 37 U.S.C. §206 are referred to as "inactive-duty training," and the "compensation" to which such members are entitled is referred to as "inactive-duty training pay." That usage is followed here.

[2] The term "inactive-duty training" is defined for compensation purposes at 37 U.S.C. §101(22) to mean:

(A) duty prescribed for members of a reserve component by the Secretary concerned under section 206 of [Title 37, United States Code] or any other law; or

(B) special additional duties authorized for members of a reserve component by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned;

and includes those duties when performed by members of a reserve component in their status as members of the National Guard, but (except as provided in section 206(d)(2) of this title) does not include work or study in connection with a correspondence course of a uniformed service.

(A similar definition of "inactive-duty training"--although one that is not relevant to the grant or receipt of compensation for reserve service under 37 U.S.C. §206--is found at 10 U.S.C. §101(d)(7)):

The term "inactive-duty training" means--

> (A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 [United States Code] or any other provision of law; and

between the ages of 18 and 45 were effectively enrolled in the militia at their place of residence and were required to furnish their own arms, ammunition, and accoutrements, and to appear, properly armed and equipped, whenever called out to exercise or into service. A companion Act of May 2, 1792, ch. 28, §4, 1 Stat. 264 (1792), provided for militiamen "employed in the service of the United States" to receive the same pay and allowances as troops of the United States; however, it made no provision for pay for those "called out to exercise."[4] The Act also stipulated that, when mobilized for federal service, the militia could not be compelled to serve for more than three months in any one year. Act of May 2, 1792, ch. 28, *id*. This provision remained in effect until changed in July 1861 in response to the departure of some "3-months' men" immediately before, during, and shortly after the first Battle of Bull Run.[5]

The original acts gave the militia the dual mission, which it still retains, of serving as state defense forces and of augmenting the regular forces of the United States in time of emergency. The militia system was refined by the Militia Act of 1903, also known as the Dick Act, ch. 196 [Public Law 33, 57th Congress], §1, 32 Stat. 775 (1903), which two classes of militia--the organized militia, thenceforth to be known as the National Guard (a title that had been in general use for many years, though not recognized in federal law), and the reserve militia, composed of all other similar forces that were not a part of the National Guard.[6] The act began the process of federalizing the militia by authorizing

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(B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Such term includes those duties when performed by Reserves in their status as members of the National Guard.)

[3] Under federal law, the "militia of the United States"

consists of all able-bodies males at least 17 years of age and ... under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard. 10 U.S.C. §311(a).

[4] Being "called out to exercise" evidently fell short of being "employed in the service of the United States."

[5] Act of July 29, 1861, ch. 25, §3, 12 Stat. 281, 282 (1861).

[6] At present, there are two classes of militia--the "organized militia," which consists of the National Guard and the Naval Militia, and the "unorganized militia," which consists of all members of the "militia of the

federal financial assistance for the National Guard of the several states and by requiring that each state, in order to qualify for these funds, (1) organize, arm, and equip its National Guard in the same fashion as prescribed for the Regular Army, (2) maintain at least 100 active militia for each of its Senators and Representatives in Congress, (3) conduct practice marches or camps of instruction for its Guard units for five consecutive days each year, (4) assemble its Guard units at armories for drill and instruction or target practice not less than 24 times each year, and (5) insure that each of its Guard units be inspected by an officer of the Regular Army or the organized militia at least once a year.

The Militia Act of 1903 allowed the states to use their allotted federal funds for the payment, subsistence, and transportation of National Guard members who engaged in actual field or camp service, and provided that National Guardsmen who participated in encampments, maneuvers, or field instruction with the Regular Army were to receive the same pay and allowances as officers and men of the Army, to be paid from Army appropriations. It did not, however, authorize the use of federal funds for armory drill pay. In a different vein, the act limited to nine months the period for which the National Guard could be called to federal service.

The Act of May 27, 1908, an amendment to the Militia Act of 1903, ch. 204 [Public Law 145, 60th Congress], §4, 35 Stat. 399, 400 (1908), removed the nine-month limitation on federal service by the National Guard and instead permitted the President to call up the Guard for any specified period, subject to the condition that no individual guardsman could be held to service beyond the term of his existing commission or enlistment. The amendment of 1908 also provided that the National Guard could be required to serve "either within or without the territory of the United States." Subsequently, the Attorney General concluded that the service of state militia outside the United States would be unconstitutional except under very limited circumstances, such as pursuit across the border after repelling an invasion.[7] It was under this theory that the

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United States" who are not members of the "organized militia." 10 U.S.C. §311(b). (See footnote 3 to this chapter, above, for the statutory definition of "militia of the United States.")

[7] *29 Op. Atty. Gen*. 322 (1912).

national guards of the states of Arizona, New Mexico, and Texas, and later of other states, were called into federal service and deployed near the Mexican border in 1916.

The National Defense Act of 1916, ch. 134 [Public Law 85, 64th Congress], §111, 39 Stat. 166, 211 (1916), empowered the President, when authorized by Congress, to "draft into the military service of the United States ... any or all members of the National Guard." In response to the emergency created by World War I, the President was given sole "draft" authority--within the meaning of the National Defense Act of 1916, *id*.--by the Army Conscription Act of 1917, ch. 15 [Public Law 12, 65th Congress], §§1 and 2, 40 Stat. 76, 76-78 (1917). In litigation involving this latter act, it was held that the "draft" of the National Guard did not constitute a call-up of the militia and, although National Guard designations and other identifications could continue to be used, persons so drafted were technically discharged from the militia during their federal service, thus neutralizing the constitutional restrictions on the overseas use of the militia.[8]

In addition to making the draft and overseas deployment of the National Guard possible, the National Defense Act of 1916, ch. 134, *id*., also dealt with other aspects of the then-existing militia system. Among other things, the act authorized, for the first time, the use of federal funds for the payment of inactive-duty training pay, which the act called "compensation for ... services," to National Guard personnel.[9] The prescribed rates were $500 a year for officers of the grade of captain or above, $240 for first lieutenants, $200 for second lieutenants,[10] and, for enlisted personnel, 25 percent of the annual base pay of enlisted men of corresponding rank in the Army for attendance at not less than 48 drills of at least 1.5 hours in duration,[11] or a proportionate amount for attendance at less than 24 drills.[12] The amount and character of service required of officers to qualify for the pay was left to Army regulations.

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[8] See, *e.g*., Selective Draft Law Cases, 245 U.S. 366 (1918), and United States v. Silver, 243 Fed. 422 (1917).

[9] Act of June 3, 1916 (National Defense Act of 1916), ch. 134 [Public Law 85, 64th Congress], §109, 39 Stat. 166, 209 (1916).

[10] Act of June 3, 1916 (National Defense Act of 1916), ch. 134 [Public Law 85, 64th Congress], §109, 39 Stat. 166, 209 (1916).

[11] Act of June 3, 1916 (National Defense Act of 1916), ch. 134 [Public Law 85, 64th Congress], §110, 39 Stat. 166, 209-210 (1916).

[12] Act of June 3, 1916 (National Defense Act of 1916), ch. 134 [Public Law 85, 64th Congress], §92, 39 Stat. 166, 206 (1916).

The National Defense Act of 1916, ch. 134, *id*., also raised the authorized strength of the Regular Army and provided for a gradual increase in the strength of the National Guard from about 100,000 to over 400,000, to be apportioned among the states on the basis of the number of their Senators and Representatives. The act required guard units to conduct at least 48 drill periods and 15 days of field training each year. Instructors were to be provided and inspections conducted by Regular Army personnel. The guard was to be paid with federal funds, distributed among the states "in direct ratio to the number of enlisted men in active service in the National Guard." The Secretary of War was authorized to withhold funds from states whose Guard did not meet the standards of the act. It created an Army Reserve Officers' Training Corps (ROTC) in civilian educational institutions, and established an Officers' Reserve Corps in which ROTC graduates could be commissioned. It also established a Regular Army Reserve, to be composed of enlisted personnel with prior service, and an Enlisted Reserve Corps, to consist of men without prior service who were by virtue of their civilian occupations technically qualified for duty in the Quartermaster, Engineer, or Signal Corps or the Ordnance or Medical Departments.

The National Defense Act of 1916, ch. 134, *id*., further divided the militia into three classes--the National Guard, the Naval Militia, and the Unorganized Militia.[13] The Naval Militia had been created without any identifiable federal status, beginning in 1888 with the formation of a Naval Militia under the law of the Commonwealth of Massachusetts, and followed over the next few years by several other states. The Congress tacitly approved the formation of these state forces by appropriating funds for "arms and equipment connected therewith for the Naval Militia of various states" in the Naval Service Appropriation Act of 1892, ch. 494, §1, 26 Stat. 799, 801 (1891), and in succeeding appropriation acts. The Naval Militia Act of 1914, ch. 21 [Public Law 57, 63d Congress], 38 Stat. 283 (1914), gave the Naval Militia a status similar to that of the land

[13] As previously indicated, this division survives in existing law at 10 U.S.C. §311(b). (Under 10 U.S.C. §311(b)(2), the "unorganized militia" consists of all members of the "militia of the United States" who are not members of the National Guard or the Naval Militia. See footnote 5 to this chapter, above.)

militia. It authorized the President to call the Naval Militia into federal service in time of war or national emergency through the appropriate state governors.

The Act of March 3, 1915, ch. 271 [Public Law 269, 63d Congress], §1, 38 Stat. 928, 940 (1915), authorized the establishment of the United States Naval Reserve, composed of men honorably discharged from the Navy after having completed an enlistment of not less than four years or a minority enlistment. A much more elaborate Naval Reserve Force was set up in the Naval Service Appropriation Act of 1917, ch. 417 [Public Law 241, 64th Congress], 39 Stat. 556, 587-592 (1916), based on a system of inactive-duty "retainer pay" for individuals who obligated themselves to serve in the Navy in time of war and national emergency. This force consisted of six classes: (1) the Fleet Naval Reserve, to be composed of former officer and enlisted personnel of the Regular Navy; (2) the Naval Reserve, to consist of men of the seagoing profession who, after some training, could be expected to serve on combatant ships; (3) the Naval Auxiliary Reserve, to be made up of persons employed on American merchant ships suitable for use as naval auxiliaries; (4) the Naval Coast Defense Reserve, to consist of persons who might perform useful service for the Navy in the defense of the coast; (5) the Naval Reserve Flying Corps, to be drawn from former Navy flyers and other persons skilled in the design, building, or operation of aircraft; and (6) the Volunteer Naval Reserve, to be composed of persons eligible to serve in one of the other five classes who obligated themselves to serve without retainer pay.

Under the Act of August 29, 1916, ch. 417 [Public Law 241, 64th Congress], 39 Stat. 556, 587-592 (1916), members of all classes of the Naval Reserve Force except the Volunteer Naval Reserve were eligible for retainer pay without regard to any actual performance of inactive-duty or training. Enlisted personnel of the Fleet Naval Reserve with less than eight years of service were entitled to an annual retainer of $50, those with between eight and 12 years of service were entitled to $72, and those with over 12 years, to $100. Enlisted personnel transferred to the Fleet Naval Reserve after completion of at least 16 or 20 years of active naval service were entitled to retainer pay of 1/3 or 1/2, respectively, of their base and longevity pay at the time of transfer. Officers of the Fleet

Naval Reserve, all members of the Naval Reserve, enlisted personnel of the Naval Auxiliary Reserve, and members of the Naval Coast Defense Reserve and the Naval Reserve Flying Corps were entitled to an annual retainer equal to two months' base pay of the corresponding rank in the Navy. Officers of the Naval Auxiliary Reserve were entitled to one month's base pay of the corresponding rank in the Navy.

Separate and apart from the Naval Reserve Force, the Act of August 29, 1916, ch. 417, *id*., also created a force of National Naval Volunteers to be enrolled from officers and enlisted personnel of the Naval Militia. The act provided that the National Naval Volunteers could be ordered into federal service whenever a need arose and, evidently with an eye on the constitutional bar against the use of the militia outside the United States, stipulated that when in federal service they were relieved from all duty with the Naval Militia. It also authorized the payment of inactive-duty training pay--which, like that of the Naval Reserve Forces, it called "retainer pay"--to members of the National Naval Volunteers. The conditions of entitlement to and the rate of this pay were similar to the drill pay authorized two months earlier for members of the National Guard. The only difference in the two laws with respect to pay was without any practical significance: both Naval Militia and National Guard officers had to attend at least 48 drills or periods of instruction per year to qualify for inactive-duty training pay; for Naval Militia officers this was a requirement of the law while for National Guard officers it was imposed by Army regulations.

The Act of July 1, 1918, ch. 114 [Public Law 182, 65th Congress], 40 Stat. 704, 708 (1918), abolished the National Naval Volunteers and repealed all Federal laws relating to the Naval Militia, but not the Naval Reserve Force. A portion of the Naval Militia legislation was revived by the Act of June 4, 1920, ch. 228 [Public Law 243, 66th Congress], 41 Stat. 812, 817 (1920), however, so the Naval Militia remained a component of the Navy until a new reserve structure was established by the Armed Forces Reserve Act of 1952, ch. 608 [Public Law 476, 82d Congress], 66 Stat. 481 (1952). Nevertheless, after 1918, the Naval Militia in essence reverted to the status of state forces only and no longer had the same relationship to the Navy as the National Guard had to the Army.

The Act of June 4, 1920, ch. 227 [Public Law 242, 66th Congress], §3, 41 Stat. 759 (1920), reorganized the Army of the United States into the Regular Army, the National Guard while in federal service, and the Organized Reserve, which included the old Officers' Reserve Corps and the Enlisted Reserve Corps. Under this act members of the National Guard became entitled to "compensation" for inactive-duty training--here

sometimes also called "drill pay"--at the rate of one-thirtieth of the base pay of their grade for each attendance at a regular drill or assembly--a method of computation which became the standard for all inactive-duty training pay and which continues basically unchanged in existing law to this day. In the case of officers, the pay was authorized only for drills of not less than 1 1/2 hours attended and participated in by at least 50 percent of the commissioned and 60 percent of the enlisted strength; the number of paid drills could not exceed five in any month; and no more than $500 a year in drill pay could be paid to those above the grade of captain. For enlisted personnel, paid drills could not exceed eight in a month or 60 in a year, and no pay was authorized for any month in which a member attended less than 60 percent of the drills or other exercises scheduled for his organization.

Separate legislative proposals had been introduced in Congress to establish the first peacetime universal military training in the United States, to reorganize the U.S. Army, and to further federalize the National Guard. The hearings on all these bills were combined and, although a mass of testimony was taken and extensive debate occurred on the bills, practically no attention was given to the small item of the change in the method of calculating drill pay. There is, however, no evidence of any Congressional intent to equate the pay for one drill to "1 day's pay," even though such pay was established as one-thirtieth of one month's base pay. An early version of the bill had proposed drill pay of seven percent of monthly base pay for each drill, a later version had proposed one-twentieth of one month's base pay. It is not clear how or why the one-thirtieth formula was arrived at in the enactment. (In terms of multiples of a "day's pay," the rates for one drill were: (1) 1916 Law--1.9 days; (2) 1st proposal--2.1; (3) 2d proposal--1.5; (4) 1920 law--1.0.) What is clear is that it was the view of both the Army and the Congress that some change in the method of computation was needed because of dissatisfaction with the way the 1916 formula was working. As the Chief of the Army Militia Bureau testified:

> I want to say that the Militia Bureau has been endeavoring to get the law changed so as to do away with the system of payments and with some of the other things we have found have not worked. Your committee has a recommendation to that effect. We would be glad to see men who attend drill paid for their services.[14]

[14] Army Reorganization: Hearings before the House Committee on Military Affairs on H.R. 8287, H.R. 8068, H.R. 7925, and H.R. 8870, Vol. II, p. 1889, 66th Congress, 1st Session (1919) (testimony of the chief of the Militia Bureau of the Army).

Congress agreed:

> Sections 109 and 110 [of the National Defense Act], providing for Federal pay for the National Guard, have been rewritten so as to simplify a system which experience has shown to be very cumbersome and difficult of administration. Pay will hereafter be based on the number of drills attended, rather than on periods of time.[15]

The Joint Services Pay Readjustment Act of 1922, ch. 212 [Public Law 235, 67th Congress], 42 Stat. 625 (1922), fixed the National Guard armory drill pay rate for enlisted personnel of the sixth and seventh grades (E-2 and E-1 under the current structure) at $1.15 and $1.00 per drill, respectively. Under the pay rates prescribed in the Act, one-thirtieth of the monthly base pay of the sixth grade was $1 and that of the seventh grade was 70 cents.

The Act of June 3, 1924, ch. 244 [Public Law 186, 68th Congress], §2, 43 Stat. 363, 363-364 (1924), changed the maximum number of drills for which National Guard officers could be paid from five per month with a maximum of 60 per year to "not less than" 48 per year, and replaced the provision that had made the attendance of 50 percent of the officer strength and 60 percent of the enlisted strength at any drill a condition of entitlement for officer drill pay with a provision that allowed the President to prescribe the minimum number of enlisted personnel and officers to be present at a drill in order to receive pay.

The Act of February 28, 1925, ch 374 [Public Law 512, 68th Congress], §1, 43 Stat. 1080 (1925), abolished the Naval Reserve Force established in 1916 and in its place created a Naval Reserve of three classes: the Fleet Naval Reserve, the Merchant Marine Naval Reserve, and the Volunteer Naval Reserve. The Fleet Naval Reserve was the "organized" arm of the force, and its officers and one category of its enlisted personnel--those specifically enlisting for such service--were the only classes required to perform drills and training. Officers below the grade of lieutenant commander and enlisted personnel of the "organized" Fleet Naval Reserve were entitled to compensation equal to one-thirtieth of the monthly base pay of their rank for each period of attendance at a

[15] House Report No. 680 (Committee on Military Affairs), p. 13, accompanying H.R. 12775, 66th Congress, 2d Session (1920).

regular drill or equivalent instruction, not to exceed 60 periods of drill or instruction in any fiscal year.

The "retainer" system of inactive-duty reserve compensation was continued only for certain enlisted categories of the Fleet Naval Reserve and for members of the Merchant Marine Naval Reserve. The Act of February 28, 1925, ch 374, *id*., authorized the Secretary of the Navy to require a four-year reserve obligation for men enlisting in the Regular Navy after July 1, 1925. Personnel assigned to the Fleet Naval Reserve as a result of the obligation were entitled to an annual retainer of $25 but were not required to perform any inactive-duty training. Enlisted personnel transferred to the Fleet Naval Reserve after 20 years of service, and those transferred before July 1, 1925, or who were serving on active duty on that date and were subsequently transferred after 16 years of service, were entitled to retainer pay of 1/2 or 1/3, respectively, of their base and longevity pay at the time of transfer. Members of the Merchant Marine Naval Reserve were entitled to an annual retainer equal to one month's base pay of their corresponding grade in the Navy. Members of the Volunteer Naval Reserve were not entitled to either retainer pay or inactive-duty training pay.

In 1930 the Navy amended its regulations to permit, under specified circumstances, as many as three drills to be consolidated into one period and held in one day. Under the regulations, fleet reservists in attendance at a consolidated drill for at least 4 1/2 hours were credited with three drills and paid inactive-duty training pay of three-thirtieths of one month's base pay, those in attendance for less than 4 1/2 but not less than three hours were credited with two drills and paid two-thirtieths of one month's base pay, and those in attendance for less than three but not less than 1 1/2 hours were credited with one drill and received one-thirtieth of one month's base pay. This change in the regulations was made after the Comptroller General of the United States had ruled that the "multiple drill" was legally permissible under the Naval Reserve Act of 1925,[16] and the Navy has conducted some of its inactive-duty training under this system ever since. The Judge Advocate General of the Army, however, for many years maintained the view that, under the drill pay authority of the National Defense Act of 1916, the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], 56 Stat. 359 (1942) (which restated the National Defense Act authority), and the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949) (which further

[16] Unpublished Decision A-31431 of May 12, 1930 (Comptroller General) (maintained in subsequent informal rulings and by regulation).

restated that authority), it was legally objectionable to count for pay purposes drills or equivalent periods of instruction held in excess of one on a single calendar day.[17]

The Act of June 15, 1933, ch. 87 [Public Law 64, 73d Congress], 48 Stat. 153 (1933), created a new Army component, the National Guard of the United States. This component was superimposed on and identical in personnel and organization to the National Guard of the several states but, in its new status, could be ordered to active duty in time of war or national emergency declared by Congress without the necessity of a "call" through the various state governors.

The Naval Reserve Act of 1938, ch. 690 [Public Law 732, 75th Congress], 52 Stat. 1175 (1938), dissolved the then-existing three-class Naval Reserve structure and replaced it with a reserve of four classes the Fleet Reserve, the Organized Reserve, the Merchant Marine Reserve, and the Volunteer Reserve. The Organized Reserve was the only class required to perform drills and training; however, members of the Merchant Marine Reserve were permitted to train and, in a departure from previous law, were entitled to inactive-duty training pay for drills or training actually performed. The act continued the one-thirtieth-of-one-month's-base-pay drill pay formula, removed the prohibition against payment of drill pay to officers in the grade of lieutenant commander or above, and placed a $10 ceiling on the pay for any one drill. Retainer pay was continued only for enlisted personnel previously or subsequently transferred to the Fleet Reserve after 16 or more years of service and for those assigned to the Fleet Reserve under a reserve obligation assumed upon enlistment in the Regular Navy. In keeping with prior practice under the Naval Reserve Acts of 1916 and 1925, the 1938 act provided for a Marine Corps Reserve that was in general parallel in structure, organization, and personnel to that of the Naval Reserve.

The Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], 56 Stat. 359 (9142), fixed the National Guard armory drill pay rate as one-thirtieth of one

[17] Such an opinion was expressed, for instance, in JAGA 1948/6779 of September 20, 1948, and in JAGA 1954/4452 of May 13, 1954.

month's base pay across-the-board. This action removed the $500 annual ceiling on officers' drill pay and eliminated the special rates for enlisted members of the sixth and seventh grades.

On September 8, 1939, President Franklin D. Roosevelt proclaimed a national emergency, setting in motion a mobilization of the nation's manpower. This proclamation enabled the Navy and the Marine Corps to begin the involuntary ordering of their reserve members to active duty, since the Naval Reserve Act permitted such action based on a declaration of national emergency by the President. The National Guard of the United States and the Army Reserve could be ordered to active duty only in time of war or national emergency declared by Congress. A joint resolution of the Congress of August 27, 1940, ch. 689 [Public Resolution 96, 76th Congress], §1, 54 Stat. 858, 858-859 (1940), authorized the President to order these components into federal service for 12 months' duty in the Western Hemisphere or in territories or possessions of the United States. (The National Guard could have been called into federal service in its militia status, subject to the constitutional restraints on its use beyond the borders of the United States, without this joint resolution.)

The Selective Training and Service Act of 1940, ch. 720, [Public Law 783, 76th Congress], 54 Stat. 885 (1940), provided for the induction of male citizens between the ages of 21 and 36 into the land and naval forces, also for 12 months, and for service in the Western Hemisphere or in territories or possessions of the United States. A Joint Resolution of August 18, 1941, ch. 362 [Public Law 213, 77th Congress], §2, 55 Stat. 626 (1941), extended the length of federal service required of national guardsmen, Army reservists, and inductees to 18 months. A joint resolution of December 13, 1941, ch. 571 [Public Law 338, 77th Congress], §1, 55 Stat. 799, 799-800 (1941), six days after the Japanese attack on Pearl Harbor, further extended this required service for the duration of the war and six months following and removed all geographical restrictions on the use of such personnel.

The National Security Act of 1947, ch. 343 [Public Law 253, 80th Congress], §207, 61 Stat. 495, 502-503 (1947), established the Department of the Air Force, and the

Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), made all provisions of law relating to the National Guard, the National Guard of the United States, and the Army Organized Reserve Corps applicable also to the Air National Guard and the Air Force Reserve, formed from personnel of the Army Air Force Reserve. The Selective Service Act of 1948, ch. 625 [Public Law 759, 80th Congress], §7, 62 Stat. 604, 614 (1948), gave the President authority, for two years, to order members of any or all reserve components into active service for up to 21 months. This authority was extended for 15 days to July 9, 1950, by the Act of June 23, 1950, ch. 351 [Public Law 572, 81st Congress], 64 Stat. 254 (1950), and further extended to July 9, 1951, by the Act of June 30, 1950, ch. 445 [Public Law 599, 81st Congress], 64 Stat. 318 (1950). The 1951 amendments to the Universal Military Training and Service Act, enacted as Title I of the Act of June 19, 1951, ch. 144 [Public Law 51, 82d Congress], 65 Stat. 75 (1951), extended the authority once more, this time to July 1, 1953, and increased the period for which the reserves could be required to serve to 24 months. The 1948 Selective Service Act had taken another evolutionary step in the reserve program by requiring an eight-year total service obligation for persons between the ages of 19 and 26 who were appointed, enlisted, or inducted into the Armed Forces and who served on active duty for less than three years. The Universal Military Training and Service Act, ch. 144, *id*., modified the program by requiring an eight-year obligation for all such persons, whether they served on active duty for three years or not.

The evolution of inactive-duty training pay also continued after World War II. The Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), previously cited, made a significant change in the pay formula by authorizing pay to be computed at the rate of one-thirtieth of one month's base and longevity pay for each drill rather than at the rate of one-thirtieth of one month's base pay. Under the laws then governing military pay, "base pay" was the initial rate prescribed for each grade without regard to length of service; "base and longevity pay" was the equivalent of current "basic pay," which includes built-in percentage increases based on length of service. See Chapter II.B.1., "Basic Pay," above.[18] Longevity pay then amounted to five percent of

[18] In particular, see footnote 6 to Chapter II.B.1., "Basic Pay," together with accompanying text.

base pay for each three years of service; hence, the changed computation method resulted in a five percent increase in the drill pay rate for members with over three years of service, 10 percent for those with over six years of service, etc. This revision to the method of computing inactive-duty training pay was not mentioned in the hearings or reports on the legislation. The Act of March 25, 1948, ch. 157, *id*., grouped the Army Officers' Reserve Corps, the Enlisted Reserve Corps, and the Organized Reserves into a component called the Organized Reserve Corps, and authorized the payment of inactive-duty training pay to members of this component. This authority put the Army Reserve on a par with the National Guard and the reserve components of the other services for the first time with respect to inactive-duty training pay, and it was this aspect of the legislation that commanded the attention of committee members and witnesses. The act also combined the inactive-duty training pay authority for all branches of service into one statute, and it fixed two hours instead of 1 1/2 hours as the minimum length of a period of drill or instructions required to qualify a member for the pay.

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949),[19] reenacted the 1948 inactive-duty training pay authority without any substantive change, and it is the basic source for the current law on the subject, codified at 37 U.S.C. §206. The multiple-drill issue arose during the hearings. The Army representative at the hearings, at the suggestion of the Chief of the National Guard Bureau, proposed that the language of the bill be amended to make it absolutely clear that no more than one-thirtieth of one month's "basic pay"[20] (invariably called "1 day's pay" by the witnesses and subcommittee members) could be paid for drills or instructions

[19] After enactment of the Career Compensation Act of 1949, ch. 681, *id*., the inactive-duty training pay provisions were classified to 37 U.S.C. §301. Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the inactive-duty training pay provisions were codified at 37 U.S.C. §206.

[20] The pre-1949 active-duty compensation system of "base and longevity pay" became "basic pay" under the Career Compensation Act. See Chapter II.B.1., "Basic Pay," above, generally; in particular, see footnote 6 of that chapter together with accompanying text.

performed within any single day. The bill was amended as proposed.[21] Three days later, however, after further discussion of the matter--including consideration of a joint memorandum from the Navy and Air Force representatives urging the committee not to upset the consolidated drill systems being used by their services--the amendment was rescinded.[22] It was not included in the legislation ultimately enacted.

The Armed Forces Reserve Act of July 9, 1952, ch. 608 [Public Law 476, 82d Congress], 66 Stat. 481 (1952), set up new statutory underpinnings for the reserve system of the Armed Forces. It established six reserve components within the military departments: (1) the National Guard of the United States, (2) the Army Reserve, (3) the Naval Reserve, (4) the Marine Corps Reserve, (5) the Air National Guard, and (6) the Air Force Reserve. See present 10 U.S.C. §10101. It also established a Coast Guard Reserve. The act required that the members of these components be placed in one of three Categories: the Ready Reserve, the Standby Reserve, or the Retired Reserve. Personnel in these categories are further separated into an active, inactive, or retired status. All members of the Ready Reserve are in an active status; those in the Standby Reserve may be in either an active or inactive status; and, as the title indicates, those in the Retired Reserve are in a retired status. Since the creation of the Selected Reserve of the Ready Reserve in 1967, it has been Department of Defense policy to restrict eligibility for inactive-duty training pay as well as retirement point credit for attendance at drills, periods of instruction, or other qualifying training to members of the Selected Reserve. Members of the Individual Ready Reserve and active status members of the Standby Reserve may voluntarily perform unpaid inactive-duty training and receive retirement point credit. Members in an inactive or retired status are not eligible for inactive-duty training or the pay associated therewith. Members of the Ready Reserve, which includes

[21] "Career Compensation for the Uniformed Services: Hearings before a Subcommittee of the House Armed Services Committee on H.R. 2553," printed in *Hearings before the House Committee on Armed Services on Sundry Legislation Affecting the Naval and Military Establishments*, 1949, pp. 1721-1723, 81st Congress, 1st Session (1949).

[22] "Career Compensation for the Uniformed Services: Hearings before a Subcommittee of the House Armed Services Committee on H.R. 2553," printed in *Hearings before the House Committee on Armed Services on Sundry Legislation Affecting the Naval and Military Establishments*, 1949, pp. 1775-1778, 81st Congress, 1st Session (1949).

the National Guard and the Air National Guard, may be involuntarily ordered to full-time active duty in time of national emergency declared by the President after January 1, 1953, but only in such numbers as may be authorized by Congress. Members of the Standby and Retired Reserve are subject to involuntary call to full-time active duty only in time of war or national emergency declared by Congress.

In a policy directive dated May 2, 1955, the Department of Defense authorized the military departments to conduct multiple training periods consisting of more than one paid drill, training assembly, or period of equivalent training or instruction, each to be of at least four hours in duration, within one calendar day. The directive was revised on March 5, 1956, to limit such multiple training periods to two per day. Evidently there still was doubt in some quarters about the legality of paying more than one-thirtieth of one month's basic pay for training performed within a single day, and the Assistant Secretary of Defense (comptroller) submitted the matter to the Comptroller General for resolution. The Comptroller General ratified the existing practices by ruling that, under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), there is no legal objection to paying inactive-duty training pay for each of two training periods conducted within a single calendar day and, further, that members who are entitled to pay for two such training periods are also entitled, under Title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch. 708 [Public Law 810, 80th Congress], 62 Stat. 108 (1948), to two retirement point credits.[23] [24]

The Reserve Forces Bill of Rights and Vitalization Act, Public Law 90-168, §2, 81 Stat. 521, 522 (1967), established a Selected Reserve within each Ready Reserve component to consist of elements having the highest priority in personnel, training, equipment, and general readiness. The Selected Reserve was required to be made up in part of units organized and trained as such, and its organization and training was required to be approved by the Secretary of Defense based upon recommendations from the

[23] 37 *Comp. Gen*. 618 (1958).

[24] The number of retirement points that a member of a reserve component of an armed force may accumulate in one year for inactive-duty training is limited to 60.

military departments as approved by the Joint Chiefs of Staff in accordance with contingency and war plans. Members of the Ready Reserve who did not belong to the Selected Reserve were administratively classified to the Individual Ready Reserve.

The Act of May 14, 1976, Public Law 94-286, §1, 90 Stat. 517 (1976), empowered the President to involuntarily order not more than 50,000 members of the Selected Reserve to active duty for not more than 90 days without a declaration of national emergency. The President was required to advise the Congress within 24 hours after exercising this authority of the "circumstances necessitating the action taken" and of the anticipated use of the reserve members or units. The act further provided that reservists ordered to active duty under such authority could be used only for operational missions and not to provide assistance during domestic disturbances. It stipulated that the Presidential order could be revoked by a joint resolution of Congress. The Act of December 23, 1980, Public Law 96-584, §2, 94 Stat. 3377 (1980), increased to 100,000 the number of members of the Selected Reserve the President could order to active duty without a declaration of national emergency, but left the 90-day maximum applicable to such duty intact. The National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §521, 100 Stat. 3816, 3870 (1986), increased this number to 200,000[25] and also permitted the President to extend the active-duty period for a second 90 days[26] if he determined such action to be "necessary in the interests of national security."

The Department of Defense Authorization Act, 1985, Public Law 98-525, §1402(a), 98 Stat. 2492, 2620-2621 (1984), adopted as a part of permanent law a provision specifying that a member of a reserve component or the National Guard may not receive pay for more than four periods of equivalent training, instruction, or other appropriate duties to make up for regular periods of training or instruction missed during

[25] See 10 U.S.C. §12304 as amended by Section 521(a) of the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §521(a), 100 Stat. 3816, 3870 (1986).

[26] See 10 U.S.C. §673b(i) as added by Section 521(b) of the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §521(b), 100 Stat. 3816, 3870-3871 (1986). (This latter provision was repealed by the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §511(a)(2) 108 Stat. 2663, 2752 (1994).)

a fiscal year. This provision merely adopted, and codified, practices that had been followed for a number of years, as set out in annual Department of Defense appropriations acts.

Under the provisions of 37 U.S.C. §204(g)-(i), as added by the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §604, 100 Stat. 3816, 3874-3878 (1986), and as amended by the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §631, 102 Stat. 1918, 1984-1985 (1988), a member of a reserve component of a uniformed service is entitled to "incapacitation pay" in the amount of the pay and allowances of a member of a regular component of a uniformed service if the member is physically disabled as the result of an injury, illness, or disease incurred or aggravated--

(A) in line of duty while performing active duty;

(B) in line of duty while performing inactive-duty training ... ; or

(C) while traveling directly to or from such duty or training.

Generally speaking, any income from nonmilitary employment or self-employment earned by an incapacitated member during a month he would otherwise have been entitled to incapacitation pay operates to reduce the amount of incapacitation pay the member actually receives on a dollar-for-dollar basis. Incapacitation pay may be paid for up to six months, provided that the Secretary of the member's military department may extend the period for receipt of such pay if a determination is made that "it is in the interests of fairness and equity to do so."[27]

[27] For the reasons underlying the initial authorization of incapacitation pay, see Senate Report No. 99-331 (Committee on Armed Services), pp. 238-240, accompanying S. 2638, 99th Congress, 2d Session (1986), and House Report No. 99-718 (Committee on Armed Services), pp. 203-204, accompanying H.R. 4428, 99th Congress, 2d Session (1986); *cf.* House Report No. 99-1001 (Committee of Conference), p. 477, accompanying S. 2638, 99th Congress, 2d Session (1986).

As previously indicated, members of reserve components participating in inactive-duty training are entitled to one day's basic pay for each drill period.[28][28] Accordingly, whenever basic pay rates are increased, compensation for inactive-duty training is also increased. Current rates of basic pay are set out at the end of the text in Chapter II.B.1, "Basic Pay," above. For historical information on how basic pay rates have changed over time, see the tables entitled “Basic Pay Schedule—Historical Data” at the end of that chapter.

As stated at 10 U.S.C. §10102:

> The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the Armed Forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the Armed Forces whenever, during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.

**Cost**: For the cost of compensation for inactive-duty training from 1972 to 2004, see Table II-5 of *Military Compensation Statistics Tables*, volume II of this edition.

[28]One day's basic pay for a given pay grade and longevity step is computed as 1/30th of the monthly basic pay to which a member of the uniformed services having the same pay grade and longevity-step status would be entitled if on active duty.

## Chapter II.D.

### Overview of Special and Incentive Pays

Although every member of the Armed Forces receives basic pay and either the basic allowances for quarters and subsistence or quarters and subsistence in kind merely by virtue of being a member of the Armed Forces, some members also receive certain other pays--denominated special and incentive pays--on top of and in addition to basic pay, quarters, and subsistence. Historically, while the first special and incentive pays ever adopted were intended to provide enlistment and reenlistment incentives, the first special and incentive pays adopted in the twentieth century were intended to compensate members exposed to conditions more hazardous than those experienced by the average member of the Armed Forces during peacetime, and, indeed, all of the pays dealt with under this Section II.D. of this edition of *Military Compensation Background Papers* originally had some hazard-compensation function or derived from one or more pays that had such a function. While some of the twentieth century's special and incentive pays still primarily serve a hazard-compensation function today, the purpose presently served by the vast majority of special and incentive pays has gradually changed over time, so that today most special and incentive pays are intended more to provide additional incentives to induce members of the Armed Forces to volunteer for certain career fields that would, without those incentives, experience manning shortfalls. Aviation career incentive pay, aviation officer continuation pay, and submarine duty incentive pay are perhaps the clearest examples of special and incentive pays the major purpose of which has changed over time from being extra compensation for added hazards to balancing the supply of persons willing to enter and remain in critical military career fields with service demands. Other pays that have always been intended to serve a supply-demand balancing function are also dealt with under the present heading, not because they, themselves, were ever intended to compensate for added hazards, but rather because they derived from one or more special pays that were. Perhaps the most prominent of such special pays are the continuation, accession, and annual incentive pays for nuclear-qualified officers, which derived, historically, from submarine duty pay. For this reason, these pays are grouped, in this Section II.D. of this edition of Military Compensation Background Papers, with the

special and incentive pays for submarine and naval service duties. As a whole, the pays dealt with in this Section II.D. serve to bring the number of volunteers for certain military career fields that involve some degree of hazard into balance with military peacetime manning requirements.

Certain other special pays that were always intended to serve a supply-demand balancing function are dealt with under the heading, "Attraction and Retention Pays," in Section II.E. of this edition of *Military Compensation Background Papers*, below. Included among these pays are the various special pays for health professionals (doctors, dentists, optometrists, veterinarians, psychologists, nurses, and other nonphysician health care providers), enlistment and reenlistment bonuses, reserve forces affiliation, enlistment, and reenlistment bonuses and educational assistance, foreign language proficiency pay, and the like. While denominated as "special pays," none of the pays dealt with under Section II.E. were ever intended to serve a hazard-compensation function, nor did they derive from one or more pays that were intended to serve such a function. Rather, their primary function is, and has always been, to make a military career reasonably competitive with available non-military alternatives.

Because the pays dealt with under Section II.D. and Section II.E. of this edition of *Military Compensation Background Papers* are all denominated as "special and incentive pays," the following summary statistics showing the aggregate costs of special and incentive pays include all Section II.D. and Section II.E. pays. For the convenience of the reader, however, the aggregate costs of the Section II.D. pays are shown separately from the Section II.E. pays--the Section II.D. pays being grouped under the heading "Special and Incentive Pays" and the Section II.E. pays being grouped under the heading "Attraction and Retention Pays," mirroring the Section II.D. and Section II.E. headings found in this edition of Military Compensation Background Papers.[1] [2]

[1] Although data showing both costs and numbers of recipients are available for most of the special and incentive pays, data on the number of recipients of special and incentive pays are not included in the summary statistics set out below. The fact is, members of the Armed Forces may be entitled to more than one special and incentive pay, and many members actually receive more than one special or incentive pay. Doctors, for instance, frequently receive more than one form of health professionals' special pay, and they may also be entitled to, for instance, non-crew member flight pay, submarine duty incentive pay, or career

For the aggregate cost of special and incentive pays from 1972 to 2004, see Table II-6 of Volume II, *Military Compensation Statistics Tables.*

sea duty pay, depending on duty assignments. Similarly, persons entitled to demolition duty pay may also be entitled to, for example, either diving duty pay, parachute duty pay, or flight deck duty pay, to say nothing of career sea duty pay. In these circumstances, it is felt that showing recipient data would be likely to mislead readers, and for this reason, recipient data are not shown in the tables.

[2] Because cost data for certain special and incentive pays are no longer available--such as the experimental stress duty pays and the personal exposure pays--the summary statistics under the "Special and Incentive Pays" heading in the table volume do not include cost data for those pays.

**Chapter II.D.1.a.(1)**

**Hostile Fire Pay (Hostile Fire and Imminent Danger)**

**Legislative Authority**: 37 U.S.C. §310.

**Purpose**: To provide an additional payment to personnel subject to hostile fire or to explosion of hostile mines; to personnel on duty in an area in which they were in imminent danger of being exposed to hostile fire or explosion of a hostile mine and while there, other members were subject to hostile fire or explosion of hostile mines; to personnel killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action; and to personnel on duty in foreign areas in which they are subject to the threat of physical harm or imminent danger because of civil insurrection, civil war, terrorism, or wartime conditions.

**Background**: The principle of token additional compensation for combat personnel originated during World War II, though, except for the "recognition" nature of both, there is little similarity between the "badge pay" of that era and the "hostile fire pay" authorized under present law. Effective January 1, 1944, Army enlisted personnel awarded the Combat Infantryman Badge became entitled to an extra $10 a month, and those awarded the Expert Infantryman Badge, to an extra $5 a month. Act of June 30, 1944, ch. 335 [Public Law 393, 78th Congress], §1, 58 Stat. 648 (1944). The $10 "badge pay" was later extended to enlisted members of the Army Medical Corps holding the Expert Medical Corps Badge. Act of July 6, 1945, ch. 279 [Public Law 137, 79th Congress], §1, 59 Stat. 462 (1945). "Badge pay" had originally been intended for the combat soldier, but the relationship between combat duty and receipt of the pay was not direct; rather, it was paid as long as a member remained qualified for the applicable badge independently of whether the member was physically present in a combat area. In addition, some members who were physically present in combat areas did not qualify for the pay.

Entitlement to "badge pay" continued until October 1949 when the underlying authority was repealed by the Career Compensation Act of 1949, ch. 681 [Public Law

351, 81st Congress], §531(b)(36) and (37), 63 Stat. 802, 839 (1949), which was enacted during an inter-war period when the military forces of the United States were not involved in armed conflict anywhere in the world. Interest in such a pay was, however, rekindled with the outbreak of hostilities in Korea in June 1950.

In July 1950 the Army recommended legislation to provide "hazard duty pay" to personnel involved in combat. In support of its proposal, the Army argued that it was inequitable that combat personnel were not eligible for extra pay when other personnel assigned to flying duty, submarine duty, parachute duty, and other hazardous duties were receiving extra pay. The Air Force and Navy disagreed with the proposal on a number of grounds: first, on the ground that there was no relationship between pay for combat duty and pay for flying, submarine, parachute, and other hazardous duties, since these latter pays had been intended as incentives to attract and retain a sufficient number of qualified volunteers for continuously hazardous duties; second, since it was widely understood and conceded--most particularly, at least according to the Air Force and Navy, by military personnel--that the basic purpose of a military force was to fight, military personnel impliedly accepted the additional hazards incident to combat in agreeing to become a part of the nation's armed forces, with the result that extra pay was not justified when such personnel actually became involved in combat;[1] and third, if the real concern was that military pay levels were inadequate to maintain an efficient fighting force, what was needed was an increase in the general level of military pay, not a new special pay for combat service.

The departmental differences were resolved by the Secretary of Defense, and a legislative proposal was submitted to Congress that reflected the essence of the Army position. The proposal recommended combat pay at the rate of $100 a month for officers and $50 a month for enlisted personnel engaged in combat or direct combat support for at least six days in any one month. The rates were equal to the lowest rates authorized for

[1] This argument was, of course, advanced before adoption of the all-volunteer-force concept for manning the Armed Forces. It was, however, quite true that the Air Force and Navy had traditionally been able to rely on volunteers for staffing to a significantly greater extent than the Army.

any incentive pay, and personnel entitled to incentive pay were not to be eligible for combat pay. Neither the House nor the Senate Armed Services Committee acted on the proposal. In 1952, however, a combat pay provision was incorporated as a Senate floor amendment to the annual Department of Defense Appropriation Bill. At a subsequent House-Senate conference, the amendment was rejected, only to be resurrected on the floor of the House. The Combat Duty Pay Act of 1952, authorizing combat pay in the amount of $45 per month retroactive to June 1, 1950, was enacted July 10, 1952, as Title VII of the Department of Defense Appropriation Act, 1953, ch. 630 [Public Law 488, 82d Congress], 66 Stat. 517, 538-539 (1952).

As is clear from the floor debates in both Houses, Congress's purpose in authorizing combat pay was to provide special recognition for the rigors and hazards of combat duty by equalizing extra compensation between combat personnel and personnel entitled to flying pay, submarine pay, parachute pay, etc. The following individual remarks are typical and highlight the "recognition" and "equalization" purposes intended to be served:

> *Mr. Teague*: This is some recognition of what they are doing, Mr. Speaker, if anywhere in the world there are a group of men to whom we owe a debt it is to the men who fight in the front lines during our wars.[2]
>
> * * *
>
> *Mr. Bennett*: The situation is that the casualties are coming from this group of people. They are the people who are doing the fighting in this war; it is the group we should recognize here. We should have recognized them a long time ago.[3]
>
> * * *
>
> *Mr. Mansfield*: Am I to understand this is an amendment to put the troops in Korea on a comparable basis with submariners, fliers, and others who get extra pay and other things?

[2] 98 *Cong. Rec.* 9437 (1952).

[3] 98 *Cong. Rec.* 9438 (1952).

*Mr. Flood*: It is exactly that....

*Mr. Hays*: This motion simply does, as the gentleman from Pennsylvania has pointed out, for the GI in the foxhole in Korea what we have been doing for nine other categories.... I do not take any credit away from the Air Force or the Navy but I think it would be rank discrimination if we refused to give hazard pay to the fellow in Korea who is out in the front lines, who is fighting the battle.[4]

When hostilities ended in Korea, interest in combat pay waned again, until a substantial number of United States troops were committed to Vietnam and combat casualties began to mount. In January 1963, the Department of Defense submitted a proposal to Congress to authorize a new combat pay--now denominated "hostile fire pay"--of $55 a month for all personnel serving in any place designated as a "combat area" by the Secretary of Defense, whether or not such personnel were assigned to a combat unit, and to personnel serving outside a designated "combat area" when subjected to hostile fire or the explosion of hostile mines. Harking back to the Korean experience, the Department of Defense recommended the same rate of hostile fire pay for officers and enlisted personnel. The $55 rate was selected because it was the lowest rate at which incentive pay was paid at the time.[5] In contrast to the preexisting "combat pay" authority, however, personnel were to be eligible for "hostile fire pay" even though also entitled to incentive pay.

The hostile fire pay provision was enacted as part of the Uniformed Services Pay Act of 1963, Public Law 88-132, §9, 77 Stat. 210, 216 (1963), with but one significant change from the Department of Defense proposal. The change was that hostile fire pay was authorized only as a limited war measure, authority for which was to terminate in time of war declared by Congress. Congress's intent in this regard was clear:

> ... [W]hat we are really trying to do ... is to provide a special payment for people who are under enemy fire during a time of so-called peace. We have been in so-called peace in Korea; we are in so-called peace in Vietnam; we are in so-

[4] 98 *Cong. Rec*. 9434-9435 (1952).

[5] At the time, the lowest monthly hazardous duty incentive pay rate under 37 U.S.C. §301 was $55. See 37 U.S.C. §301 as in effect in 1963.

called peace at the Berlin wall, and yet, as a practical matter, these people are getting shot at....

* * *

... [W]e have a situation which has been going on and may go on for many years, in which people are going to get shot at. A very small number, perhaps.

On the other hand, when we turn out a full mobilization, people are being assigned and practically everybody may be subject to hostile fire; then it becomes something that everybody has to accept and there shouldn't be any special pay attached to it.[6]

The "token recognition" nature of the hostile fire pay provisions of the 1963 Act is apparent in testimony given by Representative Charles Bennett of Florida to a subcommittee of the Senate Committee on Armed Services in support of a House floor amendment to return hostile fire pay authority to the bill reported out of the House Armed Service Committee:

I have a tremendous conviction this provision should remain in the Bill. It was put in there by the House and the Department of Defense approves this provision. It is a modest provision. The Bureau of the Budget approves it. It is an additional proposal. I think it is a thing which is only due and just to these men.

Some people have said, "Well, you pay people to fight and therefore to pay them special pay for hostile fire is an improper thing."

Well, perhaps that might have been a pretty good argument in 1776 when about 99 out of every hundred who were in the armed services were actually on the frontline, and 1 was back behind taking care of warehousing or something else. But the ratio is reversed today.

As the chairman well knows, today almost all people, numerically speaking, in wartime, even wearing uniforms, are not in the frontline and therefore it seems to be that these people upon whom so much rests and who have such tremendous responsibilities on their shoulders, should have this token.

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[6] Subcommittee No. 1 "Consideration of H.R. 3006, To Amend Title 37, United States Code, To Increase the Rates of Basic Pay for Members of the Uniformed Services, and for Other Purposes: Hearings before Subcommittee No. 1 of the House Committee on Armed Services," House Armed Services Committee Document No. 6, pp. 1720-1722, 88th Congress, 1st Session (1963) (remarks of Representatives Stratton and Blandford, respectively).

Of course, you couldn't adequately pay them for what they are doing but it is a token which I assure you is appreciated, and I speak from personal experience in this, because in World War II, I did get the $10 infantry pay which came to people in World War II, and I assure you that everyone that I knew of was very deeply grateful to the country for this amount of money which was given.

It wasn't the amount of money which was given but the fact that the country was thinking of them and realizing that they had a special responsibility to perform that was deeply felt by the average person in World War II.

I can't speak of Korea, but, of course, we had this same type of pay in Korea. I wasn't in the Korean War so I don't know how he felt about it then. But the people that I have talked to who have actually been in combat are very much in favor of this recognition by our country for their services.[7]

Representative Bennett's floor amendment was accepted by the House, and later by the Senate.

In explanation of its action, the Senate Committee on Armed Services noted:

The bill proposes a special pay not presently authorized under existing law. This provision [section 9 of the bill] would provide a special pay at the rate of $55 a month for any member of the uniformed services during any month in which he was subject to hostile fire or explosion of hostile mines or on duty in an area in which he was in imminent danger of such exposure or explosion. In addition, a member will be entitled to such pay if killed, injured, or wounded by hostile fire or explosion of a hostile mine or any other hostile action.

This provision would be in effect except in time of war declared by the Congress....

During this period of world tension a limited number of members of our Armed Forces are assigned to duties in various parts of the world where they are exposed to the hazards of injury and death from hostile fire. This pay will provide tangible recognition for a dangerous task to which only a small proportion of our servicemen are assigned. The Department of Defense strongly urges the enactment of this provision.[8]

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[7] "Military Pay Increase--To Amend Title 37, United States Code, to Increase the Rates of Basic Pay for Members of the Uniformed Services, and for Other Purposes: Hearings on H.R. 5555 before the Special Subcommittee of the Senate Committee on Armed Services," p. 108, 88th Congress, 1st Session (1963) (statement of Representative Bennett).

[8] Senate Report No. 88-387 (Committee on Armed Services), pp. 27-28, accompanying H.R. 5555, 88th Congress, 1st Session (1963).

The hostile fire pay rate was raised from $55 to $65, effective September 1, 1965, by the Act of August 21, 1965, Public Law 89-132, §4, 79 Stat. 545, 547 (1965). This adjustment was part of a general increase in the level of military pay, and no special reason was provided for the $10 raise.

> From 1963 when hostile fire pay was initially authorized, until the legislative authority was expanded to authorize imminent danger pay in 1983, four areas were designated for hostile fire pay — Vietnam, Cambodia, Laos and, during the period of hostilities surrounding the seizure of the American Embassy, Iran. In addition, hostile fire pay was authorized from time to time during this period for personnel assigned to service in American embassies abroad that came under attack. To preserve the hostile fire pay entitlement of personnel still carried in a missing status [9] from the Vietnam Conflict, official designation for hostile fire pay was continued for Vietnam and Cambodia until the U.S. reestablished diplomatic relations with Vietnam (and for a period thereafter).

Effective October 1, 1983, the entitlement to hostile fire pay was extended to members of the uniformed services on duty in foreign areas where they were subject to "the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions," and the section title was changed to read "Special pay: duty subject to hostile fire or imminent danger." Department of Defense Authorization Act, 1984, Public Law 98-94, §905, 97 Stat. 614, 636-637 (1983).[9] This entitlement extension resulted from a House floor amendment to the Authorization bill. As explained by the sponsor of the amendment, Representative Schroeder (D. Colorado):

> Mr. Chairman, my amendment is intended to provide authority for the Secretary of Defense to grant hostile fire pay to our military personnel in Lebanon and El Salvador. Over the past few months we have learned how dangerous it is to be an American soldier or sailor in Beirut or San Salvador. In mid-April, a car bomb exploded outside the American Embassy in Beirut killing as many as 16 Americans, most of them military. In late May, Lt. Comdr. Albert Schaufelberger was gunned down in a parking lot on the campus of Central American University in San Salvador. In both cases, these attacks were followed by threats of further violence against Americans in both places.
>
> Section 310 of title 37 provides limited authority for the Secretary of Defense to pay $65 a month as special pay to military personnel who are subject

[9] See House Report No. 98-352 (Committee of Conference), p. 225, accompanying S. 675, 98th Congress, 1st Session (1983).

> to hostile fire. The Defense Department has been applying this special pay provision only on a case-by-case basis, meaning that Commander Schaufelberger's family gets 1 month's pay of $65 for his being subject to hostile fire. I think this is wrong. We should provide blanket coverage for all Americans in both countries. The amendment I am offering would permit DOD to make such payments to all military personnel in such dangerous locations beginning October 1.
>
> * * *
>
> To provide some benefit for servicemembers in clearly dangerous locations, I urge your support for the amendment.[10]
>
> As a result of the expanded statutory authority provided in the Department of Defense Authorization Act, 1984, Lebanon and El Salvador were designated, effective October 1, 1983, as areas in which personnel on official duty would qualify for imminent danger pay. With the operation in Grenada in late 1983, the Islands of Grenada and Carriacou were designated in October 1983; and, designation followed for Colombia in July 1985. Designations for Vietnam, Cambodia and Iran continued.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §638, 99 Stat. 583, 649 (1985), further modified the hostile fire pay provisions of 37 U.S.C. §310 to provide that the rate of pay for duty subject to hostile fire or imminent danger is to be "the lowest rate for hazardous duty incentive pay specified in section 301(c)(1) of this title," i.e., the hazardous duty incentive pay provisions covering such hazardous duties as parachute jumping, non-crew member flight duty, etc. Under an amendment to 37 U.S.C. §301(c)(1) also effected by the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(3), 583, 99 Stat. 648 (1985), "the lowest rate for hazardous duty incentive pay" was increased to $110. Hence, with the increase in hazardous duty incentive pay rates under 37 U.S.C. §301(c)(1) to a minimum of $110 per month, the rate of pay for duty subject to hostile fire or imminent danger was increased, *pari passu*, to $110 per month from the previous $65 per month.

[10] 129 *Cong. Rec*. 20970 (1983) (daily ed., 129 *Cong. Rec*. H5678-H5679 (July 26, 1983)) (statement of Representative Schroeder).

The legislative history of the 1986 Authorization Act, Public Law 99-145, id., does not indicate the reasons for the increase in the rate of pay authorized for duty subject to hostile fire or imminent danger,[11] primarily because no report was ever submitted on the Senate bill, S. 1160, in which the subject provision was first inserted.[12] In fact, the hostile fire pay "enhancements" adopted as part of the 1986 Authorization Act exactly parallel recommendations advanced in 1984 by the *Fifth Quadrennial Review of Military*

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[11] See Senate Report No. 99-118 (Committee of Conference), p. 431, and House Report No. 99-235 (Committee of Conference), p. 431, accompanying S. 1160, 99th Congress, 1st Session (1985).

[12] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41 (Committee on Armed Services), 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Armed Services Committee reported out a clean bill, S. 1160, but did not issue a report on it. As explained by Senator Goldwater, Chairman of the Armed Services Committee, when S. 1160 came before the Senate for consideration:

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When the Armed Services Committee learned that the Senate would approve no real growth in the defense budget, it reconvened on Wednesday of this week [May 15, 1985] to make further program reductions to conform to the ceiling in the budget resolution. The Committee has reported a clean bill, S. 1160, reflecting these new budget levels....

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131 *Cong. Rec*. 12438, 12500 (1985) (daily ed., 131 *Congressional Record* S6415, S6475 (May 17, 1985)) (statement of Senator Goldwater). In "explanatory background information" on some of the differences between S. 1029 and S. 1160, the following appears:

The compensation and benefits provisions of the bill contain significant differences from those contained in S. 1029....

... In addition, the Committee recommended increases or enhancements to a number of special and incentive pays....

The special and incentive pays ... involved in these recommendations include:

c. Danger pay.

Each of these benefit increases or enhancements are in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec*. 12474 (1985) (daily ed., 131 *Cong. Rec*. S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "explanatory background information" provided by Senator Goldwater specifically dealt with the "enhancements" to the hostile fire pay program contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985). (The term "danger pay" appears to be synonymous with "hostile fire pay," see footnotes 14 and 15, below, together with accompanying text.)

*Compensation*.[13] In particular, the *Fifth Quadrennial Review* recommended not only that the rate of pay authorized for hostile fire duties be "equal to the lowest hazardous duty incentive pay at the time," it also recommended that the name of the entitlement be changed to "danger pay."[14] [15] In support of its recommendation to equalize the lowest rate of pay for hazardous duty under 37 U.S.C. §301 and hostile fire pay, the *Fifth Quadrennial Review* stated:

> Level of Payment. The final issue deals with the proper level of HFP [hostile fire pay] payment. It is important, when setting the level, that the rates are appropriate but not excessive, ...
>
> Finally, it should be noted that Congress, in addition to previous commissions studying compensation, have indicated a desire to relate HFP rates to those of the lowest hazardous duty pays, believing that duties such as parachuting from a plane or disarming a bomb are no more dangerous than "putting one's life on the line." In addition, it is felt that those taking the "brunt of the action" deserve something greater than those in the rear areas. Hence, a two-tiered rate system related to the lowest hazardous duty pay is believed to be a logical and fair approach while staying within the original intent of "token recognition."[16] [17]

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[13] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system of the uniformed services. The Fifth Quadrennial Review of Military Compensation was convened in 1982, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in early 1984.

[14] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, pp. 32 and 759 (November 1983). Also see, Executive Summary, "Report of the Fifth Quadrennial Review of Military Compensation, pp. VI-12 and 13 (January 1984).

[15] Although the Senate Armed Services Committee recommended changing the name of the special pay entitlement to "Danger Pay" as recommended by the Fifth Quadrennial Review, this proposal was deleted in conference. Senate Report No. 99-118 (Committee of Conference), p. 431, and House Report No. 99-235 (Committee of Conference), p. 431, accompanying S. 1160, 99th Congress, 1st Session (1985).

[16] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, pp. 754 and 757 (November 1983).

[17] When the Fifth Quadrennial Review was making its recommendations to Congress concerning hostile fire pay rates in 1983-1984, the hostile fire pay entitlement was $65 per month. As previously indicated, the Department of Defense Authorization Act, 1986, Public Law 99-145, §628, 99 Stat. 583, 649 (1985), effectively increased the hostile fire pay entitlement to $110 per month. See discussion of amendment to 37 U.S.C. §301(c)(1) effected by the 1986 Authorization Act, above. At $110 per month, the present hostile fire pay entitlement may be thought by some to be more than a "token" payment.

Whether on the basis of the recommendations and reasoning of the *Fifth Quadrennial Review of Military Compensation* or otherwise, Congress did in fact equate the rate of pay for duty subject to hostile fire or imminent danger to the lowest rate of pay for hazardous duties such as parachute jumping, explosives demolition, etc. Thus, the 1986 Authorization Act, Public Law 99-145, *id*., reestablished the linkage between hostile fire pay and hazardous duty incentive pay originally established by the Uniformed Services Pay Act of 1963, Public Law 88-132, §9, 77 Stat. 210, 216 (1963).[18] Given the linkage, the rate of pay for duty subject to hostile fire or imminent danger increased from $65 a month to $110 a month with enactment of the 1986 Authorization Act, Public Law 99-145, *id*.

In the last half of the 1980s and up until Operation Desert Shield in August 1990, several more areas were designated for imminent danger pay: Sudan in July 1986 (for a short period); Peru in April 1987; the Persian Gulf, Bahrain, Kuwait, the Strait of Hormuz, and a portion of Gulf of Oman in August 1987 (this was terminated in April 1989); Afghanistan in November 1988; the Philippines in May 1990 (until November 1991); Panama in December 1989 (until end of January 1990); and Laos in December 1989 (until July 1997).

The rate of pay for duty subject to hostile fire or imminent danger was temporarily increased by Congress in the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §301(a), 105 Stat. 75, 80 (1991), from $110 to $150 a month.[19] The increase applied "during the period beginning on August 1, 1990, and ending on the first day of the first month beginning on

[18] See discussion of the hostile fire pay provisions of the Uniformed Services Pay Act of 1963, Public Law 88-132, §9, 77 Stat. 210, 216 (1963), and its background at text associated with footnotes 5 through 8 to this chapter, above.

[19] Earlier, in the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §1111(a), 104 Stat. 1485, 1635 (1990), Congress specifically authorized the Secretary of Defense to "provide for the payment of imminent danger pay ...to members of the Armed Forces assigned to duty in the Persian Gulf area in connection with Operation Desert Shield with respect to periods of duty served after August 1, 1990, and before the date of enactment of this Act [November 5, 1990]."

or after the date 180 days after the end of the Persian Gulf conflict."[20] Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, *id*., §301(b), 105 Stat. at 80. Although no reason was given for the temporary increase,[21] the Senate had earlier proposed the exact same action in another bill that would have provided several special benefits to members of the Armed Forces serving in the Persian Gulf in support of Operation Desert Shield/Desert Storm. In support of its proposal, the Senate cited both the effects of inflation and the danger service members faced in the Persian Gulf:

> The Committee notes that the last time the pay was increased was in 1985. The increase proposed in this section would adjust the previous amount to match inflation. The Committee believes that military personnel deserve this increase in recognition of the dangerous circumstances in which they are serving.

Senate Report No. 102-9 (Committee on Armed Services), p. 2, accompanying S. 237, 102d Congress, 1st Session (1991).

The temporary increase to $150 per month in the rate of pay for duty subject to hostile fire or imminent danger was made permanent in the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §613, 105 Stat. 1290, 1377 (1991). No particular reason was given by either the House or Senate for making the increase permanent.[22]

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[20] Although the Persian Gulf conflict provided the impetus for the increase in the rate of special pay for duty subject to hostile fire or imminent danger, the rate increase was not limited in its applicability to the Persian Gulf area. Any member of the uniformed services subject to hostile fire or imminent danger anywhere in the world was entitled to the increased rate of pay during the applicable period.

[21] See House Report No. 102-16 (Part 1) (Committee on Armed Services), p. 10, accompanying H.R. 1175, 102d Congress, 1st Session (1991). (The House Report--House Report No. 102-16 (Part 1)--was issued on H.R. 1175, 102d Congress, 1st Session (1991), but the bill ultimately adopted as the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, 105 Stat. 75 (1991), was S. 725, 102d Congress, 1st Session (1991). No report was issued on S. 725.

[22] See, *e.g*., House Report No. 102-60(Committee on Armed Services), p. 248, accompanying H.R. 2100; Senate Report No. 102-113 (Committee on Armed Services), p. 226, accompanying S. 1507; and House Report No. 102-311 (Committee of Conference), p. 549, accompanying H.R. 2100, 102d Congress, 1st Session (1991).

In addition to making the temporary increase to $150 per month permanent, the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §611, 105 Stat. 1290, 1373 (1991), also repealed the prohibition on payment of hostile fire or imminent danger pay during time of war declared by Congress. Ignoring the earlier rationale that such pay was not justified in times of "full mobilization" because then "practically everybody may be subject to hostile fire,"[23] the House Armed Services Committee indicated that it thought the prohibition should be repealed because it could "create pay inequities in future conflicts like Operation Desert Storm."[24]

As a result of several operations in which U.S. forces were involved over the course of the 1990s, and the increasing threat of terrorism around the globe, many areas were designated as imminent danger areas, for at least a time, between the start of Desert Shield in August 1990 until the attacks of September 11, 2001.

In August 1990, Kuwait, Saudi Arabia and the Persian Gulf were designated. Bahrain, Oman, Qatar, UAE, the Red Sea, the Gulfs of Oman and Aden, and a portion of the Arabian Sea were also designated (but their designations were terminated in August 1993). In August 1990, the Department also designated Liberia and Yemen (the designation for Yemen was terminated in February 1998). Iraq was designated in September 1990. Turkey was designated in February 1991. Egypt, Jordan, Israel and Syria were designated that same month (but their designation ended in December 1991).

Designations in June 1992 included: Bosnia-Herzegovina; Macedonia; the former Federal Republic of Yugoslavia, Croatia, and Slovenia (the latter was terminated in September 1995); Angola; and Mozambique and Chad (both terminated in February 1998). In September 1992, Somalia was designated; followed by Sudan in October 1993, Haiti in September 1994, Algeria in March 1995, Azerbaijan in June 1995, Karachi, Pakistan in October 1995; and Burundi, Zaire and the rest of Pakistan in November 1996.

In 1997, several new locations were added: In January, Athens, Greece, Egypt, and Jordan; Tajikistan in March; Albania in May (through March 2002); Bahrain in June, Sierra Leone in July, Qatar in August; and Rwanda in October 1997.

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[23] See text accompanying footnote 6 to this chapter, above.

[24] House Report No. 102-60 (Committee on Armed Services), p. 248, accompanying H.R. 2100, 102d Congress, 1st Session (1991). See House Report No. 102-311 (Committee of Conference), p. 549, accompanying H.R. 2100, 102d Congress, 1st Session (1991).

As a result of operations in the Kosovo crisis in 1999, the following areas were designated for imminent danger pay: the Adriatic Sea and portions of the Ionean Sea (from April to September 1999); and specific areas in Greece, Hungary and Italy from May through mid-September 1999.

Yemen was again designated for Imminent Danger Pay in May 1999, followed by East Timor and Ethiopia in September 1999, and Uganda in January 2000. Following the attacks of September 11, 2001, hostile fire pay was paid for the first time to members of the uniformed services in the United States who were subject to the hostile acts of the terrorists on that day.

As U.S. forces commenced to fight the Global War on Terrorism, several additional areas were designated for imminent danger pay in September 2001: Kyrgyzstan, Uzbekistan, Oman, United Arab Emirates, the Red Sea, the Gulfs of Aden and Oman, and a portion of the Arabian Sea. The designation for Indonesia and Malaysia followed in October 2001; Israel in January 2002; Djibouti, Eritrea, Kenya, and all of the Republic of Georgia in July 2002, and Cote d'Ivoire in February 2003.

In connection with Operation Iraqi Freedom, most areas in which uniformed personnel were assigned had already been designated for imminent danger pay, and thus, the only new area designated was a portion of the Mediterranean Sea (designated from April through July 2003). The National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, 115 Stat. 1136, provided for hazardous duty pay for members of maritime visit, board, search and seizure teams.

In order to reward military personnel participating in Operation Enduring Freedom, which began in 2001, and Operation Iraqi Freedom, which began in 2003, the Emergency Wartime Supplementary Appropriations Act for 2003, Public Law 108-11, 117 Stat. 559 (2003) increased hostile fire pay from $150 to $225 per month. This increase covered only Fiscal Year 2003, the period from October 2002 to September 2003.

In their respective considerations of the National Defense Authorization Act for Fiscal Year 2004, the House and Senate took differing approaches to continuation of this increase. The Senate version of the bill made the increase permanent. The House version,

echoing the position of the Bush Administration, called for the higher rate in 2004 only for members involved in Operation Enduring Freedom and Operation Iraqi Freedom, who would continue to receive this rate only until the President declared those operations terminated. The position of the Bush Administration was that an across-the-board increase in hostile fire pay had no meaning as a reward for service in Afghanistan and Iraq if members in many other areas received the same amount. However, members of Congress argued that reducing the hostile fire allowance after the 2003 increase would constitute a pay cut for United States occupation forces at many locations in the world. The conference resolution endorsed the Senate version, extending the higher rate of hostile fire pay through 2004 and continuing the eligibility of members in all regions designated as hostile fire or imminent danger zones.

Since 1963, the following zones have been designated as hostile fire pay areas: the Adriatic Sea, Afghanistan, Albania, Angola, the Arabian Gulf region, a portion of the Arabian Sea, Azerbaijan, Bahrain, Bosnia and Herzegovina, Burundi, Cambodia, Chad, Colombia, Cote d'Ivoire, Croatia, Djibouti, East Timor, Egypt, El Salvador, Eritrea, Ethiopia, Georgia, Greece, Grenada and Carriacou, the Gulf of Aden, the Gulf of Oman, Haiti, Hungary, Indonesia, the northern portion of the Ionian Sea, Iran, Iraq, Israel, portions of Italy, Jordan, Kenya, Kuwait, Kyrgyzstan, Laos, Lebanon, Liberia, Macedonia, Malaysia, the eastern portion of the Mediterranean Sea, Montenegro, Mozambique, Oman, Pakistan, Panama, Peru, the Philippines, Qatar, the Red Sea, Rwanda, Saudi Arabia, Serbia, Sierra Leone, Slovenia, Somalia, Sudan, Syria, Tajikistan, Turkey, Uganda, the United Arab Emirates, Uzbekistan, Vietnam, Yemen, and Zaire.

As of October 2003, the following countries and regions retained their designation, or had been removed from the list and later redesignated: Afghanistan, Algeira, Angola, portions of the Arabian Sea, Azerbaijan, Bahrain, Bosnia and Herzegovina, Burundi, Colombia, Cote d'Ivoire, Croatia, Djibouti, East Timor, Egypt, Eritrea, Ethiopia, Georgia, Greece (only the immediate Athens area), the Gulf of Aden, the Gulf of Oman, Haiti, Indonesia, Iran, Iraq, Israel, Jordan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Liberia, Macedonia, Malaysia, Montenegro, Pakistan, the Persian Gulf, the Philippines, Qatar, the Red Sea, Rwanda, Saudi Arabia, Serbia, Sierra Leone, Somalia, Sudan, Syria, Tajikistan, Turkey (excluding the Bosporus and Dardanelles region),

Uganda, the United Arab Emirates, Uzbekistan, Yemen, and Zaire.[25] Some designations are for the land area of a country or region, others for the land area and airspace above. Bodies of water have been designated as sea area, airspace, or both. Hostile fire pay also has been authorized from time to time for military personnel assigned to service in American embassies abroad that have come under attack.

**Current rate of hostile fire pay:** $225 per month.

**Cost:** For the cost of hostile fire pay from 1972 to 2004, see Table II-7 of *Military Compensation Statistics Tables*, volume II of this edition.

[25] "Special Pay: Duty Subject to Hostile Fire or Imminent Danger," in *Department of Defense Financial Management Regulation 7000.14R*, 7A, Ch. 10 (October 2003).

**Chapter II.D.1.a.(2)**

**Demolition Duty Pay**

**Legislative Authority**: 37 U.S.C. §301(a)(4) and (c)(1).

**Purpose**: To provide an additional pay to increase the ability of the uniformed services to attract and retain personnel for duty involving the demolition or neutralization of explosives, and to compensate for the more than normally dangerous character of such duty.

**Background**: The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(a)(7), 63 Stat. 802, 809-810 (1949), added "duty involving the demolition of explosives as a primary duty, including training for such duty," to the list of duties for which incentive pay for hazardous duty was authorized. Rates of pay for this duty, commonly referred to simply as "demolition duty," were initially set at $100 a month for officers and $50 a month for enlisted personnel, the same as all other categories of hazardous duty incentive pay with the exception of flight pay and submarine duty pay. Section 204(a)(7) and (c) of the Career Compensation Act, at 63 Stat. 810.[1]

In 1948, at the request of the Secretary of Defense, the Advisory Commission on Service Pay, sometimes referred to as the Hook Commission, undertook the first comprehensive study of the military pay system since 1908. The study concluded that, although special pays such as demolition duty pay were designed in part to compensate for arduous and hazardous duties, their main purpose should be to fill a supply-demand function--namely, to induce personnel to enter upon and remain in hazardous military occupations. The Commission's rationale underlying this conclusion was that:

> The Commission, after reviewing previous studies, hearing presentations by the Services, and personally observing representative operational and training activities, is of the unanimous opinion that some additional pay should be

[1]After enactment of the Career Compensation Act of 1949, ch. 681, *id*., the hazardous duty incentive pay provisions thereof, including demolition duty pay, were in the main classified to 37 U.S.C. §235, and the demolition duty pay provisions were found at 37 U.S.C. §235(a)(7) and (c). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the hazardous duty pay provisions, including the demolition duty pay provisions here in issue, were codified at 37 U.S.C. §301.

awarded to individuals who, on a voluntary basis, carry out peacetime functions involving more than the ordinary military risk and danger....

Close examination of the nature of hazardous duty and the expressed or implied reasons for accepting risks indicated that the incentive to engage and remain in hazardous occupations provided a more realistic and practical basis for determining the rates of special pay than the theory of recompense for shorter career expectancy. The recompense or replacement concept, although promoted for many years as the sole argument for hazard pay, was found wanting for several reasons.[2]

The Hook Commission's rationale for higher demolition duty pay for officers than for enlisted personnel, which was adopted in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(a)(7), 63 Stat. 802, 809-810 (1949), was as follows:

A higher rate of hazard pay for officers as compared with enlisted personnel is justifiable on several grounds:

(1) Any special pay must be in proportion to the basic pay, so that at all times the compensation for the primary responsibility will be considerably greater than that for any additional pay.

(2) The rates proposed for hazard pay serve as an inducement to undertake and continue special duties; and such an inducement need not be as great in monetary terms for lower paid and less advanced personnel as for higher paid and more highly trained personnel.

(3) Officers are usually given greater responsibilities, aside from normal administrative control, than enlisted personnel on hazardous assignments.[3]

Although it is not altogether clear, Congress apparently accepted the conclusions of the Hook Commission concerning hazardous duties in general, and demolition duties in particular.[4] In any event, demolition duty was added to the list of duties for which

[2] "*Career Compensation for the Uniformed Forces*, A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 24, December 1948 (italicized material italicized in original).

[3] "*Career Compensation for the Uniformed Forces*, A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, December 1948.

[4] For a short discussion of the treatment accorded hazardous duty incentive pays under the Career Compensation Act of 1949, ch. 681, *id*., see House Report No. 81-779 (Committee on Armed Services), p. 15, and Senate Report No. 81-733 (Committee on Armed Services), pp. 18-19, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

hazardous duty incentive pay was authorized, and an officer-enlisted pay differential was adopted--in keeping with the Hook Commission's recommendations.

Demolition duty pay rates were raised by 10 percent to $110 and $55 per month for officers and enlisted personnel, respectively, by the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(6), 69 Stat. 18, 21 (1955), and remained at that level until October 1, 1981. At that time, rates for enlisted personnel were increased 50 percent to $83 per month by the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(c)(3), 95 Stat. 989, 993 (1981). As explained in the Senate Report, the 1981 increases were made in recognition of the fact that hazardous duty incentive pay rates had "not been adjusted in more than 20 years, and this increase is needed to enhance the incentive value of this pay."[5]

Demolition duty pay rates for enlisted personnel were further increased to $110 per month in 1985 by the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(3), 99 Stat. 583, 648 (1985). This increase was effected by an amendment to 37 U.S.C. §301(c)(1) that did away with any distinction between officers and enlisted personnel for the vast majority of duties qualifying for hazardous duty incentive pay, specifically including demolition duty pay. Prior to amendment by the 1986 Authorization Act, 37 U.S.C. §301(c)(1) read as follows:

> For the performance of the hazardous duty described in [various clauses of subsection (a) of 37 U.S.C. §301, including explosives demolition duty], an officer is entitled to $110 a month and an enlisted member is entitled to $83 a month.

After amendment by the 1986 Authorization Act, 37 U.S.C. §301(c)(1) reads as follows:

> For the performance of hazardous duty described in [the same clauses set out above, including demolition duty], a member is entitled to $110 a month.[6]

Thus, under the then-current 37 U.S.C. §301, all members, both officers and enlisted personnel,[7] were entitled to $110 per month for the performance of explosives demolition duties under qualifying orders.

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[5] Senate Report No. 97-146, p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981).

[6] The increase in hazardous duty incentive pay rates for enlisted personnel engaged in explosives demolition duties became effective October 1, 1985. Section 635(b) of the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(b), 99 Stat. 583, 648 (1985).

The legislative history of the 1986 Authorization Act per se does not indicate the reason for eliminating the distinction between officers and enlisted personnel with respect to the rates of pay authorized for explosives demolition duties. This is primarily because no report was ever submitted on the Senate bill, S. 1160, in which the proposal to equalize the rates of demolition pay for officers and enlisted personnel was made.[8] In fact, however, the proposal to equalize officer and enlisted rates of pay for various

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[7] The term "member" is defined in 37 U.S.C. §101(23) to mean "a person appointed or enlisted in, or conscripted into, a uniformed service." As such, "member" includes both officers and enlisted personnel.

[8] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41 (Committee on Armed Services), 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Armed Services Committee reported out a clean bill, S. 1160, but did not issue a report on it. As explained by Senator Goldwater, Chairman of the Armed Services Committee, when S. 1160 came before the Senate for consideration:

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> Most of Senate Report 99-41 continues to be applicable to this bill.

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>
> ... In addition, the Committee recommended increases or enhancements to a number of special and incentive pays....
>
> The special and incentive pays ... involved in these recommendations include:
>
> g. Hazardous duty pays.
>
> Each of these benefit increases or enhancements are in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec*. 12474 (1985) (daily ed., 131 *Cong. Rec.* S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "explanatory background information" provided by Senator Goldwater specifically dealt with the "enhancements" to the hazardous duty incentive pay program in general, or to the demolition duty pay program in particular, that were contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985).

hazardous duties, including demolition duty, had been made the preceding year in connection with the consideration of the Department of Defense Authorization Act, 1985, Public Law 98-525, 98 Stat. 2492 (1984). At that time, the Senate Committee on Armed Services, reporting out S. 2723, 98th Congress, 2d Session (1984), had included a provision that would, among other things, have equalized officer and enlisted rates of hazardous duty incentive pay for demolition duty.[9] In support of its recommendation, the Committee stated:

> The committee proposes that the enlisted and officer rates for several hazardous duty incentive pays be equalized....
>
> The Fifth Quadrennial Review of Military Compensation (QRMC) examined special and incentive pays in great detail. One of its conclusions was that the differential between enlisted and officer rates for seven hazardous duty incentive pays [including demolition duty pay] should be eliminated....
>
> The committee agrees that enlisted and officer personnel should be paid the same incentive for exposing themselves to similar hazards. Therefore, it recommends that the rates for these seven hazardous duty pays be changed to entitle both enlisted and officer personnel to $110 per month.[10]

The Senate proposal was eliminated in conference.[11]

As indicated immediately above, the demolition pay "enhancements" adopted as part of the 1986 Authorization Act closely parallel recommendations advanced by the *Fifth Quadrennial Review of Military Compensation* in 1984.[12] In support of its recommendation to "[a]ward officer and enlisted personnel $110 per month for

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[9] See Section 148 of S. 2723, 98th Congress, 2d Session (1984).

[10] Senate Report No. 98-500 (Committee on Armed Services), p. 210 (discussing section 148 of the Senate bill), accompanying S. 2723, 98th Congress, 2d Session (1984).

[11] House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[12] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ...proposing changes" to the compensation system of the uniformed services. The Fifth Quadrennial Review of Military Compensation was convened in 1982, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in early 1984.

performance of demolition duty,"[13] thereby eliminating officer-enlisted differentials for that pay, the *Fifth Quadrennial Review* stated:

> A. A valid need for Demolition Duty Pay currently exists and will exist in the foreseeable future.
>
> 1. Demolition duty, particularly in the Explosive Ordnance Disposal (EOD) field, exposes personnel to greater risks than those encountered by most Service personnel.
>
> 2. Enlisted manning in demolition fields, especially EOD, is below required levels.
>
> 3. Low attraction of personnel to demolition fields is a primary cause of undermanning.
>
> 4. High attrition in EOD training is also a major cause of undermanning.
>
> 5. Retention of personnel in demolition fields is generally satisfactory.
>
> B. Current rates of Demolition Duty Pay [DDP] are generally adequate to compensate for the hazards of demolition duty.
>
> 1. The rate of DDP should be uniform for officers and enlisted personnel.
>
> 2. A DDP rate of $110 per month for both officers and enlisted personnel is currently appropriate.
>
> 3. Judicious use of other special and incentive pays, *i.e*. Enlistment Bonuses, SRBs [Selective Reenlistment Bonuses], and the proposed Special Duty Assignment Pay (replaces Proficiency Pay) along with other management actions should continue in order to resolve manning, attraction and retention problems and maintain satisfactory retention level.[14]

In further comment on officer-enlisted differentials for various hazardous duty incentive pays, including explosives demolition duty, the *Fifth Quadrennial Review* stated:

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[13] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation, Volume III, p. 84, November 1983. Also see *id*., p. 3, and "*Executive Summary*, Report of the Fifth Quadrennial Review of Military Compensation," p. VI-4, January 1984.

[14] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, pp. 83-84, November 1983. Also see *id*., pp. 2-3, and Executive Summary, "Report of the Fifth Quadrennial Review of Military Compensation, pp. VI-4, January 1984.

> During the process of reviewing the various Hazardous Duty Incentive Pays, it became increasingly clear that, although there is some incentive associated with certain pays, the primary purpose is recognition for the hazards or risks involved. It was, therefore, believed that officer/enlisted personnel should receive the same level of payment for seven of the Hazardous Duty Incentive Pays: [including] ... demolition [duty pay]....[15]

In arriving at this conclusion, the *Fifth Quadrennial Review* implicitly rejected the conclusions reached by the Hook Commission in 1948.[16] In commenting on various arguments that had been advanced in favor of and against continuation of officer-enlisted differentials for hazardous duty incentive pays in general, the *Fifth Quadrennial Review* summarized the argument against the Hook Commission's position in the following terms:

> The Hook Commission rationale was based primarily on an examination of the needs of the aviation and submarine communities. Times have changed and those communities now have their own separate career incentive pays and bonuses.[17]

Other arguments in favor of eliminating the differential were summarized as follows:

* All personnel, officer and enlisted, experience the same hazards.

* One can never really compensate for risk of life, no matter the level.

* Basic pay and bonuses are adequate to cover any differential.

* Most hazard-related pays now cover skills that are not necessarily career oriented (across all Services); hence, a differential is not necessary for purposes of retention. However, exceptions may occur and should be individually addressed, as required.

* [F]ield interviews [conducted by the Fifth Quadrennial Review of Military Compensation] with both officer and enlisted personnel indicate "same rate for same risk" is perceived as equitable in the hazardous duty areas.[18]

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[15] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 919, November 1983. See *id.*, pp. 36-37.

[16] See discussion of Hook Commission recommendations concerning officer-enlisted differentials at text accompanying footnote 3 to this chapter, above.

[17] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 920, November 1983. *cf. id.*, p. 37.

[18] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 919-920, November 1983.

Whether for these or some other reasons, Congress did in fact eliminate officer-enlisted pay differentials for explosives demolition duties in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985).

As indicated above, the purpose of providing a special pay for demolition duty is to encourage personnel to enter and remain in a career involving the demolition or neutralization of explosives despite the frequent and sometimes nearly continuous exposure to the various hazards implicit in that duty. To carry out this purpose, Section 109(b) of Executive Order 11157 of June 22, 1964, as amended,[19] established performance requirements--minimum exposure standards, normally exceeded by personnel performing the duty on a full-time basis--which must be met to qualify for the pay. The pay is not awarded for meeting the minimum exposure standard; it is paid for facing as much exposure as the needs of the service may require during a period of qualifying duty. A member who, as a primary assignment, engages in demolition duty or training using live explosives or neutralizes an explosive device during any month meets the minimum exposure standard and qualifies for the extra pay for that month.[20]

Reserve forces personnel[21] entitled to compensation for inactive-duty training are entitled to demolition duty pay when they perform qualifying duties under competent orders, provided Congress has appropriated sufficient funds for that purpose.[22]

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[19] Reproduced, as amended, at 37 U.S.C. §301 note.

[20] *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶ 20331-20334.

[21] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[22] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, demolition duty, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for demolition duty are explicitly made contingent on Congressional appropriations, *i.e.*, members of the reserve forces

Under 37 U.S.C. §301(f), members of the reserve forces who perform qualifying demolition duties while entitled to compensation under 37 U.S.C. §206 are also entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties.[23] That is, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, the member is, if performing qualifying duty under 37 U.S.C. §301(f), also entitled to 1/30th of the demolition duty pay that would be payable to a member of the active duty force who was performing such duties. Under conditions prescribed by the relevant Secretary, a member of a reserve force who performs demolition duties under 37 U.S.C. §301(f) while engaged in inactive-duty training is entitled to demolition duty pay. See Executive Order 13294 (2003).[24]

Hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training can, in one sense, be traced to the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926), which was the first legislative enactment that provided for special compensation for inactive duty reserve forces personnel engaged in hazardous duties of one kind of another.[25] In fact, however, explosives demolition duties were not covered by the Air Corps Act. Rather, that act merely gave "officers, warrant officers, and enlisted men of the National

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participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

[23] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--basically, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

[24] Reproduced, as amended, at 37 U.S.C. §301 note. Also see *Department of Defense Financial Management Regulation,Military Pay and Procedures for Active Duty and Reserve Pay,* Volume 7A, DOD 7000.14-R, ¶ 80316.

[25] For a discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training, see Chapter II.D.1.b.(1) hereof, "Flight Pay (Crew Member)."

Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled. The first special provision for demolition duty pay for reserve forces personnel engaged in inactive-duty training came in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(a)(7), 63 Stat. 802, 809-810 (1949).

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), restated prior provisions of law relating to the entitlement of reserve forces personnel to special pay for the performance of hazardous duties while engaged in inactive-duty training. Section 501 of the Career Compensation Act, ch. 681, *id*., §501, 63 Stat. at 825-827, dealt generally with the entitlement of reserve forces personnel to compensation for inactive-duty training. Subsection (d) of Section 501 generalized the hazardous duty incentive pay entitlements of reserve forces personnel performing inactive-duty training by providing that hazardous duty incentive pay was available to such personnel whenever they were required by competent orders to perform any of the hazardous duties, set out at Section 204(a) of the Career Compensation Act of 1949, for which active duty personnel were entitled to hazardous duty incentive pay. The duties set out in Section 204(a) as qualifying for such pay included crew member and non-crew member flight duties, submarine duties, glider duties, parachute jumping duties, leprosy duties, explosives demolition duties, duty at a submarine escape training tank, and duty with certain diving units. See Section 204(a)(7) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a)(7), 63 Stat. at 809-810.[26] No special reason was given for this reorganization of the provisions of prior law dealing

[26] The inactive-duty training pay provisions contained in Section 501 of the Career Compensation Act of 1949, ch. 681, *id*., §501, 63 Stat. at 825-827, were classified to 37 U.S.C. §301, whereas the hazardous duty incentive pay provisions set out in Section 204 of the Career Compensation Act, ch. 681, *id*., §204, 63 Stat. at 809-810, were classified to 37 U.S.C. §235. Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the inactive-duty training pay provisions relating to hazardous duty incentive pay entitlements of reserve forces personnel were codified at 37 U.S.C. §301, together with the hazardous duty incentive pay provisions relating to active duty personnel. The current structure of demolition duty pay entitlements for reserve forces personnel performing inactive-duty training thus derives from the organization imposed on Title 37 by the Act of September 7, 1962, Public Law 87-649, *id*.

with inactive-duty training pays, including inactive-duty training incentive pays for hazardous duties. The extension of incentive pay for hazardous duty to new classes of reserve forces personnel--e.g., to reserve forces personnel in an inactive-duty training status performing leprosy duties, explosives demolition duties, submarine escape training tank duties, etc.--appears to derive from the extension of such pays to active duty personnel, and not from any special concern about reserve forces personnel and whether they should be entitled to incentive pay for performance of various hazardous duties.[27]

The Department of Defense Authorization Act, 1986, Public Law 99-145, §647, 99 Stat. 583, 655 (1985), amended 37 U.S.C. §301(f) by adding certain housekeeping provisions concerning how hazardous duty incentive pay for inactive-duty training was to be computed. As explained by the House Committee on Armed Services:

Presently, members of the reserve and guard receive hazardous duty incentive pay (HDIP) for frequent and regular flying during active and inactive duty for training periods. To receive active duty HDIP, the reservist must fly four hours each month or a pro rata share of days on duty. For inactive duty, the requirement is two hours each month or a pro rata share of days on duty. The excess hours flown on inactive duty may be credited toward active duty flight requirements, but the reverse is not permitted. This situation is inconsistent and results in less than optimum use of flying hour resources.

> To ensure equity for reserve members in the computation of hazardous duty incentive pay, the committee recommends that reserve members who are entitled to HDIP for flying be permitted to credit active duty or inactive duty training flight time to fulfill active or inactive duty flight time requirements.[28]

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[27] The Hook Commission, whose report led to the adoption of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), did not concern itself with reserve forces compensation in any way. See *e.g.*, "Terms of Reference," the charter given to the Hook Commission by the then Secretary of Defense, James Forrestal, in "Career Compensation for the Uniformed Forces, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," at pp. vii-viii, December 1948.

[28] House Report No. 99-81 (Committee on Armed Services), p. 236, accompanying H.R. 1872, 99th Congress, 1st Session (1985). See House Report No. 99-235 (Committee of Conference), p. 434, and Senate Report No. 99-118 (Committee of Conference), p. 434, accompanying S. 1160, 99th Congress, 1st Session (1985).

While the concern that led to the amendment in issue was the appropriate use and apportionment of flying time, the amendment to 37 U.S.C. §301(f) was stated in broader terms, so that it applies to any of the hazardous duties set out in 37 U.S.C. §301(a), including explosives demolition duty, and not just flight duty. Thus, for any month in which a member of a reserve force is involved both in active duty and inactive-duty training for which he is entitled to demolition duty pay under the hazardous duty incentive pay provisions of 37 U.S.C. §301, the total amount of hazardous duty incentive pay the member may receive is based on his combined entitlement for both active duty and inactive-duty training.

The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1770 (1997) raised the rate of demolition duty pay from $110 per month to $150 per month. Until 2003, the conditions of entitlement to demolition duty pay for both active duty and reserve forces personnel were set out in Section 109(b) of Executive Order 11157, as amended,[29] in various supplementary regulations adopted by the service secretaries pursuant to Section 113 of Executive Order 11157, and the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R. Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301(a), relevant to demolition pay and other incentive pays, with the secretaries of commerce, defense, health and human services, and homeland security, as those entitlements affect military personnel under the respective jurisdictions of those departments.

**Current rate of demolition duty pay**: $150 per month.

**Cost**: For the cost of demolition duty pay from 1972 to 2004, see Table II-8 of *Military Compensation Statistics Tables*, volume II of this edition.

[29] Reproduced, as amended, at 37 U.S.C. §301 note.

**Chapter II.D.1.a.(3)**

## Special Pay for Officers Holding Positions of Unusual Responsibility

**Legislative Authority:** 37 U.S.C. §306.

**Purpose**: To provide an additional pay for officers occupying certain critical positions carrying more significant responsibilities than those normal for officers of the same grade.

**Background**: Responsibility pay was first authorized for officers in the Act of May 20, 1958 (Uniformed Services Pay Act of 1958), Public Law 85-422, §1(8), 72 Stat. 122, 126-127 (1958), at the rate of $150 a month for officers in pay grade O-6, $100 a month for officers in pay grade O-5, and $50 a month for officers in pay grades O-4 and O-3. As originally adopted, responsibility pay was limited to officers in pay grades O-3 through O-6. This special pay was adopted at the recommendation of the Senate Armed Services Committee, not at the urging of the Administration. The committee explained its recommendation as follows:

> The committee recommended this provision because of the following factors:
>
> (1) Under the present pay system, an officer's pay is determined principally by his rank. It is recognized that both the abilities and responsibilities of officers within a particular grade vary to a considerable degree.
>
> (2) The changing nature and complexity of our weapons systems are creating demands for unusual responsibility in both staff and command assignments, or a combination of both. These responsibilities, in many cases, may be distinguishable from the bulk of others held by those in that rank.
>
> (3) Neither the present pay system nor the promotion system adequately acknowledges this type of individual. An example is shown by the fact that even though an officer may be occupying and adequately performing in a position of unusual responsibility, he nevertheless may be prohibited from receiving additional pay because of the fact that he is not within a so-called zone of consideration for promotion, which is based solely on the length of service in the particular grade.

(4) The changing nature of our military services is requiring greater leadership in the scientific fields as well as command leadership in the usual sense. In the Air Force, for instance, the proportion of officers in the technical fields will grow from 55 percent in a B-52 wing to approximately 75 percent in an intercontinental ballistic missile unit.[1]

In connection with Congressional consideration of the bill that became the Uniformed Services Pay Act of 1963, Public Law 88-132, 77 Stat. 210 (1963), the Department of Defense recommended that the statutory authority for responsibility pay be repealed, and the bill passed by the House in fact did so. However, the repeal provision was deleted in the Senate, and the House later concurred in this action. In addressing itself to the attempted repeal, the Senate Armed Services Committee noted:

The Bill as passed by the House contained a provision which would repeal the system of responsibility pay enacted as a part of the Military Pay Act of 1958. The Senate Committee on Armed Services deleted the House provision and therefore provided for the retention of the system of responsibility pay.

As a result of the recommendation of the Senate Committee on Armed Services, the Military Pay Act of 1958 introduced in the military pay system a new feature known as responsibility pay, for certain officers who occupy positions of unusual responsibility. This system, which was permissive, has never been implemented by the Department of Defense.

The Department of Defense suggested the repeal of this authority on two grounds:

1. That there should be no distinction between persons of equal rank and length of service for the purpose of pay since rank itself should be considered equal with responsibility.

2. That it would be difficult to administer without serious problems of equity and morale.

The Committee is of the opinion that this system should be retained for the following reasons:

1. The fact that the system has not been used does not necessarily mean that the provision is unsound. Both the Navy and the Air Force have urged its implementation.

2. The basic premise of the provision is that the relatively small number of officers holding positions of much greater responsibility than occur in normal

[1] Senate Report No. 1472 (Committee on Armed Services), pp. 7-8, accompanying H.R. 11470, 85th Congress, 2d Session (1958).

> assignments might well be rewarded with some additional compensation. Both the abilities and responsibilities of an officer within a particular grade vary to a considerable degree. The military services already recognize this variance for the purpose of assignments. Both the additional responsibility and often the longer hours that accompany such assignments would provide an added incentive for superior achievement.[2]

The Oceans Act of 1992, Public Law 102-587, §5205(a), 106 Stat. 5039, 5074 (1992), extended the authorization for responsibility pay to all officers below pay grade O-7.[3] As statutorily authorized, not more than ten percent of officers in pay grades O-4, O-5, and O-6 in any armed force may be paid responsibility pay at the same time, and not more than five percent of officers in pay grade O-3 and below in any armed force may be paid responsibility pay at the same time.

The Department of Defense made only limited use of responsibility pay prior to 1980.[4] Army and Navy officers in Vietnam holding the unique civil-military positions of senior province/district advisers or riverine forces advisers were paid responsibility pay in an attempt to induce them to voluntarily remain in such positions longer than the one-year period of duty prescribed for a combat zone. The Department of Transportation made somewhat broader use of the authority, having designated the position of commanding officer of Coast Guard vessels as a critical position of unusual responsibility. Responsibility pay has been paid to Coast Guard officers in pay grades O-3 through O-6 who have been assigned to and were serving as commanding officers of Coast Guard vessels since July 1, 1973. Beginning in fiscal year 1980, the Navy authorized responsibility pay for officers designated under NavOp 75-80, which includes, with some exceptions, most officers entitled to wear the Command at Sea Pin. The only

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[2] Senate Report No. 387 (Committee on Armed Services), pp. 29-30, accompanying H.R. 5555, 88th Congress, 1st Session (1963).

[3] Under the definition set out at 37 U.S.C. §101(11), the term "officer" includes both commissioned and warrant officers.

[4]Under the provisions of 37 U.S.C. §306(e), responsibility pay may not be paid to medical personnel entitled to special pay under 37 U.S.C. §302 (medical officers of the Armed Forces), §302a (optometrists), §302b (dental officers of the Armed Forces), or §303 (veterinarians).

Department of Defense personnel currently authorized responsibility pay are Navy officers in pay grades O-6 and below, occupying designated command positions.

**Current rates of responsibility pay**: The current rates of responsibility pay are as follows:

| Pay Grade | Amount |
|---|---|
| O-6 | $150 |
| O-5 | $100 |
| O-4 and below | $50 |

**Cost**: For the cost of responsibility pay from 1972 to 2004, see Table II-9 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.D.1.b.(1)**

**Flight Pay (Crew Member)**

**Legislative Authority**: 37 U.S.C. §301(a)(1) and (b).

**Purpose**: To provide an additional pay to help the uniformed services induce officers and enlisted personnel to enter upon and remain in flying duty and to compensate for the more than normally dangerous character of such duty.

**Background**: Crew member flight pay started out as an extra pay for officers only; it was subsequently extended to enlisted personnel; then, with the adoption of the aviation career incentive pay program for officers,[1] it was withdrawn from officers, thus being payable only to enlisted members; and now, under the amendment to the crew member flight pay program effected by the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(1)(A), 99 Stat. 583, 697 (1985), it is again payable to both officers and enlisted personnel. In its earliest incarnation, crew member flight pay was the original flight pay. All of the existing flight pay programs are derivative from the progenitor of today's crew member flight pay program.

Originally, the sole purpose of flight pay was to compensate personnel for the exceedingly hazardous nature of military flying duty. The first legislative authorization of a special pay for flying duty was incorporated in the Act of March 2, 1913 (Army Appropriation Act of 1914), ch. 93 [Public Law 401, 62d Congress], 37 Stat. 704, 705 (1913), which gave Army officers detailed to "aviation duty" as "actual flyers of heavier than air craft" an increase of 35 percent in their pay and allowances. The Act of March 4, 1913 (Navy Appropriation Act of 1914), ch. 148 [Public Law 433, 62d Congress], 37 Stat. 891, 892 (1913), extended the same extra pay to Navy and Marine Corps officers detailed by the Secretary of the Navy to "aviation duty" as "actual flyers of heavier-than-air craft."

[1]See Chapter II.D.1.b.(3) hereof, "Aviation Career Incentive Pay (ACIP) and Aviation Career Continuation Pay (AOCP)", below.

The Act of July 18, 1914, ch. 186 [Public Law 143, 63d Congress], 38 Stat. 514 (1914), created an aviation section within the Army Signal Corps and established three classes of Army aviators: military aviators, junior military aviators, and aviation students. These classes were entitled to flight pay amounting to an additional 75, 50, and 25 percent, respectively, of their base and longevity pay. Act of July 18, 1914, ch. 186, *id*., §3, 38 Stat. at 515-516. The act also gave Army enlisted personnel who were required to participate regularly and frequently in aerial flight, or who held the rating of aviation mechanic, a 50 percent increase in pay. Act of July 18, 1914, ch. 186, *id*., §3, 38 Stat. at 515-516. The Act of March 3, 1915 (Navy Appropriation Act of 1916), ch. 83 [Public Law 271, 63d Congress], 38 Stat. 928, 939 (1915), provided for Navy and Marine Corps officers and enlisted personnel to be detailed to duty involving actual flying in balloons, dirigibles, and "aeroplanes." Officers so detailed were entitled to an increase of 35 percent in pay and allowances while classified as student aviators and to 50 percent after becoming qualified as naval aviators; enlisted personnel so detailed received a 50 percent increase in pay and allowances.

The Act of June 4, 1920 (National Defense Act Amendments of 1920), ch. 227 [Public Law 242, 66th Congress], §13, 41 Stat. 759, 768-769 (1920), created the "Air Service" of the Army, redesignated as the "Air Corps" in 1926, and abolished the flight pay scale based on aviator classes. Under the Act of June 4, 1920, ch. 227, *id*., all Army officers and enlisted personnel were entitled to an increase of 50 percent in base and longevity pay while on duty requiring them to participate regularly and frequently in aerial flights.

The Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §20, 42 Stat. 625, 632-633 (1922), provided that "all officers, warrant officers, and enlisted men of all branches of the Army, Navy, Marine Corps, and Coast Guard, when detailed to duty involving flying, shall receive the same increase of their pay ... as now authorized for the performance of like duties in the Army." The Joint Service Pay Readjustment Act of 1922, ch. 212, *id*., thus established uniform flight pay rates, applicable to all services, equal to 50 percent of base and

longevity pay. In addition, the act required that the President issue regulations to set up uniform standards governing personnel entitlements to flight pay for all services. The resultant Executive Order 3705-B of July 1, 1922, instituted the first performance requirements for flight pay entitlement. A member had to make 10 flights or be in the air at least four hours a month to qualify for flight pay under these regulations. Executive Order 4610 of March 10, 1927, modified the "10 flights" requirement by specifying that the 10 flights had to total at least three hours. These performance prerequisites for flight pay entitlement, and the flight pay rate of 50 percent of pay, continued in basically the same form until the adoption of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949).

In 1948, at the request of the Secretary of Defense, the Advisory Commission on Service Pay, sometimes referred to as the "Hook" Commission, undertook the first comprehensive study of the military pay system since 1908. In reviewing military compensation generally, and the flight pay program in particular, the commission concluded that, although special pays such as flight pay had been designed in part to compensate for arduous and hazardous duties, their main purpose should be to fill a supply-demand function--to induce personnel to enter upon and remain in hazardous military occupations:

> The Commission, after reviewing previous studies, hearing presentations by the Services, and personally observing representative operational and training activities, is of the unanimous opinion that some additional pay should be awarded to individuals who, on a voluntary basis, carry out peacetime functions involving more than the ordinary military risk and danger....
>
> Close examination of the nature of hazardous duty and the expressed or implied reasons for accepting risks indicated that the incentive to engage and remain in hazardous occupations provided a more realistic and practical basis for determining the rates of special pay than the theory of recompense for shorter career expectancy. The recompense or replacement concept, although promoted for many years as the sole argument for hazard pay, was found wanting for several reasons.[2]

[2] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 24, December 1948.

Until crew member flight pay was replaced by aviation career incentive pay for officers, officer rates, except for pay grade 0-1 with under two years of service, were uniformly higher than enlisted rates. The Hook Commission's rationale favoring a higher rate of pay for officers than for enlisted personnel was that:

> A higher rate of hazard pay for officers as compared with enlisted personnel is justifiable on several grounds:
>
> (1) Any special pay must be in proportion to the basic pay, so that at all times the compensation for the primary responsibility will be considerably greater than that for any additional duty.
>
> (2) The rates proposed for hazard pay serve as an inducement to undertake and continue special duties; and such an inducement need not be as great in monetary terms for lower paid and less advanced personnel as for higher paid and more highly trained personnel.
>
> (3) Officers are usually given greater special responsibilities, aside from normal administrative control, than enlisted personnel on hazardous assignments.
>
> (4) With respect to flying in particular, death rates for enlisted personnel have consistently been lower than those for officers.[3]

Under the Hook Commission recommendations, crew member flight pay was paired with submarine duty pay, and the rates for these two pays ranged from $30 monthly for pay grade E-1, through $75 for pay grade E-7, and $100 for pay grade O-1, up to $210 for pay grade O-6.[4] With respect to the special treatment accorded flight and submarine duty pays as compared with other types of incentive pay, the commission noted:

> A separate scale was developed for flying and submarine duty, compensable today at 50 percent of pay. Because of the demonstrated greater actual or potential danger and the supreme importance of these services, the

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[3] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, December 1948.

[4] The Hook Commission recommended that officers in pay grades O-7 and O-8 receive $100 per month on account of flight duty. "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, Table XI, December 1948.

> inducement must be greater. The Commission's proposals maintain approximately the same dollar differential for these duties as now exists except in the general officer ranks. This differential, plus the proposed basic compensation, should be adequate to attract and keep men in these pursuits at the grade and age at which, in the Commission's opinion, based on present practice, they are most effective.[5]

The reasoning and recommendations of the Hook Commission led to the introduction and enactment of the hazardous duty incentive pay provisions of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949).[6] During debate in the House of Representatives, Representative Johnson of California, a member of the Armed Services Committee, spelled out Congress's desire to shift the pay from an exclusively hazard-based purpose to a primarily incentive-based purpose, in his statement opposing a (subsequently defeated) amendment that would have reduced crew member flight pay rates and eliminated grade differentials:

> Mr. Chairman, this amendment would entirely destroy the whole structure of flying pay. Yesterday I took considerable time to explain to you that there are great hazards in military flying in time of peace. This is far more important in time of peace than it is in time of war, as in peacetime we must train our pilots who will fight for us in war.... In order to offer the incentive that is necessary to keep these boys flying, experience has shown you must give them incentive pay. That is what this is, incentive pay. We are not paying for a man's life. You cannot pay for a man's life, but you can pay for the financial loss suffered by a man's family in the loss of his life, and all the courts pay less for those with small income, because all that is paid for is the pecuniary loss caused by the death.[7]

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[5] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 26, December 1948.

[6] For a short discussion of the treatment accorded hazardous duty incentive pays under the Career Compensation Act, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), see House Report No. 81-779 (Committee on Armed Services), p. 15, and Senate Report No. 81-733 (Committee on Armed Services), p. 18, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

[7] 95 *Cong. Rec*. 7773 (1949) (statement of Representative Johnson).

The rates of crew member flight pay established by the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), were:[8]

| Pay Grade | Flight Pay |
|---|---|
| O-8 | $150.00 |
| O-7 | 150.00 |
| O-6 | 210.00 |
| O-5 | 180.00 |
| O-4 | 150.00 |
| O-3 | 120.00 |
| O-2 | 110.00 |
| O-1 | 100.00 |
| W-4 | 100.00 |
| W-3 | 100.00 |
| W-2 | 100.00 |
| W-1 | 100.00 |
| E-7 | 75.00 |
| E-6 | 67.50 |
| E-5 | 60.00 |
| E-4 | 52.50 |
| E-3 | 45.00 |
| E-2 | 37.50 |
| E-1 | 30.00 |

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), is the basic source for existing crew member flight pay authority. It was, however, amended by the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(5), 69 Stat. 18, 20-21 (1955), restructuring and increasing pay rates for

[8] After enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), the hazardous duty incentive pay provisions thereof, including crew member flight pay, were in the main classified to 37 U.S.C. §235. See 37 U.S.C. §235(a)(1) and (b) (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the hazardous duty pay provisions, including the crew member flight pay provisions here in issue, were codified at 37 U.S.C. §301.

qualifying duties.[9] In urging an increase, Department of Defense witnesses again emphasized the incentive-based purpose of the pay during Congressional hearings:

> So long as these services must be staffed by volunteers the incentives offered must be enough to attract and retain the numbers required to maintain peak performance capabilities.[10]
>
> * * *
>
> My purpose here todays [sic] is to point out to you the impact which this legislation will have upon the successful solution of the most important of our personnel problems, the procurement and retention of qualified personnel.
>
> * * *
>
> For several years the flying services have experienced difficulty in procuring an adequate number of qualified applicants for flying training.
>
> * * *
>
> More serious than procurement has been the retention rate of newly trained pilots and observers.... It will be noted that the greatest increases in hazard incentive pay are recommended for first lieutenants, captains, and majors--our younger officers who are leaving service in the greatest numbers.[11]

In addition to increasing the rates of crew member flight pay, the Career Incentive Act of 1955, ch. 20, *id*., introduced longevity step differentials.

The rates of crew member flight pay under the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(5),69 Stat. 18, 20-21 (1955), were as follows:

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[9] As shown in the table below, flying duty pay rates, like basic pay, were made to depend not only on pay grade but also on years of service.

[10] Career Incentive Act of 1955: Hearings on H.R. 2607 before Subcommittee No. 2 of the House Armed Services Committee, 84th Congress, 1st Session 478 (1955) (testimony of Asst. Sec. Carter Burgess, Department of Defense).

[11] Career Incentive Act of 1955: Hearings on H.R. 2607 before Subcommittee No. 2 of the House Armed Services Committee, 84th Congress, 1st Session 519-520 (1955) (testimony of General Morris F. Lee, USAF).

| Pay Grade | Creditable Years of Service | | | | | | |
|---|---|---|---|---|---|---|---|
| | Under 2 | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 |
| O-10 | $165 | $165 | $165 | $165 | $165 | $165 | $165 |
| O-9 | 165 | 165 | 165 | 165 | 165 | 165 | 165 |
| O-8 | 155 | 155 | 165 | 165 | 165 | 165 | 165 |
| O-7 | 150 | 150 | 160 | 160 | 160 | 160 | 160 |
| O-6 | 200 | 200 | 215 | 215 | 215 | 215 | 215 |
| O-5 | 190 | 190 | 205 | 205 | 205 | 205 | 205 |
| O-4 | 170 | 170 | 185 | 185 | 185 | 195 | 210 |
| O-3 | 145 | 145 | 155 | 165 | 180 | 185 | 190 |
| O-2 | 115 | 125 | 150 | 150 | 160 | 165 | 170 |
| O-1 | 100 | 105 | 135 | 135 | 140 | 145 | 155 |
| W-4 | 115 | 115 | 115 | 115 | 120 | 125 | 135 |
| W-3 | 110 | 115 | 115 | 115 | 120 | 120 | 125 |
| W-2 | 105 | 110 | 110 | 110 | 115 | 120 | 125 |
| W-1 | 100 | 105 | 105 | 105 | 110 | 120 | 125 |
| E-9 | 105 | 105 | 105 | 105 | 105 | 105 | 105 |
| E-8 | 105 | 105 | 105 | 105 | 105 | 105 | 105 |
| E-7 | 80 | 85 | 85 | 85 | 90 | 95 | 100 |
| E-6 | 70 | 75 | 75 | 80 | 85 | 90 | 95 |
| E-5 | 60 | 70 | 70 | 80 | 80 | 85 | 90 |
| E-4 | 55 | 65 | 65 | 70 | 75 | 80 | 80 |
| E-3 | 55 | 60 | 60 | 60 | 60 | 60 | 60 |
| E-2 | 50 | 60 | 60 | 60 | 60 | 60 | 60 |
| E-1 | 50 | 55 | 55 | 55 | 55 | 55 | 55 |

E-1 less than 4 months: 50
Aviation cadets: 50

| Pay Grade | Creditable Years of Service | | | | | | |
|---|---|---|---|---|---|---|---|
| | Over 12 | Over 14 | Over 16 | Over 18 | Over 22 | Over 26 | Over 30 |
| O-10 | $165 | $165 | $165 | $165 | $165 | $165 | $165 |
| O-9 | 165 | 165 | 165 | 165 | 165 | 165 | 165 |
| O-8 | 165 | 165 | 165 | 165 | 165 | 165 | 165 |
| O-7 | 160 | 160 | 160 | 160 | 160 | 160 | 160 |
| O-6 | 215 | 215 | 220 | 245 | 245 | 245 | 245 |
| O-5 | 210 | 225 | 230 | 245 | 245 | 245 | 245 |
| O-4 | 215 | 220 | 230 | 240 | 240 | 240 | 240 |
| O-3 | 200 | 205 | 205 | 205 | 205 | 205 | 205 |
| O-2 | 180 | 185 | 185 | 185 | 185 | 185 | 185 |
| O-1 | 160 | 170 | 170 | 170 | 170 | 170 | 170 |
| W-4 | 145 | 155 | 160 | 165 | 165 | 165 | 165 |
| W-3 | 135 | 140 | 140 | 140 | 140 | 140 | 140 |
| W-2 | 130 | 135 | 135 | 135 | 135 | 135 | 135 |
| W-1 | 130 | 130 | 130 | 130 | 130 | 130 | 130 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| E-9 | 105 | 105 | 105 | 105 | 105 | 105 | 105 |
| E-8 | 105 | 105 | 105 | 105 | 105 | 105 | 105 |
| E-7 | 105 | 105 | 105 | 105 | 105 | 105 | 105 |
| E-6 | 95 | 100 | 100 | 100 | 100 | 100 | 100 |
| E-5 | 95 | 95 | 95 | 95 | 95 | 95 | 95 |
| E-4 | 80 | 80 | 80 | 80 | 80 | 80 | 80 |
| E-3 | 60 | 60 | 60 | 60 | 60 | 60 | 60 |
| E-2 | 60 | 60 | 60 | 60 | 60 | 60 | 60 |
| E-1 | 55 | 55 | 55 | 55 | 55 | 55 | 55 |

In 1974, in accordance with the report and recommendations of the *Second Quadrennial Review of Military Compensation* (QRMC),[12] Congress, through the Aviation Career Incentive Act of 1974, Public Law 93-294, 88 Stat. 177 (1974), abolished crew member flight pay for officers, *id*., §2(1), 88 Stat. at 177, and replaced it with aviation career incentive pay, *id*., §2(3), 88 Stat. at 177-179, presently codified at 37 U.S.C. §301a. See Chapter II.D.1.b.(3), "Aviation Career Incentive Pay and Aviation Career Continuation Pay," below. Officers were excluded from the crew member flight pay provisions of 37 U.S.C. §301 because it was generally believed that, since they would either be entitled to the then new aviation career incentive pay or to non-crew member flight pay, there was no need for crew member flight pay for officers involved in military aviation (see Chapter II.D.1.b.(3), "Aviation Career Incentive Pay and Aviation Career Continuation Pay," and Chapter II.D.1.b.(2), "Flight Pay (Non-Crew Member)," hereof, below).

The rates of flight pay for enlisted crew members that had been established under the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(5), 69 Stat. 18, 20-21 (1955), varying from $50 per month for members in pay grades E-1 and E-2 with less than two years of service to $105 per month for all members in pay grades E-8 and E-9 and members in pay grade E-7 with more than 12 years of service, remained in effect until September 1, 1980. At that time, crew member flight pay rates for enlisted members of the uniformed services were increased by 25 percent across-the-board by the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §2(a),

[12] Report of the 1971 Quadrennial Review of Military Compensation, Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs, Department of Defense, 1971.

94 Stat. 1123 (1980). As explained in the House Conference Report, Congress was in "unanimous agreement with the need for and desirability of" the proposed rate increases.[13] Under the 1980 Amendments, Public Law 96-343, id., crew member flight pay rates varied from a low of $63 per month for members in pay grades E-1 and E-2 with less than two years of service up to $131 per month for all members in pay grades E-8 and E-9 and members in pay grade E-7 with more than 10 years of service.

Effective October 1, 1981, Congress, through the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(b), 95 Stat. 989, 993 (1981), further increased minimum crew member flight pay rates to $83 per month, thereby increasing such pay for members in pay grades E-1 through E-3, E-4 with under four years of service, and E-5 with under two years of service, while at the same time substantially compressing the entire crew member flight pay structure. The reason for the increase, in simplest terms, was to keep crew member flight pay on a parity with other hazardous duty incentive pays. The Uniformed Services Pay Act of 1981, *id*., was specially directed at increasing hazardous duty incentive pay rates for personnel involved in noncrew member flight operations, parachute jumping, explosives demolition, acceleration or deceleration or thermal stress experiments, work in high- or low-pressure chambers, and carrier flight deck operations, since, as noted in the Senate Report, hazardous duty pay rates for such work had "not been adjusted in more than 20 years, and this increase [a 50 percent increase to $83 per month] is needed to enhance the incentive value of this pay."[14] With this increase, however, hazardous duty incentive pay rates for the targeted types of duty would, in some cases, i.e., for certain personnel in pay grades E-4 and E-5 and for all personnel in pay grades E-1 through E-3, have exceeded the hazardous duty incentive pay authorized for crew member flight operations, and since Congress felt no such differential should

[13] House Report No. 96-1233 (Committee of Conference), p. 15, accompanying H.R. 5168, 96th Congress, 2d Session (1980).

[14] Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981).

exist,[15] minimum rates of incentive pay for enlisted crew member flight duty were increased to $83 per month.

The rates of crew member flight pay as amended by the Uniformed Service Pay Act of 1981, Public Law 97-60, §111(b), 95 Stat. 989, 993 (1981), were:

**Pay Grade** **Years of Service Computed Under Section 205**

| | 2 or Less | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 |
|---|---|---|---|---|---|---|---|
| E-9 | $131 | $131 | $131 | $131 | $131 | $131 | $131 |
| E-8 | 131 | 131 | 131 | 131 | 131 | 131 | 131 |
| E-7 | 100 | 106 | 106 | 106 | 113 | 119 | 131 |
| E-6 | 88 | 94 | 94 | 100 | 106 | 113 | 119 |
| E-5 | 83 | 88 | 88 | 100 | 100 | 106 | 113 |
| E-4 | 83 | 83 | 83 | 88 | 94 | 100 | 100 |
| E-3 | 83 | 83 | 83 | 83 | 83 | 83 | 83 |
| E-2 | 83 | 83 | 83 | 83 | 83 | 83 | 83 |
| E-1 | 83 | 83 | 83 | 83 | 83 | 83 | 83 |

E-1 less than 4 months: 83
Aviation cadets: 83

**Pay Grade** **Years of Service Computed Under Section 205**

| | Over 12 | Over 14 | Over 16 | Over 18 | Over 22 | Over 26 | Over 30 |
|---|---|---|---|---|---|---|---|
| E-9 | $131 | $131 | $131 | $131 | $131 | $131 | $131 |
| E-8 | 131 | 131 | 131 | 131 | 131 | 131 | 131 |
| E-7 | 131 | 131 | 131 | 131 | 131 | 131 | 131 |
| E-6 | 119 | 125 | 125 | 125 | 125 | 125 | 125 |
| E-5 | 119 | 119 | 119 | 119 | 119 | 119 | 119 |
| E-4 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| E-3 | 83 | 83 | 83 | 83 | 83 | 83 | 83 |
| E-2 | 83 | 83 | 83 | 83 | 83 | 83 | 83 |
| E-1 | 83 | 83 | 83 | 83 | 83 | 83 | 83 |

In 1985, two substantive changes were made to the crew member flight pay provisions of 37 U.S.C. §301 by the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(1)(A) and (a)(2), 99 Stat. 583, 647-648 (1985). First, crew

[15] Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981).

member flight pay rates were increased and years-of-service differentials were eliminated for all enlisted pay grades. Second, crew member flight pay was again authorized for officers, thus effectively reversing the policy decision underlying the rescission of crew member flight pay authority for officers in the Aviation Career Incentive Act of 1974, Public Law 93-294, 88 Stat. 177 (1974), discussed above. Current crew member flight pay rates, which became effective October 1, 1985,[16] are set out below:[17]

| **Pay Grade** | **Monthly Rate** |
|---|---|
| O-10 | $110 |
| O-9 | 110 |
| O-8 | 110 |
| O-7 | 110 |
| O-6 | 250 |
| O-5 | 250 |
| O-4 | 225 |
| O-3 | 175 |
| O-2 | 150 |
| O-1 | 125 |
| W-5 | 250 |
| W-4 | 250 |
| W-3 | 175 |
| W-2 | 150 |
| W-1 | 125 |
| E-9 | 200 |
| E-8 | 200 |
| E-7 | 200 |
| E-6 | 175 |
| E-5 | 150 |
| E-4 | 125 |
| E-3 | 110 |
| E-2 | 110 |
| E-1 | 110 |

[16] Section 635(b) of the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(b), 99 Stat. 583, 648 (1985).

[17] The Warrant Officer Management Act, enacted as Title XI of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, 105 Stat. 1290, 1491-1506 (1991), established the new warrant officer pay grade, W-5, National Defense Authorization Act for Fiscal Years 1992 and 1993, *id*., §1111(a), 105 Stat. at 1491, and authorized members serving in that pay grade to receive crew member flight pay at the rate of $250 per month. National Defense Authorization Act for Fiscal Years 1992 and 1993, *id*., §1111(d)(1), 105 Stat. at 1492. For the reasons underlying the establishment of the new pay grade, see Chapter II.B.1 hereof, above, "Basic Pay".

The legislative history of the 1986 Authorization Act, Public Law 99-145, *id*., does not per se indicate the reason for increasing crew member flight pay rates for enlisted personnel or for extending crew member flight pay authorization to officers,[18] primarily because no report was ever submitted on the Senate bill, S. 1160, in which the two changes in issue were proposed.[19] In fact, however, both changes closely parallel

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[18] See, *e.g*., House Report No. 99-235 (Committee of Conference), p. 431, and Senate Report No. 99-118 (Committee of Conference), p. 431, accompanying S. 1160, 99th Congress, 1st Session (1985).

[19] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41 (Committee on Armed Services), 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Armed Services Committee reported out a clean bill, S. 1160, but did not issue a report on it. As explained by Senator Goldwater, Chairman of the Armed Services Committee, when S. 1160 came before the Senate for consideration:

> ... The Armed Services Committee reported S. 1029 to the Senate on April 29 of this year. The bill was accompanied by Senate Report No. 99-41.
>
> When the Armed Services Committee learned that the Senate would approve no real growth in the defense budget, it reconvened on Wednesday of this week [May 15, 1985] to make further program reductions to conform to the ceiling in the budget resolution. The Committee has reported a clean bill, S. 1160, reflecting these new budget levels....
>
> Most of the Senate Report 99-41 continues to be applicable to this bill....

131 *Cong. Rec*. 12438, 12500 (1985) (daily ed., 131 *Cong. Rec*. S6415, S6475 (May 17, 1985)) (statement of Senator Goldwater). In "explanatory background information" on some of the differences between S. 1029 and S. 1160, the following appears:

> The compensation and benefits provisions of the bill contain significant differences from those contained in S. 1029....
>
> ... [T]he Committee recommended increases or enhancements to a number of special and incentive pays....
>
> The special and incentive pays ... involved in these recommendations include:
>
> g. Hazardous duty pays.
>
> Each of these benefit increases or enhancements are in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec*. 12474 (1985) (daily ed., 131 *Cong. Rec*. S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "explanatory background information" provided by Senator Goldwater specifically dealt with the "enhancements" to the hazardous duty incentive pay program in general, or to the crew member flight pay program in particular, that were contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985).

See Section 148 of S. 2723, 98th Congress, 2d Session (1984).

recommendations advanced by the Fifth Quadrennial Review of Military Compensation in 1984.[20] In support of its recommendation to "[r]aise and compress the enlisted Crewmember Flight Pay rates,"[21] the Fifth Quadrennial Review concluded:

> The Service manning and reenlistment portion of [the Fifth Quadrennial Review's] analysis has shown that, while reenlistment rates for air crewmembers are generally higher than those service-wide, grade imbalances and, in a few specific skills, overall manning shortfalls continue to exist....
>
> ... [T]he rates [of crew member flight pay] range from $83 to $131 monthly, a difference of $48 stratified by nine pay grades and 14 longevity steps, resulting in an average incremental increase of $6. The incentive value of such an amount is questionable....
>
> Two actions can be taken to improve the incentive value of this pay: significantly increase the range of the allowable rates, or compress the pay table structure and increase the rates to a lesser degree. The first alternative is believed to be too costly and does not directly address the specific manning problems, that is, the grade imbalances. The latter, however, provides for greater incremental changes at lower program costs, since fewer steps are required. If the rates are differentiated by grade only, the incremental increase will appear greater than the actual dollar outlay by taking advantage of the pay raises coincident to promotions. The scale cannot be compressed by longevity without losing this advantage.[22]

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[20] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system of the uniformed services. The Fifth Quadrennial Review of Military Compensation was convened in 1982, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in early 1984.

[21] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 133, November 1983. Also see *id*., p. 10, and "*Executive Summary*, Report of the Fifth Quadrennial Review of Military Compensation," p. VI-5, January 1984.

[22] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, pp. 125-126, November 1983. Also see *id*., p. 5.

In support of its recommendation to "[r]eestablish ... Officer Crewmember Flight Pay,"[23] the Fifth Quadrennial Review noted:

> Most officer air crewmembers are either aeronautically designated/rated and, therefore, covered by ACIP[aviation career incentive pay, see Chapter II.D.1.b.(3) hereof], or are in the Air Force's Air Weapons Control Officer career field which was recently extended its own incentive pay [see Chapter II.D.1.b.(4) hereof]....
>
> However, there are currently [November 1983] about 750 officers who by definition are crewmembers, but, due to the abolishment of officer crewmember pay authority in 1974, are being carried as non-crewmembers for pay purposes. Prior to the enactment of ACIP, rated and non-rated officer crewmembers received the same flight pay (up to $245 per month). Officer Non-crewmember Flight Pay has been held at a flat rate of $110 since 1955; consequently it is not unusual for an enlisted member with equal or less experience to draw a higher incentive pay than an officer member of the same crew.... This situation is contrary to one of the basic principles of an incentive pay, that is, to be effective it must bear some relationship to basic pay....
>
> Officer non-rated crewmember positions are distributed across a wide range of skills; ... All but [one of the skill fields identified] are manned at less than 100%.... Further, the grade imbalances identified in the analysis of enlisted crewmembers [see quoted material accompanying footnote 17, above] are repeated for the officer corps. Since these officers can expect viable career opportunities on the ground and must be volunteers for flight duty, a need for a greater incentive than that currently being provided is indicated.[24]

Whether because of the recommendations of the Fifth Quadrennial Review of Military Compensation or for some other reasons, Congress, in the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(1)(A) and (a)(2), 99 Stat. 583, 647-648 (1985), did increase crew member flight pay rates for enlisted personnel, compressed the crew member flight pay table by eliminating years-of-service, or "longevity," differentials, and restored crew member flight pay entitlements to officers.

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[23] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 133, November 1983. Also see *id*., p. 6, and "*Executive Summary*, Report of the Fifth Quadrennial Review of Military Compensation," pp. VI-4 and , January 1984.

[24] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, pp. 127-128, November 1983. Also see *id*., p. 5, and "*Executive Summary*, Report of the Fifth Quadrennial Review of Military Compensation," pp. VI-4, January 1984.

The rates of crew member flight pay adopted by Congress in the 1986 Authorization Act are the same as those recommended by the Fifth Quadrennial Review of Military Compensation.[25]

Reserve forces personnel[26] entitled to compensation for inactive-duty training are entitled to crew member flight pay when they perform qualifying duties under competent orders, provided Congress has appropriated sufficient funds for that purpose.[27] Under 37 U.S.C. §301(f), members of the reserve forces who perform qualifying crew member flight duties while entitled to compensation under 37 U.S.C. §206 are also entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties.[28] That is, for every "period of instruction ... or ...

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[25] Compare the rates of crew member flight pay adopted at Section 635(a)(2) of the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(2), 99 Stat. 583, 648 (1985) (codified at 37 U.S.C. §301(b)), with the rates proposed by the Fifth Quadrennial Review at pages 127 (Table 8, Enlisted Personnel) and 129 (Table 9, Officers) of Special and Incentive Pays, "Report of the Fifth Quadrennial Review of Military Compensation," Volume III, November 1983.

[26] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[27] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, crew member flight duty, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for crew member flight duty are explicitly made contingent on congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

[28] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, the member is, if performing one of the hazardous duties set out in 37 U.S.C. §301(a), including crew member flight duties, also entitled to 1/30th of the monthly hazardous duty incentive pay that would be payable to a member of the active duty force who was performing such duties. Under regulations prescribed by the relevant Secretary, a member of a reserve force who performs crew member flight duties while engaged in inactive-duty training is entitled to crew member flight pay under 37 U.S.C. §301(f).[29]

Flight pay for reserve forces personnel generally, and crew member flight pay in particular, derives from the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926). Section 6 of the Air Corps Act amended Section 20 of the Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §20, 42 Stat. 625, 632 (1922), to give "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled. The extension of this special increase in compensation to members of the National Guard came about as a result of a floor amendment to the House bill, H.R. 10827, 69th Congress, 1st Session (1926), which established the Army Air Corps. In offering the amendment, Representative John Philip Hill of Alabama did not offer any particular justification for extending this pay to members of the National Guard. Rather, he simply noted that the bill had "the endorsement of the War Department, the Chief of the Air Service [the predecessor of the Air Corps], ... and the committee [on Military Affairs]." 67 CONG. REC. 8765 (1926) (statement of Representative Hill).

Flight pay for inactive-duty training was extended to "officers and enlisted men of the Naval Reserve ... performing aerial flights in the capacity of pilots ... as a part of their training" by the Naval Reserve Act of 1938, ch. 290 [Public Law 732, 75th Congress],

[29] See Executive Order 13294.

§313, 52 Stat. 1175, 1184 (1938). Members of the Marine Corps Reserve were covered by a separate provision that gave such members the same benefits as conferred on members of the Naval Reserve. Naval Reserve Act of 1938, ch. 290, *id*., §2, 52 Stat. at 1175. Insofar as personnel and compensation matters were concerned, the Naval Reserve Act had been patterned after the Army Air Corps Act, and as above noted, the Army Air Corps Act had extended flight pay entitlement to "officers, warrant officers, and enlisted men of the National Guard." The Naval Reserve Act was, however, more restrictive than the Army Air Corps Act had been: an amendment to the bill provided that the increase in compensation would apply to "only those actually serving as pilots of aircraft,"[30] whereas the Army Air Corps Act had extended the special pay to any member of the National Guard "participat[ing] regularly and frequently in aerial flights," independently of whether the member is a pilot.

The Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), substantially reorganized the provisions of preceding law relating to inactive-duty training pay for reserve forces personnel. Section 3 of the 1948 Act, *id*., 62 Stat. at 88-89, amended Section 14 of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §14, 56 Stat. 359, 367 (1942), to give "officers, warrant officers, and enlisted personnel" of all the reserve forces entitlement to special pay for "perform[ing] aerial flights," among other things. As stated in the House Report:

> The purpose of the bill is to standardize inactive training pay for all Reserve components of the various services and also to grant such inactive duty training pay to Army Reservists.
>
> The major departure in the legislation is the giving of this pay to the Army Reserves, including enlisted men. Such pay has been granted by the Congress heretofore to members of the National Guard and the Naval and Marine Corps Reserves....
>
> The committee considers the need for this pay to be apparent, even though it is unfortunate that the country must resort to it. The Army and Navy must maintain active Reserve components, or else, in time of war emergency, the

[30] House Report No. 2763 (Committee of Conference), p. 3, accompanying H.R. 10594, 75th Congress, 3d Session (1938).

> Nation will have to depend exclusively upon Regular services for its defense. They are patently incapable of doing such a job alone. So, in order to vitalize the National Guard and Reserve components, to get more people to participate so that they will fit promptly and effectively into the mobilization-day plans of the Armed Forces, inactive duty pay is to be given each participant at the rate of one-thirtieth of 1 month's base and longevity pay for each training period.... Such specialists as pilots, radar technicians, medical people, and so forth, will also be able to earn inactive duty training pay when the standards specified by the Secretaries [of the various departments] are met.[31] [32]

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), restated the provisions of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], 56 Stat. 359 (1942), as amended by the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), insofar as the entitlement of reserve forces personnel to special pay for the performance of hazardous duties was concerned. Section 501 of the Career Compensation Act of 1949, ch. 681, *id*., §501, 63 Stat. at 825-827, dealt generally with the entitlement of reserve forces personnel to compensation for inactive-duty training. Subsection (d) of Section 501, 63 Stat. at 826, generalized the hazardous duty incentive pay entitlements of reserve forces personnel performing inactive-duty training by providing that hazardous duty incentive pay was available to such personnel whenever they were required by competent orders to perform any of the hazardous duties, set out at Section 204(a) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a), 63 Stat. at 810, for which active duty personnel were entitled to hazardous duty incentive pay. The duties set out in Section 204(a) as qualifying for such pay included crew member and non-crew member flight duties, submarine duties,

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[31] House Report No. 80-971 (Committee on Armed Services), pp. 1-2, accompanying H.R. 3227, 80th Congress, 1st Session (1947). See Senate Report No. 80-625 (Committee on Armed Services), p. 1, accompanying S. 1174, 80th Congress, 1st Session (1947).

[32] Section 14(c) of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §14(c), 56 Stat. 359, 367 (1942), as amended by Section 3 of the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], §3, 62 Stat 87, 88-89 (1948), extended special pay to "personnel required to perform aerial flights, parachute jumping, glider flights, or submarine duty" in connection with inactive-duty training. As stated in Senate Report No. 80-625 (Committee on Armed Services), p. 2, accompanying S. 1174, 80th Congress, 1st Session (1947): Increases in pay authorized by law for flying, parachute jumping, submarine duty, *etc.*, will be paid.

glider duties, parachute jumping duties, leprosy duties, explosives demolition duties, duty at a submarine escape training tank, and duty with certain diving units. See Section 204(a) of the Career Compensation Act of 1949, ch. 681, id., §204(a), 63 Stat. at 809-810.[33] No special reason was given for this reorganization of the provisions of prior law dealing with inactive-duty training pays, including inactive-duty training incentive pays for hazardous duties. The extension of incentive pay for hazardous duty to new classes of reserve forces personnel--*e.g.*, to reserve forces personnel in an inactive-duty training status performing leprosy duties, explosives demolition duties, submarine escape training tank duties, *etc*.--appears to have derived from the extension of such pays to active duty personnel, and not from any special concern about reserve forces personnel and whether they should be entitled to incentive pay for performance of various hazardous duties.[34] See, e.g., chapters of this book dealing with explosives demolition duty pay, parachute duty pay, etc.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §647, 99 Stat. 583, 655 (1985), amended 37 U.S.C. §301(f) by adding certain housekeeping provisions concerning how hazardous duty incentive pay for inactive-duty training was to be computed. As explained by the House Committee on Armed Services:

> Presently, members of the reserve and guard receive hazardous duty incentive pay (HDIP) for frequent and regular flying during active and inactive

[33] The inactive-duty training pay provisions contained in section 501 of the Career Compensation Act of 1949, ch. 681, *id*., §501, 63 Stat. at 825-827, were classified to 37 U.S.C. §301, whereas the hazardous duty incentive pay provisions set out in Section 204 of the Career Compensation Act of 1949, ch. 681, *id*., §204, 63 Stat. at 809-810, were classified to 37 U.S.C. §235. Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the inactive-duty training pay provisions relating to hazardous duty incentive pay entitlements of reserve forces personnel were codified at 37 U.S.C. §301, together with the hazardous duty incentive pay provisions relating to active duty personnel. The current structure of hazardous duty incentive pay entitlements--including hazardous duty incentive pay for crew member flight duty--for reserve forces personnel performing inactive-duty training thus derives from the organization imposed on Title 37 by the Act of September 7, 1962, Public Law 87-649, *id*.

[34] The Hook Commission, whose report led to the adoption of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), did not concern itself with reserve forces compensation in any way. See, *e.g.*, "Terms of Reference," the charter given to the Hook Commission by the then Secretary of Defense, James Forrestal, in "*Career Compensation for the Uniformed Forces*, a Report and Recommendations for the Secretary of Defense by the Advisory Commission on Service Pay," pp. vii-viii, December 1948.

> duty for training periods. To receive active duty HDIP, the reservist must fly four hours each month or a pro rata share of days on duty. For inactive duty, the requirement is two hours each month or a pro rata share of days on duty. The excess hours flown on inactive duty may be credited toward active duty flight requirements, but the reverse is not permitted. This situation is inconsistent and results in less than optimum use of flying hour resources.
>
> To ensure equity for reserve members in the computation of hazardous duty incentive pay, the committee recommends that reserve members who are entitled to HDIP for flying be permitted to credit active duty or inactive duty training flight time to fulfill active or inactive duty flight time requirements.[35]

While the concern that led to the amendment in issue was the appropriate use and apportionment of flying time, the amendment to 37 U.S.C. §301(f) was stated in broader terms so that it applies to any of the hazardous duties set out in 37 U.S.C. §301(a), and not just flight pay. Thus, for any month in which a member of a reserve force is involved both in active duty and inactive-duty training for which he is entitled to hazardous duty incentive pay under 37 U.S.C. §301, the total amount of hazardous duty incentive pay the member may receive is based on his combined entitlement for both active duty and inactive-duty training.

The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1786, increased the hazardous duty pay of certain officers and enlisted personnel who were aerial flight crew members. Pursuant to that legislation, officers in grades 0-7 through 0-10 and enlisted personnel at grades E-1 through E-3 received $150 per month instead of the previous rate of $110 per month. Officers at grade 0-1, enlisted personnel at E-4, and warrant officers at grade W-1 received an increase to $150 per month over their previous $125 per month. The National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, 112 Stat. 2040, raised the monthly rate of hazardous duty pay for aerial flight crew members in grades E-4 through E-9 by varying amounts.

Until 2003 the conditions of entitlement to crew member flight pay for both active duty and reserve forces personnel are set out in Sections 103 and 104 of Executive Order

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[35] House Report No. 99-81 (Committee on Armed Services), p. 236, accompanying H.R. 1872, 99th Congress, 1st Session (1985). See House Report No. 99-235 (Committee of Conference), p. 434, and Senate Report No. 99-118 (Committee of Conference), p. 434, accompanying S. 1160, 99th Congress, 1st Session (1985).

11157, as amended,[36] in various supplementary regulations adopted by the service Secretaries pursuant to Section 113 of Executive Order 11157, and the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R. Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301(a), relevant to demolition pay and other incentive pays, with the secretaries of commerce, defense, health and human services, and homeland security, as those entitlements affect military personnel under the respective jurisdictions of those departments.

**Current rates of pay authorized**: Crew member flight pay rates vary by pay grade, as follows:

| Pay Grade | Monthly Rate |
|---|---|
| O-10 | $110 |
| O-9 | 110 |
| O-8 | 110 |
| O-7 | 110 |
| O-6 | 250 |
| O-5 | 250 |
| O-4 | 225 |
| O-3 | 175 |
| O-2 | 150 |
| O-1 | 125 |
| W-5 | 250 |
| W-4 | 250 |
| W-3 | 175 |
| W-2 | 150 |
| W-1 | 125 |
| E-9 | 240 |
| E-8 | 240 |
| E-7 | 240 |
| E-6 | 215 |
| E-5 | 190 |

[36] Reproduced, as amended, at 37 U.S.C. §301 note.

| | |
|---|---|
| E-4 | 165 |
| E-3 | 110 |
| E-2 | 110 |
| E-1 | 110 |

**Cost**: For the cost of flight pay for crew members from 1972 to 2004, see Table II-10 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.D.1.b.(2)**

**Flight Pay (Non-Crew Member)**

**Legislative Authority**: 37 U.S.C. §301(a)(2) and (c)(1).

**Purpose**: To provide additional pay to help the uniformed services induce personnel to enter into and remain in flying duty assignments, and to compensate for the more than normally dangerous character of such duty.

**Background**: Originally, the sole purpose of flight pay was to compensate personnel for the exceedingly hazardous nature of military flying duty. See Chapter II.D.1.b.(1), "Flight Pay (Crew Member)," above. From its birth in 1913 until 1934, the law made no distinction in the flight pay entitlements of non-crew members and crewmembers. Such a distinction grew out of a provision of the Independent Offices Appropriations Act, 1934, ch. 101 [Public Law 78, 73d Congress], §10, 48 Stat. 283, 307 (1933), one of a series of depression-era measures influenced by a sense-of-Congress resolution that "the affairs of the executive branch be conducted with the utmost economy," that authorized the President to "... distinguish between degrees of hazard in various types of flying duty and make different rates of extra pay applicable thereto."

When the President failed to take action consistent with the sense-of-Congress resolution and the President's discretionary authority under the Independent Offices Appropriation Act, 1934, ch. 101, *id.*, Congress adopted certain limitations on flight pay entitlements in the Act of March 15, 1934 (Navy Appropriation Act of 1935), ch. 69 [Public Law 122, 73d Congress], 48 Stat. 403, 411 (1934), and the Act of April 26, 1934 (Army Appropriation Act of 1935), ch. 165 [Public Law 176, 73d Congress], 48 Stat. 614, 618 (1934). Under the subject acts, a $120 monthly ceiling was placed on flight pay for "nonflying" officers--officers without an aeronautical rating or designation--in the grades of lieutenant commander/major and above. The ceiling was extended to cover all nonflying officers, regardless of grade, in the appropriation acts for the Army and Navy for fiscal year 1936. The maximum rate was reduced from $120 to $60 for flight surgeons in fiscal year 1940, and for all non-flying officers in fiscal year 1941. The rate reduction

stemmed from the conclusion of the House Appropriations Committee that flight pay for non-flying officers was "justifiable only upon the ground of increased insurance premiums" and that "the hazard is certainly not as great as in the case of flying personnel who are in the air vastly more often and generally under more hazardous conditions."[1]

Though the definition of a "flying officer" was broadened by the Act of July 1, 1943, ch. 185 [Public Law 108, 78th Congress], 57 Stat. 347, 349 (1943), to include flight surgeons and personnel undergoing flying training, the $60 ceiling on flight pay for non-flying officers remained in effect until July 1, 1950, albeit through a quirk in the law from October 1, 1949, to July 1, 1950. The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(a)(1) and (3), 63 Stat. 802, 809-810 (1949), established specific flight pay rates for aviation crew and non-crew members effective October 1, 1949,[2] and repealed "all Acts or parts of Acts inconsistent with the provisions of this Act."[3] However, the fiscal year 1950 Appropriation Act carried the $60 ceiling, and its enactment was delayed until a few days after adoption of the Career Compensation Act of 1949, *id*. The ceiling was thus not affected by the repeal--the new, higher rates for "nonflying" officers themselves being effectively repealed by the subsequently enacted Appropriation Act--and continued to apply throughout fiscal year 1950.

In 1948, at the request of the Secretary of Defense, the Advisory Commission on Service Pay, sometimes referred to as the "Hook Commission," undertook the first comprehensive study of the military pay system since 1908. The commission concluded that, although special pays such as flight pay were designed in part to compensate for arduous and hazardous duties, their main purpose should be to fill a supply-demand

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[1] House Report No. 1912 (Committee on Appropriations), p. 13, accompanying H.R. 9209, 76th Congress, 3d Session (1940).

[2] Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §533(a), 63 Stat. 802, 841 (1949).

[3] Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §531(a), 63 Stat. 802, 838 (1949).

function--namely, to induce personnel to enter into and remain in hazardous military occupations. The commission's rationale underlying this conclusion was that:

> The Commission, after reviewing previous studies, hearing presentations by the Services, and personally observing representative operational and training activities, is of the unanimous opinion that some additional pay should be awarded to individuals who, on a voluntary basis, carry out peacetime functions involving more than the ordinary military risk and danger....
>
> Close examination of the nature of hazardous duty and the expressed or implied reasons for accepting risks indicated that the incentive to engage and remain in hazardous occupations provided a more realistic and practical basis for determining the rates of special pay than the theory of recompense for shorter career expectancy. The recompense or replacement concept, although promoted for many years as the sole argument for hazard pay, was found wanting for several reasons.[4]

The Hook Commission's rationale for higher non-crew-member flight pay rates for officers than for enlisted personnel was that:

> A higher rate of hazard pay for officers as compared with enlisted personnel is justifiable on several grounds:
>
> (1) Any special pay must be in proportion to the basic pay, so that at all times the compensation for the primary responsibility will be considerably greater than that for any additional duty.
>
> (2) The rates proposed for hazard pay serve as an inducement to undertake and continue special duties; and such an inducement need not be as great in monetary terms for lower paid and less advanced personnel as for higher paid and more highly trained personnel.
>
> (3) Officers are usually given greater special responsibilities, aside from normal administrative control, than enlisted personnel on hazardous assignments.
>
> (4) With respect to flying in particular, death rates for enlisted personnel have consistently been lower than those for officers.[5]

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[4] "*Career Compensation for the Uniformed Forces*, A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 24, December 1948.

[5] "*Career Compensation for the Uniformed Forces*, A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, December 1948.

The reasoning and recommendations of the Hook Commission led to the introduction and enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), which established non-crew member flight pay rates of $100 a month for officers and $50 a month for enlisted personnel.[6] See Section 204(a)(3) and (c) of the Act, id., 63 Stat. at 810.[7] These rates were raised by 10 percent to $110 and $55 for officers and enlisted personnel, respectively, by the Career Incentive Act of 1955, ch 20 [Public Law 20, 84th Congress], §2(6), 69 Stat. 18, 21 (1955), and remained at those levels until October 1, 1981, when the rates for enlisted personnel were increased by 50 percent to $83 per month under the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(c), 95 Stat. 989, 993 (1981). As explained in the Senate report, the rates of non-crew member flight pay for enlisted personnel had "not been adjusted in more than 20 years, and this increase is needed to enhance the incentive value of this pay."[8]

Non-crew member flight pay rates for enlisted personnel were further increased to $110 per month in 1985 by the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(3), 99 Stat. 583, 648 (1985). This increase was effected by an amendment to 37 U.S.C. §301(c)(1) that eliminated the distinction between officers and enlisted personnel for the vast majority of duties qualifying for hazardous duty incentive pay, including non-crew member flight pay. Prior to amendment by the 1986

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[6] For a short discussion of the treatment accorded hazardous duty incentive pays under the Career Compensation Act of 1949, ch. 681, *id*., see House Report No. 81-779 (Committee on Armed Services), p. 15, and Senate Report No. 81-733 (Committee on Armed Services), p. 18, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

[7] After enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), the hazardous duty incentive pay provisions thereof, including non-crew member flight pay, were in the main classified to 37 U.S.C. §235, with the non-crew member flight pay provisions being found at 37 U.S.C. §235(a)(3) and (c). See 37 U.S.C. §235(a)(3) and (c) (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the hazardous duty pay provisions, including the non-crew member flight pay provisions here in issue, were codified at 37 U.S.C. §301.

[8] Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981).

Authorization Act, Public Law 99-145, *id*., §635(a)(3), 99 Stat. at 648, 37 U.S.C. §301(c)(1) read as follows:

> For the performance of the hazardous duty described in [various clauses of subsection (a) of 37 U.S.C. §301, including non-crew member flight duty], an officer is entitled to $110 a month and [an] enlisted member is entitled to $83 a month.
>
> After amendment by the 1986 Authorization Act, Public Law 99-145, id., §635(a)(3), 99 Stat. at 648, 37 U.S.C. §301(c)(1) reads as follows:
>
> For the performance of hazardous duty described in [the same clauses set out above, including non-crew member flight duty], a member is entitled to $110 a month.[9]

Thus, under current 37 U.S.C. §301, all members, both officers and enlisted personnel,[10] are entitled to $110 per month for the performance of non-crew member flight duties under qualifying orders.

The legislative history of the 1986 Authorization Act, Public Law 99-145, *id., per se* does not indicate the reason for eliminating the distinction between officers and enlisted personnel with respect to the rates of pay authorized for non-crew member flight duties, primarily because no report was ever submitted on the Senate bill, S. 1160, in which the proposal to equalize the rates of non-crew member flight pay for officers and enlisted personnel was made.[11] In fact, however, the proposal to equalize officer and

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[9] The increase in hazardous duty incentive pay rates for enlisted personnel engaged in non-crew member flight duties became effective October 1, 1985. Section 635(b) of the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(b), 99 Stat. 583, 648 (1985).

[10] The term, "member," is defined in 37 U.S.C. §101(23) to mean "a person appointed or enlisted in, or conscripted into, a uniformed service." As such, "member" includes both officers and enlisted personnel.

[11] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41 (Committee on Armed Services), 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Armed Services Committee reported out a clean bill, S. 1160, but did not issue a report on it. As explained by Senator Goldwater, Chairman of the Armed Services Committee, when S. 1160 came before the Senate for consideration:

...The Armed Services Committee reported S. 1029 to the Senate on April 29 of this year. The bill was accompanied by Senate Report No. 99-41.

enlisted rates of pay for various hazardous duties, including non-crew member flight duty, had been made the preceding year in connection with the consideration of the Department of Defense Authorization Act, 1985, Public Law 98-525, 98 Stat. 2492 (1984). At that time, the Senate Committee on Armed Services, reporting out S. 2723, 98th Congress, 2d Session (1984), had included a provision that would, among other things, have equalized officer and enlisted rates of hazardous duty incentive pay for non-crew member flight duty.[12] In support of its recommendation, the Committee stated:

> The committee proposes that the enlisted and officer rates for several hazardous duty incentive pays be equalized....
>
> The Fifth Quadrennial Review of Military Compensation (QRMC) examined special and incentive pays in great detail. One of its conclusions was

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When the Armed Services Committee learned that the Senate would approve no real growth in the defense budget, it reconvened on Wednesday of this week [May 15, 1985] to make further program reductions to conform to the ceiling in the budget resolution. The Committee has reported a clean bill, S. 1160, reflecting these new budget levels....

Most of Senate Report 99-41 continues to be applicable to this bill....

131 *Cong. Rec.*2438, 12500 (1985) (daily ed., 131 CONG. REC. S6415, S6475 (May 17, 1985)) (statement of Senator Goldwater). In "explanatory background information" on some of the differences between S. 1029 and S. 1160, the following appears:

The compensation and benefits provisions of the bill contain significant differences from those contained in S. 1029....

... In addition, the Committee recommended increases or enhancements to a number of special and incentive pays ....

The special and incentive pays ... involved in these recommendations include:

Hazardous duty pays.

Each of these benefit increases or enhancements is in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec*. 12474 (1985) (daily ed., 131 *Cong. Rec*. S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "explanatory background information" provided by Senator Goldwater specifically dealt with the "enhancements" to the hazardous duty incentive pay program in general, or to the non-crew member flight pay program in particular, that were contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985).

[12] See Section 148 of S. 2723, 98th Congress, 2d Session (1984).

> that the differential between enlisted and officer rates for seven hazardous duty incentive pays [including non-crew member flight pay] should be eliminated....
>
> The committee agrees that enlisted and officer personnel should be paid the same incentive for exposing themselves to similar hazards. Therefore, it recommends that the rates for these seven hazardous duty pays be changed to entitle both enlisted and officer personnel to $110 per month.[13]

The Senate proposal was eliminated in conference.[14]

As indicated immediately above, the non-crew member flight pay "enhancements" adopted as part of the 1986 Authorization Act, Public Law 99-145, *id*., closely parallel recommendations advanced by the *Fifth Quadrennial Review of Military Compensation* in 1984.[15] In support of its recommendation to "[r]aise enlisted Non-Crewmember Flight Pay to $110 per month,"[16] thereby eliminating officer-enlisted differentials for that pay, the Fifth Quadrennial Review stated:

> Although the need for an incentive exists to some extent, the dominant factor associated with non-crewmember duties is the hazard associated with performing tasks in the air rather than on the ground. Therefore, a flat rate of $110 per month is sufficient to recognize the risk and serve as an incentive for this category of officer and enlisted flyers.[17]

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[13] Senate Report No. 98-500 (Committee on Armed Services), p. 210 (discussing section 148 of the Senate bill, S. 2723), accompanying S. 2723, 98th Congress, 2d Session (1984).

[14] House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[15] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of he principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system of the uniformed services. The Fifth Quadrennial Review of Military Compensation was convened in 1982, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in early 1984.

[16] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 133, November 1983. Also see *id*., p. 6, and Executive Summary, "Report of the Fifth Quadrennial Review of Military Compensation," p. VI-5, January 1984.

[17] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, pp. 5, 133, November 1983. Also see Executive Summary, "Report of the Fifth Quadrennial Review of Military Compensation," pp. VI-4 and 5, January 1984.

In further comment on officer-enlisted differentials for various hazardous duty incentive pays, including non-crew member flight duty, the *Fifth Quadrennial Review* stated:

> During the process of reviewing the various Hazardous Duty Incentive Pays, it became increasingly clear that, although there is some incentive associated with certain pays, the primary purpose is recognition for the hazards or risks involved. It was, therefore, believed that officer/enlisted personnel should receive the same level of payment for seven of the Hazardous Duty Incentive Pays: [including] ... flight [pay]--non-crewmember....[18]

In arriving at this conclusion, the Fifth Quadrennial Review implicitly rejected the conclusions reached by the Hook Commission in 1948.[19] In commenting on various arguments that had been advanced in favor of and against continuation of officer-enlisted differentials for hazardous duty incentive pays in general, the *Fifth Quadrennial Review* summarized the argument against the Hook Commission's position in the following terms:

> The Hook Commission rationale was based primarily on an examination of the needs of the aviation and submarine communities. Times have changed and those communities now have their own separate career incentive pays and bonuses.[20]

Other arguments in favor of eliminating the differential were summarized as follows:

> * All personnel, officer and enlisted, experience the same hazards.
>
> * One can never really compensate for risk of life, no matter the level.

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[18] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 919, November 1983. See *id.*, pp. 36-37.

[19] See discussion of Hook Commission recommendations concerning officer-enlisted differentials at text accompanying footnote 5 to this chapter, above.

[20] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 920, November 1983; *cf. id.*, p. 37. (The "aviation community" referred to was that of rated flyers, not non-crew member flyers. Rated flyers are currently covered by the aviation career incentive and continuation pay programs. See Chapter II.D.1.b.(3), "Aviation Career Incentive Pay (ACIP) and Aviation Career Continuation Pay (AOCP)", hereof, below.)

* Basic pay and bonuses are adequate to cover any differential.

* Most hazard-related pays now cover skills that are not necessarily career oriented (across all Services); hence, a differential is not necessary for purposes of retention. However, exceptions may occur and should be individually addressed, as required.

* [F]ield interviews [conducted by the Fifth Quadrennial Review of Military Compensation] with both officer and enlisted personnel indicate "same rate for same risk" is perceived as equitable in the hazardous duty areas.[21]

Whether for these or some other reasons, Congress did in fact eliminate officer-enlisted pay differentials for non-crew member flight duties in the 1986 Authorization Act, Public Law 99-145, *id*.

Reserve forces personnel[22] entitled to compensation for inactive-duty training are entitled to non-crew member flight pay when they perform qualifying duties under competent orders, provided Congress has appropriated sufficient funds for that purpose.[23] Under 37 U.S.C. §301(f), members of the reserve forces who perform qualifying non-crew member flight duties while entitled to compensation under 37 U.S.C. §206 are also entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty

[21] "*Special and Incentive Pays*, Report of the Quadrennial Review of Military Compensation," Volume III, pp. 919-920, November 1983.

[22] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[23] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, non-crew member flight duties, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for non-crew member flight duties are explicitly made contingent on congressional appropriations, *i.e*., members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

personnel performing such duties.[24] That is, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, the member is, if performing qualifying duty under 37 U.S.C. §301(f), also entitled to 1/30th of the non-crew member flight pay that would be payable to a member of the active duty force who was performing such duties. Under regulations prescribed by the President, a member of a reserve force who performs non-crew member flight duties under 37 U.S.C. §301(f) while engaged in inactive-duty training is entitled to non-crew member flight pay.[25]

Flight pay for reserve forces personnel generally, and non-crew member flight pay in particular, derives from the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926). Section 6 of the Army Air Corps Act amended Section 20 of the Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §20, 42 Stat. 625, 632 (1922), to give "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled. The extension of this special increase in compensation to members of the National Guard came about as a result of a floor amendment to the House bill, H.R. 10827, 69th Congress, 1st Session (1926), that established the Air Corps. In offering the amendment, Representative John Philip Hill of Alabama did not offer any particular justification for extending this pay to members of the National Guard. Rather, he simply

[24] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

[25] See *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶80312; *cf. id.*, ¶80311.

noted that the bill had "the endorsement of the War Department, the Chief of the Air Service [the predecessor of the Air Corps], ... and the committee [on Military Affairs]."[26]

Flight pay for inactive-duty training was extended to "officers and enlisted men of the Naval Reserve ... performing aerial flights in the capacity of pilots ... as a part of their training" by the Naval Reserve Act of 1938, ch. 290 [Public Law 732, 75th Congress], §313, 52 Stat. 1175, 1184 (1938). Members of the Marine Corps Reserve were covered by a separate provision that gave such members the same benefits as conferred on members of the Naval Reserve. Naval Reserve Act of 1938, ch. 290, *id*., §2, 52 Stat. at 1175. Insofar as personnel and compensation matters were concerned, the Naval Reserve Act had been patterned after the Army Air Corps Act, and as above noted, the Army Air Corps Act had extended flight pay entitlements to "officers, warrant officers, and enlisted men of the National Guard." The Naval Reserve Act was, however, more restrictive than the Army Air Corps Act had been: an amendment to the bill provided that the increase in compensation would apply to "only those actually serving as pilots of aircraft,"[27] whereas the Army Air Corps Act had extended the special pay to any member of the National Guard "participat[ing] regularly and frequently in aerial flights," independently of the member's status as a pilot or otherwise. Because no Navy or Marine Corps reserve personnel other than pilots were entitled to flight pay under the Naval Reserve Act of 1938, Navy and Marine Corps reserve personnel engaged in what would presently qualify as non-crew member flight duties would not have been entitled to hazardous duty incentive pay on account of performing such duties.

The Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), substantially reorganized the provisions of preceding law relating to inactive-duty training pay for reserve forces personnel. Section 3 of the 1948 Act, ch. 157, *id*., 62 Stat. at 88-89, amended Section 14 of the Pay Readjustment Act of 1942, ch. 413 [Public Law

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[26] 67 *Cong. Rec*. 8765 (1926) (statement of Representative Hill).

[27] House Report No. 2763 (Committee of Conference), p. 3, accompanying H.R. 10594, 75th Congress, 3d Session (1938).

607, 77th Congress], §14, 56 Stat. 359, 367 (1942), to give "officers, warrant officers, and enlisted personnel" of all the reserve forces entitlement to special pay for "perform[ing] aerial flights," among other things. As stated in the House Report:

> The purpose of the bill is to standardize inactive training pay for all Reserve components of the various services and also to grant such inactive duty training pay to Army Reservists.
>
> The major departure in the legislation is the giving of this pay to the Army Reserves, including enlisted men. Such pay has been granted by the Congress heretofore to members of the National Guard and the Naval and Marine Corps Reserves....
>
> The committee considers the need for this pay to be apparent, even though it is unfortunate that the country must resort to it. The Army and Navy must maintain active Reserve components, or else, in time of war emergency, the Nation will have to depend exclusively upon the Regular services for its defense. They are patently incapable of doing such a job alone. So, in order to vitalize the National Guard and Reserve components, to get more people to participate so that they will fit promptly and effectively into the mobilization-day plans of the Armed Forces, inactive duty pay is to be given each participant at the rate of one-thirtieth of 1 month's base and longevity pay for each training period.... Such specialists as pilots, radar technicians, medical people, and so forth, will also be able to earn inactive duty training pay when the standards specified by the Secretaries [of the various departments] are met.[28] [29]

These provisions covered personnel of all the reserve forces performing non-crew member flight duties as a part of their inactive-duty training.

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st ongress], 63 Stat. 802 (1949), restated the provisions of the Pay Readjustment Act of 1942, ch. 413

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[28] House Report No. 80-971 (Committee on Armed Services), pp. 1-2, accompanying H.R. 3227, 80th Congress, 1st Session (1947). See Senate Report No. 80-625 (Committee on Armed Services), p. 1, accompanying S. 1174, 80th Congress, 1st Session (1947).

[29] Section 14(c) of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §14(c), 56 Stat. 359, 367 (1942), as amended by Section 3 of the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], §3, 62 Stat. 87, 88-89 (1948), extended special pay to "personnel required to perform aerial flights, parachute jumping, glider flights, or submarine duty" in connection with inactive-duty training. As stated in Senate Report No. 80-625 (Committee on Armed Services), p. 2, accompanying S. 1174, 80th Congress, 1st Session (1947): Increases in pay authorized by law for flying, parachute jumping, submarine duty, *etc*., will be paid.

[Public Law 607, 77th Congress], §14, 56 Stat. 359, 367 (1942), as amended by the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], §3, 62 Stat. 87, 88-89 (1948), insofar as the entitlement of reserve forces personnel to special pay for the performance of hazardous duties was concerned. Section 501 of the Career Compensation Act of 1949, ch. 681, *id*., 63 Stat. at 825-827, dealt generally with the entitlement of reserve forces personnel to compensation for inactive-duty training. Subsection (d) of Section 501, 63 Stat. at 826, generalized the hazardous duty incentive pay entitlements of reserve forces personnel performing inactive-duty training by providing that hazardous duty incentive pay was available to such personnel whenever they were required by competent orders to perform any of the hazardous duties, set out at Section 204(a) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a), 63 Stat. at 810, for which active duty personnel were entitled to hazardous duty incentive pay. The duties set out in Section 204(a) as qualifying for such pay included crew member and non-crew member flight duties, submarine duties, glider duties, parachute jumping duties, leprosy duties, explosives demolition duties, duty at a submarine escape training tank, and duty with certain diving units. See Section 204(a) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a), 63 Stat. 809-810.[30] No special reason was given for this reorganization of the provisions of prior law dealing with inactive-duty training pays, including inactive-duty training incentive pays for hazardous duties. The extension of incentive pay for hazardous duty to new classes of reserve forces personnel--*e.g*., to reserve forces personnel in an inactive-duty training status performing leprosy duties, explosives demolition duties, submarine escape training tank duties, etc.--appears to have derived from the extension of such pays to active duty personnel, and not from any special concern about reserve forces personnel and whether they should be entitled to incentive

[30] The inactive-duty training pay provisions contained in section 501 of the Career Compensation Act of 1949, ch. 681, *id*., §501, 63 Stat. at 825-827, were classified to 37 U.S.C. §301, whereas the hazardous duty incentive pay provisions set out in Section 204 of the Career Compensation Act, ch. 681, *id*., §204, 63 Stat. at 809-810, were classified to 37 U.S.C. §235. Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the inactive-duty training pay provisions relating to hazardous duty incentive pay entitlements of reserve forces personnel were codified at 37 U.S.C. §301, together with the hazardous duty incentive pay provisions relating to active duty personnel. The current structure of hazardous duty incentive pay entitlements--including hazardous duty incentive pay for non-crew member flight duty--for reserve forces personnel performing inactive-duty training thus derives from the organization imposed on Title 37 by the Act of September 7, 1962, Public Law 87-649, *id*.

pay for performance of various hazardous duties.[31] See, e.g., chapters of this book dealing with explosives demolition duty pay, parachute duty pay, etc.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §647, 99 Stat. 583, 655 (1985), amended 37 U.S.C. §301(f) by adding certain housekeeping provisions concerning how hazardous duty incentive pay for inactive-duty training was to be computed. As explained by the House Committee on Armed Services:

> Presently, members of the reserve and guard receive hazardous duty incentive pay (HDIP) for frequent and regular flying during active and inactive duty for training periods. To receive active duty HDIP, the reservist must fly four hours each month or a pro rata share of days on duty. For inactive duty, the requirement is two hours each month or a pro rata share of days on duty. The excess hours flown on inactive duty may be credited toward active duty flight requirements, but the reverse is not permitted. This situation is inconsistent and results in less than optimum use of flying hour resources.
>
> To ensure equity for reserve members in the computation of hazardous duty incentive pay, the committee recommends that reserve members who are entitled to HDIP for flying be permitted to credit active duty or inactive duty training flight time to fulfill active or inactive duty flight time requirements.[32]

While the concern that led to the amendment in issue was the appropriate use and apportionment of flying time, the amendment to 37 U.S.C. §301(f) was stated in broader terms, so that it applies to any of the hazardous duties set out in 37 U.S.C. §301(a), and not just flight pay. Thus, for any month in which a member of a reserve force is involved both in active duty and inactive-duty training for which he is entitled to hazardous duty incentive pay under 37 U.S.C. §301, the total amount of hazardous duty incentive pay the member may receive is based on his combined entitlement for both active duty and inactive-duty training.

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[31] The Hook Commission, whose report led to the adoption of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), did not concern itself with reserve forces compensation in any way. See, *e.g.*,"Terms of Reference," the charter given to the Hook Commission by the then Secretary of Defense, James Forrestal, in "Career Compensation for the Uniformed Forces, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," pp. vii-viii, December 1948.

[32] House Report No. 99-81 (Committee on Armed Services), p. 236, accompanying H.R. 1872, 99th ongress, 1st Session (1985). See House Report No. 99-235 (Committee of Conference), p. 434, and Senate Report No. 99-118 (Committee of Conference), p. 434, accompanying S. 1160, 99th Congress, 1st Session (1985).

Non-crew member flight duty was among several forms of hazardous duty that received a pay increase from $110 per month to $150 per month in the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1787.

Until 2003, the conditions of entitlement to non-crew member flight pay for both active duty and reserve forces personnel were set out in Section 103 and 104 of Executive Order 11157, as amended,[33] in various supplementary regulations adopted by the service Secretaries pursuant to Section 113 of Executive Order 11157, and in the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R. Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301(a), relevant to demolition pay and other incentive pays, with the Secretaries of Commerce, Defense, Health and Human Services, and Homeland Security, as those entitlements affect military personnel under the respective jurisdictions of those departments.

**Current rate of non-crew member flight pay**: The current rate of pay for non-crew member flight duties for both officers and enlisted members is $150 per month.

**Cost**: For the cost of non-crew member flight pay from 1972 to 1995, see Table II-11 of *Military Compensation Statistics Tables*, volume II of this edition.

[33]Reproduced, as amended, at 37 U.S.C. §301 note.

**Chapter II.D.1.b.(3)**

## Aviation Career Incentive Pay and Aviation Career Continuation Pay

**Legislative Authority**: 37 U.S.C. §§301a and 301b.

**Purpose**: To provide additional pay for aviation service in order to increase the ability of the uniformed services to attract and retain officer volunteers in a military aviation career. As prescribed by Section 615(a) of the National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, 112 Stat. 2040 (1998), aviation service is defined by 37 U.S.C. §301a(a)6 as "service performed by an officer (except a flight surgeon or other medical officer) while holding an aeronautical rating or designation or while in training to receive an aeronautical rating or designation."

**Background**: The practice of providing additional pay to military personnel for undertaking flying duty has a long tradition. The primary form of this pay, currently known as aviation career incentive pay (ACIP), is, however, of relatively recent origin, having been adopted by the Aviation Career Incentive Act of 1974, Public Law 93-294, §2, 88 Stat. 177, 177-179 (1974), to replace the preexisting flight pay program.[1] The purpose underlying the creation of ACIP was described by Congress as follows:

> The purpose of the bill is to restructure the flight-pay system of the Armed Forces so as to achieve a more equitable distribution of flight pay and increase the ability of the Armed Forces to attract and retain officer aviator crewmembers....
>
> > H.R. 12670 removes flight pay for officers from Section 301 of Title 37, United States Code, which provides "incentive pay: hazardous duty" and puts it in a new Section 301a which provides for "incentive pay: aviation career." The new section thus recognizes the committee's desire to define flight pay as not simply recompense for undertaking occasional hazardous duty but as an incentive pay for undertaking a career that is, on a continuing basis, more hazardous than other service careers and at the same time involves a capacity to absorb special

[1] For a discussion of the flight pay program and a history of the rates of pay authorized thereunder, see Chapter II.D.1.b.(1), "Flight Pay (Crew Member)," above.

> professional training which represents a considerable investment on the part of the Government.[2]

Representative Young of Florida, a member of the House Armed Services Committee, voiced the same theme in more down-to-earth language during the hearings on an earlier bill:

> If we are going to call it flight pay then they ought to be paid for flying, but there should, in my opinion, be some type of incentive or career pay for the men and women, if that be the case, that fall in these categories. I would hope we would find a way to go to the Congress with a program that would, in fact, provide for this money, but not give it the title of flight pay because it is a very deceiving situation.... We ought to devise some different program or different approach to the Congress and call it what it is, an incentive pay or a career pay rather than flight pay.[3]

To create an incentive for officers to undertake a career in military aviation, the Aviation Career Incentive Act of 1974 (1) established a system whereby an officer involved in the "frequent and regular performance of operational or proficiency flying duty" under competent orders was entitled to continuous aviation career incentive pay independently of whether, during any given year, the officer was actually assigned to flying duty; (2) set ACIP rates based on the length of an officer's aviation service rather than on grade and total military service, although years of officer service were used in determining such rates for more senior officers, *i.e.*, those with more than 18 years of officer service; (3) set the highest ACIP rates for the years immediately following the completion of an officer's first obligated tour, which normally coincided with the retention-critical, flight-intensive, period of a career; (4) provided for the progressive phasing out of ACIP entitlements in the senior, less-flight-intensive years of a commissioned career, with total elimination of ACIP entitlements after 25 years of

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[2] House Report No. 93-799 (Committee on Armed Services), pp. 1 and 3, and Senate Report No. 93-841 (Committee on Armed Services), pp. 3 and 5, accompanying H.R. 12670, 93d Congress, 2d Session (1974). Also see *Report of the 1971 Quadrennial Review of Military Compensation*, Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs, Department of Defense, 1971.

[3] Hearings on H.R. 8593 before Subcommittee No. 4 of the House Armed Services Committee, p. 104, 93d Congress, 1st Session (1973).

officer service; and (5) replaced the former "excusal" system with a set of operational flying-time standards, or "gates," for entitlement to continuous monthly ACIP.[4]

The ACIP rates prescribed in the 1974 Act were:

**Commissioned Officers**

**Phase I**

| Years of Aviation (Service including Flight Training) as an Officer | Monthly Rate |
|---|---|
| 2 or less | $100 |
| Over 2 | 125 |
| Over 3 | 150 |
| Over 4 | 165 |
| Over 6 | 245 |

**Phase II**

| Years of Service as an Officer as Computed under 37 U.S.C. §205 | Monthly Rate |
|---|---|
| Over 18 | $225 |
| Over 20 | 205 |
| Over 22 | 185 |
| Over 24 | 165 |
| Over 25 | 0 |

**Warrant Officers**

| Years of Aviation Service as an Officer | Monthly Rate |
|---|---|
| 2 or less | $100 |
| Over 2 | 110 |
| Over 6 | 200 |

**Note 1:** ACIP for officers of pay grade O-7 could not be more than $160 a month, and that for officers of pay grade O-8 or above, not more than $165, regardless of years of service**.**
**Note 2:** Officers with more than 18 years of officer service but less than six years of aviation service received Phase I rates.

[4] See appendix to this chapter for a fuller explanation of the reasons for this structuring of the ACIP system.

Under the ACIP "gate" system, an officer qualified for aviation service, except a flight surgeon or other medical officer, was entitled to continuous ACIP at the appropriate rate (1) until he completed 12 years of aviation service; or (2) if he had at least six years of operational flying duty at the 12-year gate, until he completed 18 years of aviation service; or (3) if he had at least nine but less than 11 years of operational flying duty at the 18-year "gate," until he completed 22 years of officer service; or (4) if he had at least 11 years of operational flying duty at the 18-year gate, until he completed 25 years of officer service in the case of a commissioned officer, or for as long as he remained qualified in the case of a warrant officer. An officer not entitled to continuous ACIP because of failure to make a gate but who was required by competent orders to perform operational or proficiency flying duty was nevertheless entitled to ACIP on a monthly basis if he performed at least four hours of aerial flight a month. A flight surgeon or other medical officer required by competent orders to perform operational flying duty was also entitled to monthly ACIP for the performance of at least four hours of aerial flight a month.

Effective September 1, 1980, ACIP rates for commissioned and warrant officers were increased 25 percent across-the-board by the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §2(b), 94 Stat. 1123, 1124 (1980), because, in the words of the Conference Report, of the "need for and desirability of" such increases to improve retention.[5] In addition, the maximum rates payable to officers in pay grade O-7 was increased to $200 and to officers in pay grade O-8 or above, to $206. Military Personnel and Compensation Amendments of 1980, Public Law 96-343, *id*., §2(b), 94 Stat. at 1124.

The perceived aviator retention problem was also addressed in another piece of legislation approved the same day, the Department of Defense Authorization Act, 1981, Public Law 96-342, §806(a)(1), 94 Stat. 1077, 1095-1096 (1980). The latter act effectively established a special continuation pay for aviation career officers, codified at 37 U.S.C. §301b and commonly referred to as aviation career or aviation officer

[5] House Report No. 96-1233 (Committee of Conference), p. 15, accompanying H.R. 5168, 96th Congress, 2d Session (1980).

continuation pay (AOCP). Specifically, the Department of Defense Authorization Act, 1981, Public Law 96-342, *id*., authorized, under regulations required to be prescribed by the Secretary of Defense (or the Secretary of Transportation with respect to the Coast Guard), the payment to a qualified and electing officer of up to four months' basic pay for each year the officer agreed to remain on active duty beyond the expiration of his obligated service. Officers qualified for such pay had to (1) be entitled to ACIP under 37 U.S.C. §301a, (2) be in a pay grade below O-7, (3) be qualified to perform "operational flying duty," as that term is defined in 37 U.S.C. §30la(a)(6), (4) have at least six but less than 18 years of aviation service as an officer, (5) be in an aviation specialty designated as "critical," and (6) have executed a written agreement to remain on active duty in aviation service for at least one year. The aviation career continuation pay authorized by the provision in issue was in addition to any other pay and allowances, including ACIP, to which an affected officer might otherwise be entitled. Any agreement adopted under the provision in issue could not extend beyond the time an affected officer would complete 19 years of aviation service.

The aviation career continuation pay provisions adopted in the Department of Defense Authorization Act, 1981, Public Law 96-342, §806(a)(1), 94 Stat. 1077, 1095-1096 (1980), were amended by the Uniformed Services Pay Act of 1981, Public Law 97-60, §113, 95 Stat. 989, 995 (1981), to limit their application to specified circumstances. First, the Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., provided that the only agreements that could be accepted under the aviation career continuation pay program between October 14, 1981, the date of adoption of the act, and September 30, 1982, were agreements executed by Navy or Marine Corps officers. Second, the act provided that any officer receiving aviation career continuation pay under an agreement covering a particular period of time could not receive ACIP under 37 U.S.C. §301a at a rate higher than the rate in effect on September 30, 1981.[6] Finally, the act provided, in

[6] In addition to amending the aviation career continuation pay program, the Uniformed Services Pay Act, Public Law 97-60, §112(b), 95 Stat. 989, 995 (1981), generally increased ACIP rates. See second following paragraph and ACIP rate table, as in effect after passage of the Uniformed Services Pay Act of 1981, Public Law 97-60, §112(b), 95 Stat. 989, 995 (1981), on following page.

essence, that no agreements under the aviation career continuation pay program could be accepted after September 30, 1982.

As explained in the relevant Congressional Report, authority to make aviation career continuation payments was restricted to Navy and Marine Corps officers because they were the main category of officers experiencing "retention problems."[7] Similarly, the provision forbidding ACIP payments at rates exceeding those in effect on September 30, 1981, to officers receiving aviation career continuation pay was intended to insure that affected officers "not be entitled to the increased rates of [ACIP] during the period obligated as a result of the [continuation pay] bonus."[8] And the authority to make such payments at all was terminated as of September 30, 1982, because Congress felt "the [continuation pay] bonus to be an inappropriate solution to long-term retention problems" with military aviators.[9] As explained in the Senate Report, Congress had originally adopted the aviation career continuation pay program to allow the services to deal with "aviation specialties where retention problems and shortages exist that cannot be addressed by other management action or initiatives," and the 1981 amendments to the program were, at least in the contemplation of Congress, needed to restrict its applicability to precisely those situations.[10]

In addition to limiting the applicability of aviation career continuation pay as indicated above, the Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., §112(b), 95 Stat. at 995, increased, effective October 1, 1981, ACIP rates for "retention critical" career-decision-point commissioned officers--those with over six years of service--as well as for senior officers referred to as Phase II officers. The Act also

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[7] Senate Report No. 97-146 (Committee on Armed Services), p. 9, accompanying S. 1181, 97th Congress, 1st Session (1981).

[8] Senate Report No. 97-146 (Committee on Armed Services), pp. 9-10, accompanying S. 1181, 97th Congress, 1st Session (1981).

[9] Senate Report No. 97-146 (Committee on Armed Services), p. 10, accompanying S. 1181, 97th Congress, 1st Session (1981).

[10] Senate Report No. 97-146 (Committee on Armed Services), p. 9, accompanying S. 1181, 97th Congress, 1st Session (1981).

increased ACIP rates for warrant officers to the same rates authorized for so-called Phase I commissioned officers, thereby coincidentally increasing the number of years-of-service categories applicable to such officers. Finally, the 1981 Act extended ACIP entitlements to commissioned officers in pay grade O-6 or below with more than 25 years of service who were, despite their seniority, nevertheless required to perform flying duties.

As explained in the relevant Senate Report, ACIP rates were increased for all aviators--both commissioned and warrant officers--with more than six years of aviation service "to improve retention and reduce ... shortages" of qualified personnel, thus combating what was perceived as an increasingly "serious shortage."[11] Officers with more than six years of aviation service were targeted in particular "to provide the greatest incentive during the flight-intensive, retention-critical, mid-career years."[12] ACIP rates for so-called "mid-career" officers having been thus raised, rates for the more senior Phase II officers also were increased "by a comparable amount to create an orderly incentive pay reduction" mechanism-- rather than an abrupt drop--by which ACIP entitlement was to be gradually phased out.[13] Finally, ACIP entitlement was extended to commissioned officers in pay grade O-6 or below with more than 25 years of service who were actually required to perform flying duties in recognition of Congress's feeling that it was "inequitable to ask these officers to perform flying duties on a regular basis and not be given the incentive pay that men junior to them who are performing the same functions receive."[14] According to the Senate Report, this situation arose as “recent

[11] Senate Report No. 97-146 (Committee on Armed Services), p. 9, accompanying S. 1181, 97th Congress, 1st Session (1981).

[12] Senate Report No. 97-146 (Committee on Armed Services), p. 9, accompanying S. 1181, 97th Congress, 1st Session (1981).

[13] Senate Report No. 97-146 (Committee on Armed Services), p. 9, accompanying S. 1181, 97th Congress, 1st Session (1981).

[14] Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981).

aviator shortages" among more junior personnel substantially increased the number of senior officers required to perform flying duties.[15]

As increased by the Uniformed Services Pay Act of 1981, Public Law 97-60, *id.*, ACIP rates for commissioned and warrant officers were thus:

**Commissioned Officers**

**Phase I**

| Years of Aviation Service (including Flight Training) as an Officer | Monthly Rate |
|---|---|
| 2 or less | $125 |
| Over 2 | 156 |
| Over 3 | 188 |
| Over 4 | 206 |
| Over 6 | 400 |

**Phase II**

| Years of Service as an Officer as Computed under Section 205 | Monthly Rate |
|---|---|
| Over 18 | $370 |
| Over 20 | 340 |
| Over 22 | 310 |
| Over 24 | 280 |
| Over 25 | 250 |

**Warrant Officers**

| Years of Aviation Service as an Officer | Monthly Rate |
|---|---|
| 2 or Less | $125 |
| Over 2 | 156 |
| Over 3 | 188 |

[15] Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981).

| | |
|---|---|
| Over 4 | 206 |
| Over 6 | 400 |

**Note:** ACIP for officers in pay grade 0-7 was limited to $200 per month and that for officers in pay grade 0-8 or above, to $206.

The Department of Defense Authorization Act, 1984, Public Law 98-94, §904(a)(1) and (2), 97 Stat. 614, 635-636 (1983), amended the aviation career continuation pay program in a number of regards. First, eligibility for aviation officer career continuation pay under 37 U.S.C. §301b during the period October 1, 1983, to September 30, 1984, was limited to officers of the Navy and Marine Corps who were pilots, whereas under the preexisting aviation career continuation pay program, non-pilots had been eligible for continuation pay as well as pilots. Second, a number of restrictions were attached to the types of continuation agreements that could be accepted by the Navy and Marine Corps: under the 1984 Authorization Act, the only continuation agreements that could be accepted were those executed by an officer who had at least six but less than 11 years of active service, who had completed the minimum service required for aviation training, and who had not previously received aviation career continuation pay under 37 U.S.C. §301b; in addition, an acceptable agreement had to require the officer in question to remain on active duty in aviation service either three or four years. An officer meeting the stated criteria was eligible for up to $4,000 in aviation career continuation pay for each year of a three-year agreement and up to $6,000 for each year of a four-year agreement. In derogation of the normal three- or four-year rule, a special provision allowed a six-year agreement to be accepted from an officer who had completed less than seven years of active duty, in which case the officer was eligible for up to $6,000 for each year of the six-year agreement.[16] Third, another provision withdrew hazardous duty incentive pay entitlements under 37 U.S.C. §301 during any period an officer was obligated to serve under a continuation agreement accepted under 37 U.S.C. §301b.

[16] That is, during the period October 1, 1983, to September 30, 1984, the basic authority that provided for aviation career continuation pay in some multiple of basic pay was effectively suspended in favor of an upper limit of either $4,000 per year of a three-year agreement or $6,000 per year of a four- or six-year agreement. Since the minimum basic pay of an officer in pay grade O-3 with more than six years of service--and any officer executing a continuation agreement should at least have been in pay grade O-3 with more than six years of service--was more than $2,000 per month, the $4,000 and $6,000 per-year limitations on continuation agreements had the effect of keeping the actual payment below the level theoretically authorized for an officer executing a continuation agreement.

While limiting the program as indicated, the 1984 Authorization Act did extend the termination date for the program from September 30, 1982, to September 30, 1984.[17]

In explanation of these restrictions, the Senate Armed Services Committee noted:

> In passing the fiscal year 1981 Defense Authorization Act, the Congress enacted a new continuation bonus for aviation officers in an effort to improve the serious manning shortages in these skills. Subsequent to its original enactment, the bonus was limited to Navy and Marine Corps aviators only.... Both services request that their authority to pay it [AOCP] be renewed.
>
> The Committee, however, is concerned that the implementation of the aviation bonus by the Navy and Marine Corps has not fully achieved its intended goal of targeting bonus dollars to specific aviation specialties and to the career points where shortages which cannot be addressed by other management actions exist....
>
> ... [I]n [agreeing to] extend ... the authority, the Committee recommends the following changes to the aviation bonus program:
>
> a. Extend the authority to September 30, 1984, and continue to restrict its use to only Navy and Marine Corps aviators; however, aviators who receive the bonus will continue to receive Aviation Career Incentive Pay rates in effect on September 30, 1981;
>
> b. Allow only 3-, 4-, or 6-year contracts and limits [sic] each aviator to one contract during his eligibility;
>
> c. Limit the maximum bonus amounts to $6,000 per year for a 4- or 6-year commitment and $4,000 per year for a 3-year commitment;
>
> d. Limit eligibility for the bonus to those aviators who have at least six but less than eleven years of active duty.[18]

In conference, eligibility for the aviation career continuation pay program was restricted to pilots. As explained in the House and Senate Conference Reports:

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[17] Since the Department of Defense Authorization Act, 1984, Public Law 98-94, 97 Stat. 614 (1983), was not enacted until September 24, 1983, see 97 Stat. at 707, there was a hiatus in the aviation career continuation pay program from October 1, 1982, to September 24, 1983, during which no continuation agreements whatsoever could be accepted.

[18] Senate Report No. 98-174 (Committee on Armed Services), pp. 216-217, accompanying S. 675, 98th Congress, 1st Session (1983). See Senate Report No. 98-213 (Committee of Conference), pp. 224-225, and House Report No. 98-352 (Committee of Conference), pp. 224-225, accompanying S. 675, 98th Congress, 1st Session (1983).

> The House recedes [to the Senate proposal highlighted above] with an amendment limiting the eligibility for the bonus to pilots. Although the naval flight officers are critical to the operations of Navy and Marine Corps aircraft, the conferees authorized the bonus only for the purpose of reducing critical shortfalls in manning. A substantial shortage exists for pilots, but the conferees agree that a similar shortage presently does not exist for naval flight officers. Therefore, it is appropriate to limit the use of the aviation officer career bonus in fiscal year 1984 to address only the shortages of Navy and Marine Corps pilots.[19]

Despite the expressed intention to limit aviation career continuation pay to Navy and Marine Corps pilots, the Department of Defense Appropriations Act, 1984, Public Law 98-212, Title I, 97 Stat. 1421 (1983), without expressly overturning the amendments to 37 U.S.C. §301b made by the Department of Defense Authorization Act, 1984, Public Law 98-94, *id*.,[20] effectively reinstituted authority to make AOCP payments to all aviators, pilots and flight officers alike, although the act did indicate that the bonus should be paid to "aviation specialties where shortages actually exist." Pursuant to the authority granted in the 1984 Appropriations Act, the Navy and Marine Corps began making aviation career continuation pay available to all eligible aviators, pilots and flight officers, in January 1984.[21]

In hearings held before the Manpower and Personnel Subcommittee of the Senate Committee on Armed Services in March 1984, Navy and Marine Corps officials testified that only the Navy continued to have a pilot shortage.[22] Because of this, the Department of Defense Authorization Act, 1985, Public Law 98-525, §622, 98 Stat. 492, 2540-2541 (1984), removed Marine Corps aviators from the category of officers eligible for aviation career continuation pay. At the same time, the 1985 Authorization Act broadened the

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[19] House Report No. 98-352 (Committee of Conference), pp. 224-225, and Senate Report No. 98-213 (Committee of Conference), pp. 224-225, accompanying S. 675, 98th Congress, 1st Session (1983).

[20] For a discussion of the reasons underlying the limitation on the payment of AOCP to pilots contained in the Department of Defense Authorization Act, 1984, Public Law 98-94, 97 Stat. 614 (1983), see text accompanying footnote 19 to this chapter, above.

[21] Senate Report No. 98-500 (Committee on Armed Services), p. 209, accompanying S. 2723, 98th Congress, 2d Session (1984).

[22] Senate Report No. 98-500 (Committee on Armed Services), p. 209, accompanying S. 2723, 98th Congress, 2d Session (1984).

category of naval aviators eligible for the pay to include all naval aviators, not just pilots. In addition, the 1985 Authorization Act extended the termination date for the program to September 30, 1985.

In support of this action, the Senate Committee on Armed Services stated:

> After thoroughly reviewing this matter, the committee recommends a provision ... extending the authority to pay the Aviation Officer Continuation Pay for one additional year, through September 30, 1985. Because the Marine Corps no longer has a shortage of aviators in the grades and years of service for which the bonus is authorized, the committee has restricted the payment of the bonus to Navy aviators only. The committee reiterates that this bonus should not be applied across-the-board to all Navy aviators, but should be targeted to those aviation communities where shortages actually exist.
>
> . . .
>
> Despite the original congressional intent that the Aviation Officer Continuation Pay be used as a short-term bonus to restore aviation retention to required levels, there is some indication that Navy officers are beginning to regard this bonus as a longer-term career aviation pay. The committee notes that the current Aviation Career Incentive Pay was designed to meet this goal for all of the Services.[23]

The Department of Defense Authorization Act, 1986, Public Law 99-145, §636, 99 Stat. 583, 648 (1985), further extended the authority for aviation career continuation pay, this time to September 30, 1987. The Senate, which had originally proposed a one-year extension only, stated:

> In fiscal year 1985, authority exists for the payment of aviation officer continuation pay to Navy aviators in aviation communities where shortages actually exist. The committee recognizes that the Navy has experienced an increase in pilot resignations in recent months, which is believed to be due primarily to increased hiring by the airline industry....
>
> The committee believes that the authority that existed in fiscal year 1985 for this pay should be continued through fiscal year 1986. The committee expects that this pay will continue to be targeted only to Navy aviators in aviation communities where actual shortages truly exist.[24]

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[23] Senate Report No. 98-500 (Committee on Armed Services), pp. 209-210, accompanying S. 2723, 98th Congress, 2d Session (1984). See House Report No. 98-1080 (Committee of Conference), pp. 297-298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[24] Senate Report No. 99-41 (Committee on Armed Services), p. 194, accompanying S. 1029, 99th Congress, 1st Session (1985).

The House, which had proposed a three-year extension, agreed to a two-year extension, until September 30, 1987, in conference.[25]

The National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §631, 100 Stat. 3816, 3883 (1986), amended the AOCP program in two regards: first, by extending the authority of the Secretary of Defense to accept a six-year agreement from officers who had completed less than eight years of active duty, as opposed to the seven years of active duty that had been the cutoff point under provisions adopted by the 1984 Authorization Act;[26] and, second, by eliminating the prohibition on the receipt of any form of hazardous duty incentive pay under 37 U.S.C. §301 by officers receiving AOCP.[27] Both changes were made at the urging of the Department of Defense.[28] As indicated in the report filed by the Senate Committee on Armed Services with respect to the proposal to allow officers with up to eight years of active duty to enter into six-year continuation agreements,

> ... under present law, only aviators with less than seven years of active duty may sign an agreement to remain on active duty for six years and receive AOCP at a rate of $6,000 a year for each of those six years. The Department of Defense has

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[25] House Report No. 99-235 (Committee of Conference), p. 431, and Senate Report 99-118 (Committee of Conference), p. 431, accompanying S. 1160, 99th Congress, 1st Session (1985).

[26] See text accompanying footnote 16 to this chapter, above.

[27] In addition to these changes to the AOCP program, the 1987 Authorization Act, Public Law 99-661, *id*., also modified the ACIP program to include aviation flight cadets within the category of personnel eligible to have time spent in aviation cadet training count as "operational flying duty" for purposes of determining future entitlement to continuous aviation career incentive pay over a full military aviation career under the ACIP "gate" structure previously explained. As the Senate Committee on Armed Services noted:

> ... Under ACIP, certain milestones based on years of aviation service are used in determining continued eligibility for that pay. The 12 to 18 months spent in flight training is creditable as aviation service, but only if the student is an officer. This creates a substantial disincentive for enlisted personnel to pursue their aviation training through the NAVCAD [Navy Aviation Cadet] program because the time spent in training will be lost throughout their later careers for purposes of determining eligibility for ACIP.
>
> Senate Report No. 99-331 (Committee on Armed Services), pp. 231-232, accompanying S. 2638, 99th Congress, 2d Session (1986).

[28] See Senate Report No. 99-331 (Committee on Armed Services), p. 231, accompanying S. 2638, 99th Congress, 2d Session (1986). Cf. House Report No. 99-1001 (Committee of Conference), p. 481, accompanying S. 2638, and House Report No. 99-718 (Committee on Armed Services), pp. 204-205, accompanying H.R. 4428, 99th Congress, 2d Session (1986).

> requested that this "window" be expanded to include those with less than eight years of active duty. The committee concurs ... and recommends this change.[29]

With respect to the proposal to permit aviators receiving AOCP also to receive hazardous duty incentive pay under 37 U.S.C. §301 if assigned to a qualifying billet, the House Committee on Armed Services simply noted that its proposal

> ... would eliminate the current statutory restriction against receipt of hazardous duty incentive pay by officers serving under aviation continuation agreements. The recommended change would affect, perhaps, 50 aviators assigned, for example, to carrier flight deck duties--very demanding sea billets that are difficult to fill.[30]

The National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §622, 101 Stat. 1019, 1100-1101 (1987), again amended the AOCP program, this time in four major particulars. Under prior practice, the basic statute provided generalized authority, codified at 37 U.S.C. §301b(a), for the Secretary of Defense to accept continuation agreements from aviation officers in the different services, with AOCP entitlements limited to a maximum of four months of basic pay multiplied by the number of years covered by a continuation agreement. However, that generalized authority had been limited by successive authorization acts that codified the limitations to the generalized authority at 37 U.S.C. §301b(e). Among other things, those acts provided that the only officers from whom continuation agreements might be accepted during a specifically prescribed period were officers who never had previously received aviation career continuation pay under 37 U.S.C. §301b, and that the maximum amount of an AOCP payment to a given officer could not exceed $4,000 for each year of a three-year continuation agreement or $6,000 for each year of a four- or six-year continuation agreement. In particular, the generalized program criteria and maximum rates of AOCP pay set out at 37 U.S.C. §301b(a) were in practice rather severely circumscribed by limitations set out at 37 U.S.C. §301b(e), which applied to agreements proffered by aviation officers during specified periods of time. In the first amendment to

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[29] Senate Report No. 99-331 (Committee on Armed Services), p. 231, accompanying S. 2638, 99th Congress, 2d Session (1986).

[30] House Report No. 99-718 (Committee on Armed Services), p. 204, accompanying H.R. 4428, 99th Congress, 2d Session (1986).

the AOCP program, the National Defense Authorization Act for Fiscal Years 1988 and 1989 effectively adopted the two previously identified special limitations in 37 U.S.C. §301b(e), applicable to specified periods of time, as program-wide limitations applicable to all agreements proffered thereafter. As its second and third amendments, the National Defense Authorization Act for Fiscal Years 1988 and 1989 extended the AOCP program through September 30, 1989, with the provision that during the period from October 1, 1987, to September 30, 1989, the only aviation career continuation agreements that might be accepted were agreements from Navy officers who had completed fewer than eleven years of active duty and who agreed to remain on active duty for an additional three or four years. As a special exemption, Navy officers who had completed fewer than eight years of active duty were permitted to enter six-year continuation agreements. As thus modified, the AOCP program was available to all Navy officers who met the basic program criteria set out at the newly amended 37 U.S.C. §301b(a)--including non-pilots as well as pilots. Fourth, and finally, the National Defense Authorization Act for Fiscal Years 1988 and 1989 repealed the prior provision of the aviation career continuation pay program that had prohibited officers receiving AOCP from receiving aviation career incentive pay (ACIP) under 37 U.S.C. §301a at rates higher than those in effect on September 30, 1981.

The amendments to the aviation career continuation pay program adopted under the National Defense Authorization Act for Fiscal Years 1988 and 1989 came about as a result of recommendations made by the Department of Defense and incorporated in the Senate defense authorization bill, S. 1174, 100th Congress, 1st Session (1987). As set out in the Report of the Senate Committee on Armed Services:

> The Department of Defense has requested that the Navy's authority to pay aviation officer continuation pay be extended for two years beyond the current expiration date of September 30, 1987. In addition, the Department of Defense requested that the pay be enhanced by increasing the pay multiple for a six year contract from $6,000 to $8,000, by eliminating the requirement that bonus recipients receive aviation career incentive pay at lower rates, and by elimination of the requirement for six years of aviation service to be eligible for the pay. The committee recommends a provision ... adopting the Defense Department proposal, except for elimination of the six year aviation service eligibility requirement. The committee believes this eligibility requirement places the bonus at the appropriate career decision point. Enhancement of this bonus is necessary, especially in light of increased airline hiring that draws from military aviation

> communities. The committee directs that aviation officer continuation pay be applied only to critically short, aviation skills, and that this bonus may not be offered to Naval Flight Officers except in those aviation communities in which a critical shortage of NFO's exists.[31]

The only part of the Department of Defense initiative recommended by the House Armed Services Committee, on the other hand, was the proposal to extend the termination date for the aviation career continuation pay program for two additional years.[32] The essence of the Senate proposal was adopted in conference--except for the proposal to increase the multiple for a six-year agreement from $6,000 to $8,000 per year--without specific comment on the aviation career continuation pay program in general, its objectives, or how it was working in practice.[33]

In 1988 Congress again revisited the question of the aviation career continuation pay program, this time adopting a new, provisional replacement program roughly patterned on, but somewhat different from, the existing program. In the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §611, 102 Stat. 1918, 1977-1979 (1988), Congress adopted an uncodified "Aviator Retention Bonus" program that applied to aviation officers who, during the period January 1 to September 30, 1989, executed a written agreement to remain on active duty in aviation service for at least one year.[34] Officers entitled to participate in the program were officers who (i) were entitled to aviation career incentive pay under 37 U.S.C. §301a, (ii) were in pay grades below pay grade O-6, (iii) were qualified to perform "operational flying duty" as that term is defined at 37 U.S.C. §301a(a)(6), (iv) had completed at least six but less than 13 years of active

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[31] Senate Report No. 100-57 (Committee on Armed Services), p. 146, accompanying S. 1175, 100th Congress, 1st Session (1987). Cf. House Report No. 100-446 (Committee of Conference), pp. 643-644, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

[32] House Report No. 100-58 (Committee on Armed Services), p. 204, accompanying H.R. 1748, 100th Congress, 1st Session (1987) ("[T]he committee does not support such enhancements [as recommended by the Department of Defense] at this time.").

[33] House Report No. 100-446 (Committee of Conference), pp. 643-644, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

[34] For the full text of this "Aviator Retention Bonus" program, see 37 U.S.C. §301b note.

duty, (v) had completed all active duty service commitments incurred for undergraduate aviation training, and (vi) were in an aviation specialty designated by the Secretaries of their respective military departments, and approved by the Secretary of Defense, as "critical." A related provision restricted the designation of an aviation specialty as "critical" to those situations in which "there exists a current shortage of officers in that specialty." National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, *id*., §611(b)(2), 102 Stat. at 1978. A qualified officer who executed an approved agreement became eligible for "aviator retention bonus" payments of up to $12,000 for each year of an agreement that obligated the officer to remain on active duty through 14 years of commissioned service or up to $6,000 for each year of an agreement that obligated the officer to remain on active duty for one or two years. Refunds were required from any officer who entered an agreement but failed to complete the term of service called for in the agreement. As enacted, the National Defense Authorization Act, Fiscal Year 1989 provided that agreements under the former aviation career continuation pay program could not be accepted after December 31, 1988, thereby effectively short-circuiting the September 30, 1989, termination date that had been established for that program in the National Defense Authorization Act for Fiscal Years 1988 and 1989.

Under the provisional program, Congress required the Secretary of Defense to submit a report "describing the manner in which the authority provided ... is to be used" as well as an additional "comprehensive report on the retention of aviators in the Armed Forces" to include, among other things, "[a]n analysis of aviator requirements and inventories ... of the Armed Forces by grade and years of service, including a list of those aviators who are assigned to duty other than operational flying duty and a justification for such assignments" and "[a]n analysis of current and projected aviator retention rates in the Armed Forces and of those current and projected retention rates actually needed to meet the requirements of the Armed Forces," together with recommendations on "the initial active duty service commitment of aviators," "the integration of the aviator career incentive pay under section 301a of title 37, United States Code, and the aviator retention bonus ... into a structure that more efficiently supports the retention requirements for aviators in the Armed Forces," and "changes in the aviator management policies of the

Armed Forces that would eliminate the disincentives cited by aviators as retention detractors." National Defense Authorization Act, Fiscal Year 1989, §611(h).[35]

As enacted, the provisional "aviator retention bonus" program differed from the prior aviation career continuation pay program in several respects. First, the "aviator retention bonus" program was not limited to naval aviators, but instead covered all aviation officers of the Armed Forces in "aviation specialt[ies] designated ... as critical." Thus, subject to Congressional funding through the defense appropriations process, aviators in the Air Force, the Army, and the Marine Corps theoretically could qualify for the "aviator retention bonus," in addition to Navy aviators.[36] Second, the new program eliminated the old aviation career continuation pay program's restriction of officers to one continuation agreement. Under the provisional "aviator retention bonus" program, qualified officers could commit to completion of fourteen years of commissioned service, in which case they were eligible for a bonus of up to $12,000 per year from the time they entered the agreement until they in fact completed fourteen years of commissioned service. Alternatively, they could commit themselves to a succession of one- or two-year agreements, in which case they were eligible for up to $6,000 per year for as long as they continued to serve on active duty under an accepted agreement. Third, whereas the old aviation career continuation pay program was available to officers in pay grades below pay grade O-7, the provisional "aviator retention bonus" program was available only to officers in pay grades below pay grade O-6. Fourth, the "aviator retention bonus" program was available only to officers who had completed "at least six but less than 13 years of active duty." By contrast, the prior aviation career continuation pay program theoretically was available to officers who had completed "at least six but less than 18 years of aviation service as ... officer[s]," although the more restrictive provisions that had been set out at 37 U.S.C. §301b(e) had in practice limited the program to officers who had completed a maximum of eleven years of active duty. The effect of these latter

[35] Reprinted at 37 U.S.C. §301b note.

[36] Indeed, the program was specifically concerned with projected impending shortages of aviation officers in the Air Force. See, *e.g.*, House Report No. 100-563 (Committee on Armed Services), p. 254, accompanying H.R. 4264, and Senate Report No. 100-326 (Committee on Armed Services), p. 94, accompanying S. 2355, 100th Congress, 2d Session (1988).

two differences was to direct the "aviator retention bonus" program to more junior, career-decisional aviators, as compared with the broader focus of the prior aviation career continuation pay program.

The provisional "aviator retention bonus" program was adopted essentially on the basis of recommendations put forward by the Department of Defense, although the House Armed Services Committee noted that it "shares the concerns of the Department of Defense about the projected dramatic increase in airline hiring during the next decade" and, therefore, aviator retention.[37] In contrast to the recommendation of the Department of Defense to adopt the new program as a permanent means of dealing with aviator shortages in critical skill areas,[38] Congress adopted the program as a provisional, nine-month authorization with a concomitant requirement to make various reports and recommendations to Congress on aviator requirements and inventories, retention rates, integration of the aviation career incentive pay program and the continuation bonus program, *etc*., to stimulate the Department of Defense to "evaluate critically all facets of its management of the aviator inventory and to also give equal scrutiny to the validity of stated aviator requirements, especially in non-flying positions" as well as to "evaluate critically the capability and desirability of realigning portions of the Air Force flying missions, such as airlift, to the Air National Guard and the Air Force Reserve" on the grounds that "[r]ealignment of certain flying missions from the active to the reserve force may have the potential of averting some of the aviator manning problems in the active force and may also be cost-effective in the long term."[39] To the end of insuring that the required reports were in fact made by November 15 and December 1, 1988, respectively,

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[37] House Report No. 100-563 (Committee on Armed Services), p. 254, accompanying H.R. 4264, 100th Congress, 2d Session (1988). See also Senate Report No. 100-326 (Committee on Armed Services), pp. 93-94, accompanying S. 2355, 100th Congress, 2d Session (1988); House Report No. 100-753 (Committee of Conference), pp. 403-405, accompanying H.R. 4264, 100th Congress, 2d Session (1988); and House Report No. 100-989 (Committee of Conference), pp. 405-406, accompanying H.R. 4481, 100th Congress, 2d Session (1988).

[38] Senate Report No. 100-326 (Committee on Armed Services), p. 93, accompanying S. 2355, 100th Congress, 2d Session (1988).

[39] House Report No. 100-753 (Committee of Conference), pp. 404-405, accompanying H.R. 4264, and House Report No. 100-989 (Committee of Conference), p. 406, accompanying H.R. 4481, 100th Congress, 2d Session (1988).

the 1989 National Defense Authorization Act specifically provided that authority to make payments under the provisional "aviator retention bonus" program, which was, as above noted, to be effective during the period January 1 to September 30, 1989, "shall terminate effective December 2, 1988"--or before the program was scheduled to begin--if the reports were not received on time.[40]

In 1989, having indicated a desire to at least consider rationalizing "the integration of the aviator career incentive pay under section 301a of title 37, United States Code, and the aviator retention bonus ... into a structure that more efficiently supports the retention requirements for aviators in the Armed Forces" in the National Defense Authorization Act, Fiscal Year 1989, [41] Congress addressed both the aviation career incentive pay and the aviator retention bonus programs. In the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §§631-632, 103 Stat. 1352, 1449-1453 (1989), Congress amended the preexisting aviation career incentive pay program and effectively codified the provisional "aviator retention bonus" adopted by the National Defense Authorization Act, Fiscal Year 1989, as a replacement for the prior aviation career continuation pay program.[42]

In amending the aviation career incentive pay program, Congress amended both the rates of aviation career incentive pay and the preexisting "gate" structure. The rates of aviation career incentive pay were increased for warrant officers and Phase I commissioned officers with more than six years of aviation service as an officer--or as an aviation cadet--from $400 per month to $650 per month, and the rates for most Phase II commissioned officers were increased as well. In the latter category, the exceptions were

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[40] Since the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, 102 Stat. 1918 (1988), was enacted on September 29, 1988, the deadlines for the required reports were somewhat short.

[41] National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §611(h)(2)(C)(ii), 102 Stat. 1918, 1979 (1988), reprinted at 37 U.S.C. §301b note.

[42] In adopting the substance of the "aviator retention bonus" program enacted by the 1989 National Defense Authorization Act as a replacement for the preexisting aviation career continuation pay program at 37 U.S.C. §301b, Congress did not amend the statutory catchline for the older program, with the result that the new program continues to be known by the same name as the older program.

officers with more than 25 years of service as officers and officers in pay grades O-7 and above.[43]

The "gate" structure of the aviation career incentive pay program was prospectively amended by the National Defense Authorization Act for Fiscal Years 1990 and 1991[44] essentially to require more operational flying duty during the early stages of a military aviation career for an officer to remain entitled to continuous ACIP over the course of a full aviation career.[45] Under the preexisting ACIP "gate" system, an officer qualified for aviation service was entitled to continuous ACIP through completion of twenty-five years of aviation service if he performed operational flying duties for six of his first twelve and eleven of his first eighteen years of aviation service, except that if he performed operational flying duties for at least nine but less than eleven of his first eighteen years of aviation service, he was entitled to continuous ACIP for his first twenty-two years of aviation service. Under the amended "gate" system, an officer qualified for aviation service was entitled to continuous ACIP through completion of twenty-five years of aviation service if he performed operational flying duties for nine of his first twelve and twelve of his first eighteen years of aviation service, except that if he performed operational flying duties for at least ten but less than twelve of his first eighteen years of aviation service, he was entitled to continuous ACIP for his first twenty-two years of aviation service. Officers actually performing operational flying duty remain entitled to aviation career incentive pay without regard to the "gate" system.[46]

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[43] In amending the ACIP rate schedule, the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, *id*., also eliminated the "Over 24 Years of Service as an Officer" category.

[44]The effective date of the prospective amendments to the "gate" structure of the aviation career incentive pay program was October 1, 1991. National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §631(e)(1)(B), 103 Stat. 1352, 1450 (1989). See 37 U.S.C. §301a note.

[45] In connection with Congress's increased emphasis on having aviators perform more operational flying duty to remain entitled to continuous aviation career incentive pay, a separate provision of the 1990/1991 National Defense Authorization Act reduced the number of "non-operational flying duty positions" authorized for each of the Armed Forces. National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §633, 103 Stat. 1352, 1453-1454 (1989). (For the purpose of this particular provision, the term "non-operational flying duty position" was defined as a position identified by a military department that required the assignment of an aviator but did not include operational flying duty.)

[46] Certain transitional provisions applied to officers who did not meet the new, higher "gate" requirements when the amendments took effect on October 1, 1991. Under these provisions, aviators with various

Under the amended "gate" system, the Secretaries of the military departments are permitted, on a case-by-case basis, to grant "waivers" to officers who have not met the operational flying duty requirements for their first twelve or eighteen years of aviation service, so long as they have completed at least six years of operational flying duties while in aviation service. Officers who are granted "waivers" to the operational flying duty requirements set out in the "gate" system remain eligible to receive continuous monthly aviation career incentive pay.

In making permanent and codifying the substance of the provisional "aviator retention bonus" program adopted by the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, *id*., the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, *id*., extended the program to apply to aviators who executed continuation agreements between January 1, 1989, and September 30, 1991.[47]

In proposing amendments to the incentive and special pays programs for aviators and other provisions intended to deal with the problem of aviator retention and manning

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periods of aviation service as of October 1, 1991, who had not then met the new "gate" requirements were either "grandfathered" or given additional time to meet the "gates."

[47] In addition to the provisions amending the aviation career incentive pay and the aviation career continuation pay programs and establishing limits on the number of "non-operational flying duty positions," the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, 103 Stat. 1352 (1989), in an effort to deal with aviator retention in a comprehensive manner, also established armed-services-wide minimum service requirements for aviators, *id*., §634, 103 Stat. at 1454-1455, and required the Secretary of Defense to submit a report on the adequacy of the Servicemen's Group Life Insurance program in terms of the risks faced by aviators resulting from the performance of operational flying duties, *id*., §635, 103 Stat. at 1455. The new minimum service requirement for aviators who successfully complete pilot training on fixed-wing aircraft is eight years and for aviators who successfully complete such training on any other type of aircraft is six years; the minimum service requirement for aviators who successfully complete training as navigators or naval flight officers is six years. See 10 U.S.C. §653(a) and (b) as added to Chapter 37 of Title 10, United States Code, by the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, id., §634(a), 103 Stat. at 1454. In general, the new, minimum service requirements apply to persons who begin undergraduate flight training after September 30, 1990, although the new requirements do not apply to persons who graduate from any of the national service academies or any of the Senior Officers' Training Corps programs of the Armed Forces before January 1, 1992. National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §634(b), 103 Stat. at 1454-1455. (The Comptroller General of the United States was also required to submit a report evaluating the effectiveness of aviator assignment policies and practices of the Armed Forces, *id*., §636, 103 Stat. at 1455, and a sense-of-Congress provision urged the President to convene a commission to study the projected national shortage of aviators, *id*., §637, 103 Stat. at 1455-1456.)

shortfalls generally, in 1989 the House and Senate Committees on Armed Services commented extensively on their respective perceptions of the underlying problems and how their proposals would address them. Because of the comprehensive treatment given to the problem of military aviator manning and retention problems in the context of perceived nationwide shortages of aviators, the Senate and House reports are quoted below *in extenso*. The report of the Senate Committee on Armed Services noted as follows:

> The committee recommends several provisions directed at improving the retention and utilization of military aviators. These provisions were developed on the basis of the aviator retention report submitted to the committee on December 1, 1988 as required by the National Defense Authorization Act for Fiscal Year 1989; a hearing the Subcommittee on Manpower and Personnel held on these provisions; and inputs received from individual military aviators from each military service. The committee believes that, together, these provisions provide a reasonable balance between the expectations of individual military aviators and the needs of the military services. The committee also believes that these provisions will improve the retention of military aviators to levels that will eliminate the projected shortages in the Navy and the Air Force.
>
> The specific provisions are summarized below:
>
> 1. *Aviation Career Incentive Pay (ACIP).*—The committee recommends ... the restructuring and enhancement of aviation career incentive Pay [sic] authorized by [37 U.S.C. §301a]. Specifically, the committee recommends increasing the rate of aviation career incentive pay in the retention sensitive years, especially for aviation service over six year [sic] (from $400 per month to $650 per month). The provision would also smooth out the rates for aviators who have over 18 years of aviation service to eliminate pay inversions that result from the current steep reductions in rates.
>
> Concurrently, this provision would require aviators to perform more years of operational flying duty in order to draw continuous monthly ACIP. Under the current ACIP structure, aviators must perform six of the first 12 years of aviation service and 11 of the first 18 years of aviation service in operational flying duties in order to draw continuous monthly ACIP. The provision would increase the operational flying requirement to 9 out of the first 12 years of aviation service and 12 out of the first 18 years of aviation service, respectively. The committee believes this change ensures an equitable return on the government's investment in the training and qualification of military aviators, and is consistent with the desires of aviators to spend the majority of their career in operational flying assignments.

The Department of Defense is expected to fund the increases authorized by this section within the amounts provided for the military personnel appropriation for fiscal year 1990.

2. *Aviator Retention Bonus.* —The committee recommends ... extension of the expiration date of the aviator retention bonus that was authorized on a temporary basis in the National Defense Authorization Act for Fiscal Year 1989 to September 30, 1992. The committee expects that the other improvements being recommended, operating in synergy with the bonus, would improve manning in aviation skills over the next few years to a point where the bonus can be phased out.

3. *Reduction in Nonoperational Flying Positions*.—The committee recommends ... a provision that would require the Department of Defense to reduce the number of nonoperational flying positions in the military services by five percent (two percent in fiscal year 1991 and three percent in fiscal year 1992). The committee believes the number of nonoperational flying positions in the military services to be excessive and inadequately justified.

4. *Minimum Active Duty Service Obligation for Aviators.* —The committee recommends ... a provision that would establish minimum active duty service obligations of nine years for fixed wing jet pilots and seven years for all other aviators. These obligations would begin upon completion of undergraduate aviation training, and are established to provide a reasonable return on the considerable investment made in the training and qualification of military aviators.

5. *Aviator Insurance.*—The committee recommends ... a provision that would require the Secretary of Defense to submit a proposal to the committee that would provide $100,000 in accidental death insurance for military aviators performing operational flying. The committee believes this provision appropriately recognizes the inherent risks in military flying.

6. *Report on Aviator Assignment Policies and Systems.*—The committee recommends ... a provision that would require the General Accounting Office to evaluate the aviator assignment policies and systems of the military services and to report to the committee on the effectiveness and efficiency of the policies and systems in assigning aviators to aviator positions and in accommodating individual preferences within the operational needs of the military services. The committee believes this provision is needed to address the substantial and serious dissatisfaction expressed by a large number of military aviators about the lack of assignment visibility and their perception that the assignment system is preoccupied with filling squares with little regard to individual preferences. The committee does not expect 100 percent satisfaction; however, the committee believes the military services can do better in this area.

7. *Commission on the National Shortage of Aviators*.—The committee recommends ... a provision that would express the sense of the Senate that the President should convene a commission composed of airline industry, Department of Defense, and other interested parties to address the problem of the shortage of aviators in this country. The committee believes that this problem, which is also a problem in a number of other countries, merits such an effort.[48]

The 1989 report of the House Committee on Armed Services, on the other hand, noted as follows:

> The committee and the Department of Defense remain concerned about continuing shortages of pilots in the military and the projected increase in civilian airline hiring of pilots during the next decade. For instance, the Navy is already considerably short of its requirements today and the Air Force projects a growing shortfall by 1994. By the year 2000, current projections suggest a nationwide shortage of about 12,000 pilots. In view of these shortages and because the preliminary aviator bonus take rate data indicate that additional retention incentives may be in order, the committee recommends a number of changes to existing law and the compensation package for military pilots.
>
> Section 621 [of the House bill, H.R. 2461, 101st Congress, 1st Session (1989)] would: (1) increase Aviation Career Incentive Pay (ACIP) from a monthly payment of $400 to one of $650 for officers with more than six years of aviation service; (2) restructure ACIP for senior officers in order to avoid pay inversions; (3) authorize the service Secretaries to delay implementation of the new ACIP rate structure; and (4) increase operational flying requirements for all aviation officers in order to qualify for ACIP from 6 of the first 12 years to 9 of the first 12 years and from 11 of the first 18 years to 12 of the first 18 years.
>
> Section 621 would also authorize the service Secretaries to waive the first of the above operational flying requirements (as long as a minimum requirement of 6 of the first 12 years is met) in order to comply with joint officer personnel policy, advanced educational requirements or unique service needs.
>
> The new operational flying "gates" would apply to all aviation officers commencing pilot, navigator or flight officer training after September 30, 1991. In addition, aviation officers who have complied with current operational requirements for ACIP but who would not be able to meet the revised requirement structure would be "grandfathered" so that they not forfeit eligibility for this pay. When calculating ACIP for pilots with breaks in their active duty service, the aviation service date and officer service dates would be adjusted so that only active duty time would be used to determine whether officers qualify for ACIP.

[48] Senate Report No. 101-81 (Committee on Armed Services), pp. 176-178, accompanying S. 1352, 101st Congress, 1st Session (1989).

Finally, section 621 would require the Secretary of Defense to submit a report no later than February 15, 1991 detailing the number of pilots in each service who fail to meet the initial operational flying requirement for ACIP, the extent to which the service Secretary has exercised his waiver authority with respect to those pilots, and an explanation of why those pilots did not comply with the operational flying requirements.

. . .

On a related matter, section 622 [of the same House bill, H.R. 2461, 101st Congress, 1st Session (1989)] would extend for two additional years the existing authority for the aviator retention bonus. The committee is concerned about the large number of pilots who testified at recent hearings indicating that they had accepted the bonus because it [i.e., the agreement of the pilots to remain on active duty for a specified number of years] ran concurrently with already existing service commitment [*sic*]. The committee is very concerned about the situation and expects that the service Secretary [*sic*] will take steps to ensure that active duty service obligations incurred as a result of accepting a bonus run consecutively with any other preexisting service obligations.

In addition, this provision would require the Secretary of Defense to submit an annual report including the following: (1) the appropriateness of targeting bonus payments based on a critical shortage in a given aviation specialty; (2) an assessment of other targeting options, such as payments based on the number of years of flying experience or the rated qualifications of officers; (3) an analysis of each year's bonus take rates, the effectiveness of existing bonus amounts as a retention incentive, and a detailed analysis of the costs of the bonus program.

. . .

The committee notes that there are more than 27,000 non-operational flying positions in the Department of Defense, representing some 40 percent of all aviator positions in the military. Because the committee believes that this figure is excessive, section 623 [of H.R. 2461, 101st Congress, 1st Session (1989)] would require each service to reduce by five percent the number of non-operational flying duty positions by September 30, 1992. This reduction would be incremental, with a two percent reduction required no later than September 30, 1991 and the remaining three percent no later than September 30, 1992.

. . .

Because there is a historical disparity in the minimum service obligation for aviation officers among the services (current obligations for pilots are eight years in the Air Force, seven years in the Navy, five years in the Army and four and one-half years in the Marine Corps), section 624 [of H.R. 2461, 101st Congress, 1st Session (1989)] would require the Secretary of Defense to submit a report on the rationale for these disparate service obligations, the legitimacy of interservice differences in view of service operational requirements,

and the long-term desirability of a uniform minimum service obligation for pilots and other aviation officers in all services.

. . .

Section 625 [of H.R. 2461, 101st Congress, 1st Session (1989)] would require the Secretary of Defense to review the adequacy of current insurance coverage under the Servicemen's Group Life Insurance program and the practicality and desirability of providing an accidental death insurance plan for aviators and other crew members.

Section 625 would also require the Secretary of Defense to submit a report no later than February 15, 1990 including the Secretary's recommendations, if appropriate, on ways to improve and expand those benefits. In those recommendations, the Secretary should consider two options: a moderate increase in premiums and one at no cost. In addition, the Secretary should include recommendations on the advisability of providing such an enhanced program to all other active duty personnel whose peacetime career fields entail hazardous duty.[49]

In commenting on the proposed amendments to the aviation career incentive pay and the aviator retention bonus programs, the 1989 report of House-Senate Conference Committee followed up with these observations:

The conferees believe that the substantial increase in ACIP in exchange for the requirement for more operational flying duty recognizes the vital role of military aviators in the overall combat effectiveness of our military forces and the desire of military aviators to spend more time in operational flying to hone their unique skills. The conferees recognize that military aviators are not solely motivated by monetary considerations in making career decisions. They are more motivated by job satisfaction: e.g., effective operational flying. The conferees believe both of these considerations are addressed by this provision [i.e., Section 631 of H.R. 1461, 101st Congress, 1st Session (1989), the bill ultimately adopted as the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, 103 Stat. 1352 (1989)].

What is not addressed in this provision is the desire expressed by many military aviators for further improvements in quality of life, such as better, less costly medical care for dependents; better, less

[49] House Report No. 101-121 (Committee on Armed Services), pp. 276-279, accompanying H.R. 1461, 101st Congress, 1st Session (1989). Also see *id*., p. 279, for a discussion of the proposed provisions requiring the General Accounting Office to report on the effectiveness and efficiency of aviator assignment policies and practices and the sense-of-Congress recommendation that the President convene a commission to consider the projected nationwide shortage of both military and civilian aviators in the 1990s and following.

> costly child care; and more visibility and control of assignments. These are not concerns unique to military aviators. Some of these concerns are addressed in other provisions of this conference report. However, the conferees are mindful that more needs to be done. The conferees urge the Secretary of Defense to evaluate and propose initiatives accordingly.
>
> . . .
>
> [Concerning aviator retention bonuses, the] conferees expect the Navy and Air Force to use this authority, in coordination with the aviation career incentive pay increase, as a tool for retaining military aviators for operational flying duties. The conferees expect the report required by this provision to include a critical evaluation of whether or not the bonus authority needs to be continued beyond September 30, 1991, and if so, the justification for such an extension and a recommendation on any changes that should be made to improve the efficiency of the bonus.[50]

The "gate" structure of the aviation career incentive pay program was amended again by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §616(a), 110 Stat. 186, 362 (1996). This amendment provided that, for an officer to be entitled to continuous aviation career incentive pay through completion of twenty-five years of aviation service, he only had to perform operational flying duties for eight out of his first twelve years of aviation service, rather than meet the preexisting nine year requirement.[51] Thus, under the aviation career incentive pay program now in existence, an officer qualified for aviation service is entitled to continuous ACIP through completion of twenty-five years of aviation service if he performs operational flying duties for eight of his first twelve and twelve of his first eighteen years of aviation service, except that if he performs operational flying duties for at least ten but less than twelve of his first eighteen years of aviation service, he is entitled to continuous ACIP for his first twenty-two years of aviation service.[52] Under the amended "gate" system, the

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[50] House Report No. 101-331 (Committee of Conference), p. 588, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[51] See text accompanying footnotes 44 through 46 of this chapter, above.

[52] Neither the Senate Committee on Armed Services nor the House Committee on National Security identified any particular reason for reducing the required years of operational flying duties from nine out of the first twelve to eight out of the first twelve years of aviation service. See, *e.g.*, House Report No. 104-131 (Committee on National Security), p. 231, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and Senate Report No. 104-112 (Committee on Armed Services), p. 255, accompanying S. 1026, 104th Congress, 1st Session (1995); cf. House Report No. 104-406 (Committee of Conference), p. 816,

Secretaries of the military departments are permitted, on a case by case, non-delegable[53] basis, to grant "waivers" to officers who have not met the operational flying duty requirements for their first twelve or eighteen years of aviation service, so long as they have completed at least six years of operational flying duties while in aviation service. Officers who are granted "waivers" to the operational flying duty requirements set out in the “gate system” remain eligible to receive continuous monthly aviation career incentive pay. Officers who are not granted “waivers” are entitled to so-called "conditional" monthly aviation career incentive pay so long as they are required by competent orders to perform operational flying duties and meet certain minimum monthly flying requirements.

The National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §612(a), 105 Stat. 1290, 1376 (1991), extended the "aviator retention bonus" program from September 1, 1991, to September 1, 1992; the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §612(c), 106 Stat. 2315, 2421 (1992), also extended the program expiration date from September 30, 1992, to September 30, 1993; the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §613(a), 107 Stat. 1547, 1681 (1993), again extended the program expiration date, this time from September 30, 1993, to September 30, 1994; the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §613(a), 108 Stat. 2663, 2783 (1994), further extended the program expiration date from September 30, 1994, to September 30, 1995; and the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §613(a), 110 Stat. 186, 359 (1996), extended the program expiration date from September 30, 1995 to September 30, 1997.

The National Defense Authorization Acts for fiscal years 1997 and 1998 granted two more one-year extensions, through September 30, 1998 and September 30, 1999, respectively. The National Defense Authorization Act for Fiscal Year 1999, Public Law

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accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), p. 806, accompanying S. 1124, 104th Congress, 2d Session (1996).

[53] See 37 U.S.C. §301a(a)(5), as amended by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §616(b), 110 Stat. 186, 362 (1996).

105-261, 112 Stat. 2035, extended the program by only three months, through December 31, 1999, effectively moving the end date of the ensuing yearly extensions from the end of the fiscal year to the end of the calendar year. Each of the next five annual national defense authorization acts followed the pattern of renewing the aviation retention bonus for one year, through the end of the following calendar year. In each of those cases, apart from noting that the House and Senate Committees on Armed Services had respectively "recommended the extension," no particular reason was given for the action in question.[54]

The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1770, began a two-year process of revising the pay table for the ACIP. That law established a new maximum level of $840 for the ACIP, to be paid to aviation officers with more than 14 and less than 22 years of service. That time of service became the last category designated in Phase I; Phase II now began with officers having more than 22 years of service rather than the previous 18. Thus, a large group of officers with an intermediate time of aviation service were rewarded with a significantly higher

[54] With respect to the extension of the "aviator retention bonus" program from September 30, 1991, to September 30, 1992, made by the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §612(a), 105 Stat. 1290, 1376 (1991), see House Report No. 102-60 (Committee on Armed Services), p. 249, accompanying H.R. 2100; Senate Report No. 102-113 (Committee on Armed Services), pp. 222-223, accompanying S. 1507; and House Report No. 102-311 (Committee of Conference), p.549, accompanying H.R. 2100, 102d Congress, 1st Session (1991). With respect to the additional extension to September 30, 1993, made by the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §612(c), 106 Stat. 2315, 2421 (1992), see House Report No. 102-527 (Committee on Armed Services), p. 243, accompanying H.R. 5006; Senate Report No. 102-352 (Committee on Armed Services), p. 208, accompanying S. 3114; and House Report No. 102-966 (Committee of Conference), p. 713, accompanying H.R. 5006, 102d Congress, 2d Session (1992). With respect to the further extension to September 30, 1994, made by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §613(a), 107 Stat. 1547, 1681 (1993), see House Report No. 103-200 (Committee on Armed Services), p. 294, accompanying H.R. 2401; Senate Report No. 103-112 (Committee on Armed Services), p. 152, accompanying S. 1298; and House Report No. 103-357 (Committee of Conference), p. 683, accompanying H.R. 2401, 103d Congress, 1st Session (1993). With respect to the extension to September 30, 1995, made by the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §613(a), 108 Stat. 2663, 2783 (1994), see House Report No. 103-499 (Committee on Armed Services), pp. 251-252, accompanying H.R. 4301; Senate Report No. 103-282 (Committee on Armed Services), pp. 193-194, accompanying S. 2182; and House Report No. 103-701 (Committee of Conference), p. 713, accompanying S. 2182, 103d Congress, 2d Session (1994). With respect to the present program extension to September 30, 1997, made by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §613(a), 110 Stat. 186, 359 (1996), see House Report No. 104-131 (Committee on National Security), p. 231, accompanying H.R. 1530, 104th Congress, 1st Session (1995); Senate Report No. 104-112 (Committee on Armed Services), pp. 254-255, accompanying S. 1026, 104th Congress, 1st Session (1995); House Report No. 104-406 (Committee of Conference), p. 815, accompanying H.R. 1530, 104th Congress, 1st Session (1995); and House Report No. 104-450 (Committee of Conference), pp. 805-806, accompanying S. 1124, 104th Congress, 2d Session (1996).

monthly ACIP for potentially an eight-year period, while the ACIP of all more junior and more senior aviation officers remained the same. Senior warrant officers, who until the 1999 legislation received ACIP according to the same service chart as officers, also were rewarded by the new rates. Unlike officers, whose ACIP declined from $840 to $585 when they reached 22 years of service, warrant officers continued to receive the top amount, regardless of length of service, once they exceeded 14 years. The ACIP reform was completed the following year by the National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, 112 Stat. 2040, which prescribed a single ACIP table for officers, eliminating the Phase I and Phase II designations and retaining the pay categories that had applied in Fiscal Year 1998.

**Aviation Career Incentive Pay for Reserves**

Reserve forces personnel[55] entitled to compensation for inactive-duty training are entitled to aviation career incentive pay when they perform qualifying duties under competent orders. Under 37 U.S.C. §301a(d), members of the reserve forces who perform qualifying flight duties while entitled to compensation under 37 U.S.C. §206 are also entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties, provided Congress has appropriated sufficient funds for making such payments.[56] [57] That is, for every "period of instruction ... or ...

[55] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[56] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, crew member flight duty, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for crew member flight duty are explicitly made contingent on Congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, he is, if he is performing qualifying duty under 37 U.S.C. §301a(d), also entitled to 1/30th of the aviation career incentive pay that would be payable to a member of the active duty force who was performing such duties. Under regulations prescribed by the President, a member of a reserve force who performs flight duties under 37 U.S.C. §301a(d) while engaged in inactive-duty training is entitled to aviation career incentive pay.[58] See *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD *70*00.14-R, ¶80312; *cf. id.*, ¶80311.

Flight pay for reserve forces personnel generally, and aviation career incentive pay in particular, derives from the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926). Section 6 of the Air Corps Act amended Section 20 of the Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §20, 42 Stat. 625, 632 (1922), to give "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled. The extension of this special increase in compensation to members of the National Guard came about as a result of a floor amendment to the House bill, H.R. 10827, 69th Congress, 1st Session (1926), that established the Army Air Corps. In offering the amendment, Representative John Philip Hill of Alabama did not offer any particular justification for extending this pay to members of the National Guard. Rather, he simply

[57] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

[58] Reproduced at 37 U.S.C. §301 note.

noted that the bill had "the endorsement of the War Department, the Chief of the Air Service [the predecessor of the Air Corps], ... and the committee [on Military Affairs]."[59]

Flight pay for inactive-duty training was extended to "officers and enlisted men of the Naval Reserve ... performing aerial flights in the capacity of pilots ... as a part of their training" by the Naval Reserve Act of 1938, ch. 290 [Public Law 732, 75th Congress], §313, 52 Stat. 1175, 1184 (1938). Members of the Marine Corps Reserve were covered by a separate provision that gave such members the same benefits as conferred on members of the Naval Reserve. Naval Reserve Act of 1938, ch. 290, *id*., §2, 52 Stat. at 1175. Insofar as personnel and compensation matters were concerned, the Naval Reserve Act had been patterned after the Army Air Corps Act, and as above noted, the Army Air Corps Act had extended flight pay entitlements to "officers, warrant officers, and enlisted men of the National Guard." The Naval Reserve Act was, however, more restrictive than the Army Air Corps Act had been: an amendment to the bill provided that the increase in compensation would apply to "only those actually serving as pilots of aircraft,"[60] whereas the Army Air Corps Act had extended the special pay to any member of the National Guard "participat[ing] regularly and frequently in aerial flights," independently of the member's status as a pilot or otherwise.

The Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), substantially reorganized the provisions of preceding law relating to inactive-duty training pay for reserve forces personnel. Section 3 of the 1948 Act, *id*., 62 Stat. at 88-89, amended Section 14 of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §14, 56 Stat. 359, 367 (1942), to give "officers, warrant officers, and enlisted personnel" of all the reserve forces entitlement to special pay for "perform[ing] aerial flights," among other things. As stated in the House Report:

> The purpose of the bill is to standardize inactive training pay for all Reserve components of the various services and also to grant such inactive duty training pay to Army Reservists.

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[59] 67 *Cong. Rec*. 8765 (1926) (statement of Representative Hill).

[60] House Report No. 2763 (Committee of Conference), p. 3, accompanying H.R. 10594, 75th Congress, 3d Session (1938).

> The major departure in the legislation is the giving of this pay to the Army Reserves, including enlisted men. Such pay has been granted by the Congress heretofore to members of the National Guard and the Naval and Marine Corps Reserves....
>
> The committee considers the need for this pay to be apparent, even though it is unfortunate that the country must resort to it. The Army and Navy must maintain active Reserve components, or else, in time of war emergency, the Nation will have to depend exclusively upon the Regular services for its defense. They are patently incapable of doing such a job alone. So, in order to vitalize the National Guard and Reserve components, to get more people to participate so that they will fit promptly and effectively into the mobilization-day plans of the Armed Forces, inactive duty pay is to be given each participant at the rate of one-thirtieth of 1 month's base and longevity pay for each training period.... Such specialists as pilots, radar technicians, medical people, and so forth, will also be able to earn inactive duty training pay when the standards specified by the Secretaries [of the various departments] are met.[61] [62]

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), restated the provisions of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], 56 Stat. 359 (1942), as amended by the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), insofar as the entitlement of reserve forces personnel to special pay for the performance of hazardous duties was concerned. Section 501 of the Career Compensation Act, ch. 681, *id.*, §501, 63 Stat. at 825-827, dealt generally with the entitlement of reserve forces personnel to compensation for inactive-duty training. Subsection (d) of Section 501, 63 Stat. at 826, generalized the hazardous duty incentive pay entitlements of reserve forces personnel performing inactive-duty training by providing that hazardous duty incentive pay was available to such personnel whenever they were required by competent orders to perform any of the hazardous duties, set out at Section 204(a) of the Career Compensation Act of

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[61] House Report No. 80-971 (Committee on Armed Services), pp. 1-2, accompanying H.R. 3227, 80th Congress, 1st Session (1947). See Senate Report No. 80-625 (Committee on Armed Services), p. 1, accompanying S. 1174, 80th Congress, 1st Session (1947).

[62] Section 14(c) of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §14(c), 56 Stat. 359, 367 (1942), as amended by Section 3 of the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], §3, 62 Stat 87, 88-89 (1948), extended special pay to "personnel required to perform aerial flights, parachute jumping, glider flights, or submarine duty" in connection with inactive-duty training. As stated in Senate Report No. 80-625 (Committee on Armed Services), p. 2, accompanying S. 1174, 80th Congress, 1st Session (1947):

> Increases in pay authorized by law for flying, parachute jumping, submarine duty, etc., will be paid.

1949, ch. 681, *id*., §204(a), 63 Stat. at 810, for which active duty personnel were entitled to hazardous duty incentive pay. The duties set out in Section 204(a) as qualifying for such pay included crew member and non-crew member flight duties,[63] submarine duties, glider duties, parachute jumping duties, leprosy duties, explosives demolition duties, duty at a submarine escape training tank, and duty with certain diving units. See Section 204(a) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a), 63 Stat. at 809-810.[64] No special reason was given for this reorganization of the provisions of prior law dealing with inactive-duty training pays, including inactive-duty training incentive pays for hazardous duties. The extension of incentive pay for hazardous duty to new classes of reserve forces personnel--*e.g*., to reserve forces personnel in an inactive-duty training status performing parachute duties, explosives demolition duties, submarine escape training tank duties, *etc*.--appears to have derived from the extension of such pays to active duty personnel, and not from any special concern about reserve forces personnel and whether they should be entitled to incentive pay for performance of various hazardous duties.[65] See, *e.g*., chapters of this book dealing with explosives demolition duty pay and parachute duty pay.

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[63] At the time, both rated and non-rated personnel assigned to crew member duties were entitled to crew member flight pay. Aviation Career Incentive Pay derives from the crew member flight pay program. See Chapter II.D.1.b.(1), "Flight Pay (Crew Member)," above.

[64] The inactive-duty training pay provisions contained in section 501 of the Career Compensation Act of 1949, ch. 681, *id*., 63 Stat. at 825-827, were classified to 37 U.S.C. §301, whereas the hazardous duty incentive pay provisions set out in Section 204 of the Career Compensation Act, ch. 681, *id*., 63 Stat. at 809-810, were classified to 37 U.S.C. §235. Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the inactive-duty training pay provisions relating to hazardous duty incentive pay entitlements of reserve forces personnel were codified at 37 U.S.C. §301, together with the hazardous duty incentive pay provisions relating to active duty personnel. When aviation career incentive pay was first authorized by the Aviation Career Incentive Act of 1974, Public Law 93-294, 88 Stat. 177 (1974), reserve forces personnel performing inactive-duty raining were covered under 37 U.S.C. §301a(d), in much the same fashion as they had been under the preceding crew member flight pay program. See following paragraph to this chapter, below. The current structure of hazardous duty incentive pay entitlements--including the present-day aviation career incentive pay (see preceding footnote to this chapter, above)--for reserve forces personnel performing inactive-duty training thus effectively derives from the organization imposed on Title 37 by the Act of September 7, 1962, Public Law 87-649, *id*.

[65] The Hook Commission, whose report led to the adoption of the Career Compensation Act of 1949, did not concern itself with reserve forces compensation in any way. See, *e.g*., "Terms of Reference," the charter given to the Hook Commission by the then Secretary of Defense, James Forrestal, as set out in "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," at pp. vii-viii, December 1948.

With adoption of the Aviation Career Incentive Act of 1974, Public Law 93-294, 88 Stat. 177 (1974), flight pay for rated personnel was effectively split off from crew member flight pay, and the aviation career incentive pay program came into being. At that time, the prior provisions of 37 U.S.C. §301(f), which governed the entitlements of reserve forces personnel to crew member flight pay, among other things, were effectively imported into the new 37 U.S.C. §301a(d), and members of the reserve forces entitled to compensation for inactive-duty training became entitled to aviation career incentive pay when performing qualifying duties under competent orders. As stated in the House Report:

> The committee bill places Reserve-component and National Guard officers under the same aviation career incentive pay program as active duty officers, including the rate stepdowns and the 25-year termination.... The committee ... desire[s] to treat Reservists on an equal basis with active duty members whenever possible.[66]

Until 2003, the conditions of entitlement to non-crew member flight pay for both active duty and reserve forces personnel were set out in Sections 103 and 104 of Executive Order 11157, as amended,[67] in various supplementary regulations adopted by the service secretaries pursuant to Section 113 of Executive Order 11157, and the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R.[68] Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301(a), relevant to aviation career pay and other incentive pays, with the Secretaries of Commerce, Defense, Health and Human Services, and Homeland Security, as those entitlements affect military personnel under the respective jurisdictions of those departments.

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[66] House Report No. 93-799 (Committee on Armed Services), p. 21, accompanying H.R. 12670, 93d Congress, 2d Session (1974). See Senate Report No. 93-841 (Committee on Armed Services), p. 24, accompanying H.R. 12670, 93d Congress, 2d Session (1974) (quotation the same except for a reference to "the same flight pay system" in place of "the same aviation career incentive pay system").

[67] Reproduced, as amended, at 37 U.S.C. §301 note.

[68] In particular, see *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay,* Volume 7A, DOD 7000.14-R, ¶¶80312-80313.

Reserve forces personnel are not entitled to aviation officer career continuation pay under 37 U.S.C. §301b.

An appendix to this chapter shows how ACIP developed after World War II and Korea in response to changes in air operations and tactics and concomitant requirements for increased numbers of career military aviators.

Under the amendments to the aviation career incentive pay program made by the National Defense Authorization Acts for Fiscal Years 1998 and 1999, Public Laws 105-85 and 105-261, as of 2004 the following are the current ACIP rates for commissioned and warrant officers:

| Years of Aviation Service (including Flight Training) as an Officer | Monthly Rate |
|---|---|
| 2 or less | $125 |
| Over 2 | 156 |
| Over 3 | 188 |
| Over 4 | 206 |
| Over 6 | 650 |
| Over 14 | 840 |
| Over 22 | 585 |
| Over 20 | 495 |
| Over 22 | 385 |
| Over 25 | 250 |

**Note:** Warrant officers with more than 22 years of service continue to receive the rate established for "over 14."

**Note:** ACIP for officers in pay grade 0-7 is limited to $200 per month and that for officers in pay grade 0-8 or above, to $206.

**Cost**: For the cost of aviation career incentive pay from 1974 to 2004, see Tables II-12 of *Military Compensation Statistics Tables,* volume II of this edition.

**Chapter II.D.1.b.(4)**

**Flight Pay (Air Weapons Controllers)**

**Legislative Authority**: 37 U.S.C. §301(a)(11) and (c)(2).

**Purpose**: To provide an additional incentive for military personnel to undertake service as air weapons controllers on airborne warning and control system aircraft, and to compensate such personnel for the more than normally dangerous character of such duty.

**Background**: Before enactment of the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-994 (1981), military officers assigned to duty as air weapons controllers on airborne warning and control system aircraft were, while actually performing such duty, eligible for non-crew member flight pay under the hazardous duty incentive pay provisions of 37 U.S.C. §301(a)(2) and (c). The rate of hazardous duty incentive pay for officers assigned to qualifying duty was a flat $110 per month, substantially less than the aviation career incentive pay rates applicable to officers with aeronautical ratings or designations under 37 U.S.C. §301a.[1] With the sharp increase in the number of airborne warning and control systems aircraft--frequently referred to as "AWACS aircraft" or, more simply, as "AWACS"--in the military service of the United States beginning about 1975, and the concomitant increase in demand for personnel to staff such aircraft, the Air Force had noted a shortage in the supply of qualified air weapons controllers.[2]

In order to increase the number of officers volunteering for such duty, Congress, in the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-994 (1981), added a new category of service to the hazardous duty incentive pay

[1] Enlisted personnel assigned to non-crew member duties on air weapons control aircraft were entitled to $55 a month in hazardous duty incentive pay.

[2] In House debate on the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-994 (1981), for instance, it was pointed out that the Air Force had had five AWACS aircraft in 1977, 24 in 1981, and would have 33 by 1985, with a corresponding increase in the number of air weapons control officers needed to man such aircraft from 27 in 1976 to "about 1,000 in the mid-eighties." 127 *Cong. Rec*. 20638 (1981) (daily ed., 127 *Cong. Rec*. H6325 (September 15, 1981)) (remarks of Representative Skelton).

provisions of 37 U.S.C. §301--namely, duty "involving frequent and regular participation in aerial flight by an officer ... serving as an air weapons controller crew member ... aboard an airborne warning and control system aircraft...." To differentiate this pay from the non-crew member flight pay provisions also found in 37 U.S.C. §301, a new set of pay rates for air weapons control officers was provided in 37 U.S.C. §301(c)(2). Under the new provision, the monthly rate of pay for a particular officer in a designated air weapons control billet depended on that officer's cumulative years of service in such duty.[3] Personnel specifically excluded from eligibility for the new pay included officers entitled to aviation career incentive pay under 37 U.S.C. §301a as well as warrant officers and enlisted personnel. See 37 U.S.C. §301(a)(11) as in effect before enactment of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §615, 110 Stat. 186, 361-362 (1996), which broadened the program by specifically including warrant officers and enlisted members within the category of personnel entitled to the special pay.[4] The monthly rates of hazardous duty incentive pay for officers assigned to duty as air weapons controllers initially adopted in the Uniformed Services Pay Act of 1981, Public Law 97-60, *id.*, were:

| **Pay Grade** | **Years of Service as an Air Weapons Controller** | | | | | | |
|---|---|---|---|---|---|---|---|
| | **2 or less** | **Over 2** | **Over 3** | **Over 4** | **Over 6** | **Over 8** | **Over 10** |
| O-7 and above | $200 | $200 | $200 | $200 | $200 | $200 | $200 |
| O-6 | 225 | 250 | 300 | 325 | 350 | 350 | 350 |

[3] For the purpose of computing specific entitlements under the air weapons controllers provisions in question, an individual officer was to be credited with all service as an air weapons control officer after the date he began training leading to qualification for such service except for periods exceeding 90 days in duration when his primary duties are other than those of such an officer. See 37 U.S.C. §301(c)(2)(B) and the table set out at 37 U.S.C. §301(c)(2)(A) as in effect before enactment of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §615, 110 Stat. 186, 361-362 (1996). As noted in the House-Senate Conference Report, all time qualifying as "weapons controller experience," whether "gained in ground duties or as an air weapons controller crew member," counted for the purpose of determining the amount of air weapons controller pay to which any specific officer is entitled. House Report No. 97-265 (Committee of Conference), p. 22, accompanying S. 1181, 97th Congress, 1st Session (1981).

[4] With respect to the changes to the special pay program for air weapons controllers effected by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §615, 110 Stat. 186, 361-362 (1996), see footnotes 10 to 14 to this chapter, together with accompanying text, below.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| O-5 | 200 | 250 | 300 | 325 | 350 | 350 | 350 |
| O-4 | 175 | 225 | 275 | 300 | 350 | 350 | 350 |
| O-3 | 125 | 156 | 188 | 206 | 350 | 350 | 350 |
| O-2 | 125 | 156 | 188 | 206 | 250 | 300 | 300 |
| O-1 | 125 | 156 | 188 | 206 | 250 | 250 | 250 |

| **Pay Grade** | **Years of Service as an Air Weapons Controller** | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | **Over 12** | **Over 14** | **Over 16** | **Over 18** | **Over 20** | **Over 22** | **Over 24** | **Over 25** |
| O-7 and above | $200 | $200 | $200 | $200 | $200 | $200 | $200 | $110 |
| O-6 | 350 | 350 | 350 | 350 | 300 | 250 | 250 | 225 |
| O-5 | 350 | 350 | 350 | 350 | 300 | 250 | 250 | 225 |
| O-4 | 350 | 350 | 350 | 350 | 300 | 250 | 250 | 225 |
| O-3 | 350 | 350 | 350 | 300 | 275 | 250 | 225 | 200 |
| O-2 | 300 | 300 | 300 | 275 | 245 | 210 | 200 | 180 |
| O-1 | 250 | 250 | 250 | 245 | 210 | 200 | 180 | 150 |

In adopting the provisions in question, Congress noted, among other things, the nature of the duty involved:

> ... One of the major reasons for the shortage of volunteers is the nature of AWACS duty. AWACS duty is arduous and perceived by weapons controllers as having few rewards.... [Recent] deployments [of AWACS aircraft to various locations around the world] translated to lengthy periods of family separation.... In the troubled decade ahead, we can expect our worldwide AWACS commitment to expand, thereby exacerbating the weapons controller manning problem.[5]

Congress went on to note, however:

> The major reason for the shortage of volunteers ... is the great disparity between the flight pay paid to pilots and that paid to weapons controllers. This is a major disincentive....
>
> Mr. Chairman, we are on the horns of a dilemma. On the one hand, we have the AWACS, the most sophisticated surveillance aircraft in the world; a proven system which, through its many deployments since 1977, has proven to be an invaluable instrument of national policy. On the other hand, we are failing to attract and retain the very people who can insure the AWACS remains an

[5] 127 *Cong. Rec.* (1981) (daily ed., 127 *Cong. Rec.* H6326 (September 15, 1981)) (remarks of Representative Skelton).

> effective instrument of national policy. It is time to address this problem and enhance hazardous duty incentive pay is the optimum vehicle [sic].[6]

Congress also cited the effects of inflation in reducing the incentive value of the hazardous duty incentive pay--*i.e.*, non-crew member flight pay under 37 U.S.C. §301(a)(2)--that was the only incentive pay to which air weapons controllers were, before the 1981 Pay Act, entitled:

> The existing hazardous duty incentive pay rate dates from 1955, since then, [sic] the Consumer Price Index has tripled. Moreover, in 1955 the hazardous duty incentive pay of a captain exceeded 25 percent of his basic pay; today, his incentive pay is less than 6 percent of basic pay.[7]

In light of the manning problems noted and the perceived causes, Congress concluded that a separate pay for air weapons controllers was warranted:

> Today's hazardous duty incentive pay simply is not enough to attract and keep the people we need to overcome the hardships all aircrew members endure--the irregular schedules, long periods of no-notice family separation, and the hazards involved in flying close to international trouble spots.[8]

The hazardous duty incentive pay provisions of the Uniformed Services Pay Act of 1981, Public Law 97-60, 95 Stat. 989, 992-994 (1981), became effective October 1, 1981.[9] The pay rates established by that law for air weapons controllers remained in effect until 1998. The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1786, raised the pay rates for certain enlisted, warrant officer, and officer air weapons controllers. In all three categories, the measure provided individuals with less than two years of service in the specialty (those with the smallest monthly allotments) with raises ranging from $25 to $50 per month. Individuals of higher rank or longer experience were not affected by the change.

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[6] 127 *Cong. Rec.* (1981) (daily ed., 127 *Cong. Rec*. H6326 (September 15, 1981)) (remarks of Representative Skelton).

[7] 127 *Cong. Rec*. 20638 (1981) (daily ed., 127 *Cong. Rec.* H6326 (September 15, 1981)) (remarks of Representative Skelton).

[8] 127 *Cong. Rec*. 20638 (1981) (daily ed., 127 *Cong. Rec.* H6326 (September 15, 1981)) (remarks of Representative Skelton).

[9] Section 111(d) of the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(d), 95 Stat. 989, 994 (1981). See 37 U.S.C. §301 note.

Whereas the Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., specifically provided that only commissioned officers were entitled to AWACS flight duty pay,[10] the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §615, 110 Stat. 186, 361-362 (1996), broadened the program by specifically including warrant officers and enlisted members within the category of personnel entitled to the special pay. As explained by the Senate Armed Services Committee:

> The committee recommends a provision that would authorize special hazardous duty incentive pay for enlisted members serving as air weapons controllers aboard airborne warning and control systems. The Air Force is converting officer air weapons controller positions to enlisted billets. This provision permits the enlisted air weapons controllers to receive hazardous duty incentive pay on the same basis as their officer counterparts.[11] [12]

The current rates of AWACS flight duty pay covering commissioned officers, warrant officers,[13] and enlisted personnel are set out before the cost figures at the end of this chapter.[14]

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[10] See 37 U.S.C. §301(a)(11) as in effect before passage of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §615, 110 Stat. 186, 361-362 (1996).

[11] Senate Report No. 104-112 (Committee on Armed Services), p. 255, accompanying S. 1026, 104th Congress, 1st Session (1996); cf. House Report No. 104-406 (Committee of Conference), p. 816, accompanying H.R. 1530, 104th Congress, 1st Session (1996), and House Report No. 104-450 (Committee of Conference), p. 806, accompanying S. 1124, 104th Congress, 2d Session (1996).

[12] As originally proposed, warrant officers were not included within the category of persons to whom AWACS flight pay entitlement was extended. This is perhaps explained by the fact that the Air Force does not have any warrant officers, and the Air Force is currently the only service that has personnel assigned to AWACS flight duties. In any event, as ultimately amended by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §615, *id*., the AWACS flight pay program extends entitlement to almost all--see the following parenthetical--grades of military personnel who could theoretically be assigned to AWACS duties. (The National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §1111(a), 105 Stat. 1290, 1491-1492 (1991), established a new warrant officer pay grade, "Chief Warrant Officer, W-5". Possibly due to simple oversight, chief warrant officers in that new pay grade were not included within the category of persons entitled to receive AWACS flight pay if assigned to qualifying duties--or, perhaps more accurately, no special rates of AWACS pay were established for persons in that pay grade.)

[13] But see the parenthetical to footnote 12, immediately above.

[14] The rules for computing the specific amount of AWACS flight duty pay to which any given member is entitled are essentially the same for commissioned officers, warrant offices, and enlisted members as they were under the AWACS flight pay program in effect before enactment of the National Defense

Reserve forces personnel[15] entitled to compensation for inactive-duty training are technically entitled to AWACS flight pay when they perform AWACS flight duties under competent orders, provided Congress has appropriated sufficient funds for that purpose.[16] Under 37 U.S.C. §301(f), members of the reserve forces who perform qualifying flight duties while entitled to compensation under 37 U.S.C. §206 are also technically entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties.[17] That is, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, the member is, if performing qualifying AWACS flight duties under 37 U.S.C. §301(f), also entitled to 1/30th of the AWACS flight pay that would be payable to a member of the active duty force who was performing such duty.

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Authorization Act for Fiscal Year 1996, Public Law 104-106, §615, 110 Stat. 186, 361-362 (1996). For a statement of these rules, see footnote 3 to this chapter, above.

[15] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[16] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, crew member flight duty, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for crew member flight duty are explicitly made contingent on congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

[17] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

As a practical matter, it is doubtful whether any reserve forces personnel participating in inactive-duty training would ever qualify for AWACS flight pay. Entitlement to AWACS flight pay is premised on "frequent and regular participation in aerial flight by an officer ... who is serving as an air weapons controller crew member ... aboard an airborne warning and control system aircraft," and it is doubtful that reserve forces personnel participating in inactive-duty training have access to such aircraft. Thus, while technically entitled to hazardous duty incentive pay for AWACS flight duties under 37 U.S.C. §301, reserve forces personnel would appear to never have received AWACS flight pay.[18]

Technical authority to make AWACS flight pay to reserve forces personnel engaged in inactive-duty training can, in one sense, be traced to the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926), which was the first legislative enactment that provided for special compensation for inactive duty reserve forces personnel engaged in hazardous duties of one kind or another.[19] In fact, however, hazardous duty incentive pay for AWACS flight duties was not covered by the Army Air Corps Act. Rather, that Act merely gave "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled.[20] The first special provision that authorized AWACS flight pay for reserve forces personnel performing inactive-duty training came, as above indicated, in the

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[18] Indeed, applicable regulations do not make provision of any sort for reserve forces personnel to receive hazardous duty incentive pay for AWACS duties. See. *e.g.*, *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶80311-80316, generally (dealing with entitlements of reserve forces personnel participating in inactive-duty training to hazardous duty incentive pay).

[19] For a more complete discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training generally, see Chapter II.D.1.b.(1) hereof, "Flight Pay (Crew Member)," above

[20] Subsequent enactments extended both the categories of duties for which, and the categories of personnel to whom, hazardous duty incentive pay was available for inactive-duty training. See Chapter II.D.1.b.(1) hereof, "Flight Duty (Crew Member)," for a more complete discussion of the history of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training.

Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-994 (1981), which brought AWACS flight duties within the category of duties for which hazardous duty incentive pay was technically authorized.

Historically, the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-994 (1981), had been intended to extend AWACS flight pay entitlements to active duty personnel performing qualifying duties. The entitlements technically covered reserve forces personnel also because of the way Title 37 of the United States Code was organized. At the time, 37 U.S.C. §301(f) provided that a member of the reserve forces on inactive-duty training was entitled to additional pay for hazardous duty when he "performs, under orders, any duty described in subsection (a) of this section." Subsection (a), in turn, covered hazardous duty incentive pay entitlements of active duty personnel, and it was to that subsection that the AWACS flight pay entitlements were added. The Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., had simply added a new category of duty for which hazardous duty incentive pay was authorized for active duty personnel as well under 37 U.S.C. §301(f). Thus, reserve forces personnel on inactive-duty training had in effect "piggybacked" on active duty personnel insofar as technical entitlement to AWACS flight pay was concerned. See discussion of the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-994 (1981), above.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §647, 99 Stat. 583, 655 (1985), amended 37 U.S.C. §301(f) by adding certain housekeeping provisions concerning how hazardous duty incentive pay for inactive-duty training was to be computed. As explained by the House Committee on Armed Services:

> Presently, members of the reserve and guard receive hazardous duty incentive pay (HDIP) for frequent and regular flying during active and inactive duty for training periods. To receive active duty HDIP, the reservist must fly four hours each month or a pro rata share of days on duty. For inactive duty, the requirement is two hours each month or a pro rata share of days on duty. The excess hours flown on inactive duty may be credited toward active duty flight requirements, but the reverse is not permitted. This situation is inconsistent and results in less than optimum use of flying hours resources.

> To ensure equity for reserve members in the computation of hazardous duty incentive pay, the committee recommends that reserve members who are entitled to HDIP for flying be permitted to credit active duty or inactive duty training flight time to fulfill active or inactive duty flight time requirements.[21]

Although the concern that led to the amendment in issue was the appropriate use and apportionment of flying time in general, the amendment to 37 U.S.C. §301(f) was stated in broader terms, so that it applied to any of the hazardous duties set out in 37 U.S.C. §301(a), including AWACS flight duties. Thus, for any month in which a member of a reserve force is involved both in active duty and inactive-duty training for which he is entitled to hazardous duty incentive pay under 37 U.S.C. §301, the total amount of hazardous duty incentive pay the member may receive is based on his combined entitlement for both active duty and inactive-duty training.

**Current rates of AWACS flight pay**: The current rates of pay for AWACS flight duty are:

| **Pay Grade** | **Years of Service as an Air Weapons Controller** | | | | | | |
|---|---|---|---|---|---|---|---|
| | **2 or less** | **Over 2** | **Over 3** | **Over 4** | **Over 6** | **Over 8** | **Over 10** |
| O-7 and above | $200 | $200 | $200 | $200 | $200 | $200 | $200 |
| O-6 | 225 | 250 | 300 | 325 | 350 | 350 | 350 |
| O-5 | 200 | 250 | 300 | 325 | 350 | 350 | 350 |
| O-4 | 175 | 225 | 275 | 300 | 350 | 350 | 350 |
| O-3 | 150 | 156 | 188 | 206 | 350 | 350 | 350 |
| O-2 | 150 | 156 | 188 | 206 | 250 | 300 | 300 |
| O-1 | 150 | 156 | 188 | 206 | 250 | 250 | 250 |
| W-4 | 200 | 225 | 275 | 300 | 325 | 325 | 325 |
| W-3 | 175 | 225 | 275 | 300 | 325 | 325 | 325 |
| W-2 | 150 | 200 | 250 | 275 | 325 | 325 | 325 |
| W-1 | 150 | 150 | 150 | 175 | 325 | 325 | 325 |
| E-9 | 200 | 225 | 250 | 275 | 300 | 300 | 300 |
| E-8 | 200 | 225 | 250 | 275 | 300 | 300 | 300 |
| E-7 | 175 | 200 | 225 | 250 | 275 | 275 | 275 |
| E-6 | 156 | 175 | 200 | 225 | 250 | 250 | 250 |

[21] House Report No. 99-81 (Committee on Armed Services), p. 236, accompanying H.R. 1872, 99th Congress, 1st Session (1985). See House Report No. 99-235 (Committee of Conference), p. 434, and Senate Report No. 99-118 (Committee of Conference), p. 434, accompanying S. 1160, 99th Congress, 1st Session (1985).

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| E-5 | 150 | 156 | 175 | 188 | 200 | 200 | 200 |
| E-4 and below | 150 | 156 | 175 | 188 | 200 | 200 | 200 |

| **Pay Grade** | **Years of Service as an Air Weapons Controller** | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | **Over 12** | **Over 14** | **Over 16** | **Over 18** | **Over 20** | **Over 22** | **Over 24** | **Over 25** |
| O-7 and above | $200 | $200 | $200 | $200 | $200 | $200 | $200 | $150 |
| O-6 | 350 | 350 | 350 | 350 | 300 | 250 | 250 | 225 |
| O-5 | 350 | 350 | 350 | 350 | 300 | 250 | 250 | 225 |
| O-4 | 350 | 350 | 350 | 350 | 300 | 250 | 250 | 225 |
| O-3 | 350 | 350 | 350 | 300 | 275 | 250 | 225 | 200 |
| O-2 | 300 | 300 | 300 | 275 | 245 | 210 | 200 | 180 |
| O-1 | 250 | 250 | 250 | 245 | 210 | 200 | 180 | 150 |
| W-4 | 325 | 325 | 325 | 325 | 276 | 250 | 225 | 200 |
| W-3 | 325 | 325 | 325 | 325 | 325 | 250 | 225 | 200 |
| W-2 | 325 | 325 | 325 | 325 | 275 | 250 | 225 | 200 |
| W-1 | 325 | 325 | 325 | 325 | 275 | 250 | 225 | 200 |
| E-9 | 300 | 300 | 300 | 300 | 275 | 230 | 200 | 200 |
| E-8 | 300 | 300 | 300 | 300 | 265 | 230 | 200 | 200 |
| E-7 | 300 | 300 | 300 | 300 | 265 | 230 | 200 | 200 |
| E-6 | 300 | 300 | 300 | 300 | 265 | 230 | 200 | 200 |
| E-5 | 250 | 250 | 250 | 250 | 225 | 200 | 175 | 150 |
| E-4 and below | 200 | 200 | 200 | 200 | 175 | 150 | 150 | 150 |

**Cost**: For the cost of air weapons controller flight pay from 1982 to 1995, see Table II-13 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.D.2.a.**

## Parachute Duty Pay

**Legislative Authority**: 37 U.S.C. §301(a)(3) and (c)(1).

**Purpose**: To provide an additional pay to increase the ability of the uniformed services to attract and retain volunteers for parachute duty, and to compensate for the more than normally dangerous character of such duty.

**Background**: Parachute duty pay of $100 a month for officers and $50 for enlisted personnel was first authorized by the Act of June 3, 1941, ch. 166 [Public Law 98, 77th Congress], 55 Stat. 240 (1941), about nine months after the U.S. Army formed its first parachute unit. In adopting these rates of pay, Congress attempted to make a precise calculation of the additional compensation necessary to offset the especially hazardous nature of flying and parachuting, both of which were involved in parachute duty. At the time, *i.e.*, 1941, flight pay was 50 percent of base and longevity pay. Thus, a second lieutenant with less than five years of service would be entitled to annual flight pay of $750, with progressively higher pay upon advancement in grade or movement into a new longevity step. This basic $750 a year was said to represent compensation for the "direct hazard of flying which is the same for all,"[1] and any flight pay above that level was said to represent compensation for the "career hazard which involves a cumulative stress and strain over a period of years." As to parachute troops, it was remarked that "it is obvious that these personnel incur greater risks than do those who fly either as passengers or pilots of military aircraft, for in addition to the hazard of injury or death due to a crash of the airplane there is the constant and continuous risk of the parachute jump which must be made as a routine operation not required of other flying personnel." On this reasoning, Congress concluded that parachute officers should receive the $750 "direct hazard" part of flight pay for their flying risk plus a "reasonable amount"--$500 a year--for their jumping risk. The combined annual total of $1,250 was rounded to $1,200, and the

[1] All quotations in this paragraph are from Senate Report No. 259 (Committee on Military Affairs), p. 2, accompanying S. 1063, 77th Congress, 1st Session (1941) (letter of Henry L. Stimson, Secretary of War, to Senator Morris Sheppard, Chairman, Senate Committee on Military Affairs).

officer parachute duty rate was thus set at $100 per month. The "career hazard" part of flight pay was not included in the parachute duty calculation because "it will be necessary to change the personnel of these units frequently in order to meet the requirements for young and vigorous men."

The "pure hazard" theory under which officer parachute duty pay rates were set would appear to be applicable to enlisted parachute personnel as well, since enlisted parachutists were subject to exactly the same flying and jumping risks as their officer counterparts. However, a different, "properly compensated" standard was applied in determining parachute duty pay rates for enlisted personnel. Under this standard, the enlisted pay rate for parachute duty was set at one-half the officer rate. The Senate Military Affairs Committee explained:

> Your committee, after careful consideration, is of the opinion that enlisted men engaged on parachute duty incur risks which other troops are not subject to and therefore should be properly compensated, and believe that the minimum additional pay for such duty should not be less than $50 per month.[2]

In 1948, at the request of the then Secretary of Defense, the Advisory Commission on Service Pay, sometimes referred to as the Hook Commission, conducted the first comprehensive study of the military pay system since 1908. In reviewing military compensation generally, and parachute duty pay in particular, the commission concluded that, although special pays such as parachute duty pay had been designed in part to compensate for arduous and hazardous duties, their main purpose was to fill a supply-demand function-- namely, to induce personnel to enter upon and remain in hazardous military occupations:

> The Commission, after reviewing previous studies, hearing presentations by the Services, and personally observing representative operational and training activities, is of the unanimous opinion that some additional pay should be awarded to individuals who, on a voluntary basis, carry out peacetime functions involving more than the ordinary military risk and danger....

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[2] Senate Report No. 259 (Committee on Military Affairs), p. 1, accompanying S. 1063, 77th Congress, 1st Session (1941).

> Close examination of the nature of hazardous duty and the expressed or implied reasons for accepting risks indicated that the incentive to engage and remain in hazardous occupations provided a more realistic and practical basis for determining the rates of special pay than the theory of recompense for shorter career expectancy. The recompense or replacement concept, although promoted for many years as the sole argument for hazard pay, was found wanting for several reasons....[3]

The Hook Commission also recommended higher parachute duty pay rates for officers than for enlisted personnel:

> A higher rate of hazard pay for officers as compared with enlisted personnel is justifiable on several grounds:
>
> (1) Any special pay must be in proportion to the basic pay, so that at all times the compensation for the primary responsibility will be considerably greater than that for any additional duty.
>
> (2) The rates proposed for hazard pay serve as an inducement to undertake and continue special duties; and such an inducement need not be as great in monetary terms for lower paid and less advanced personnel as for higher paid and more highly trained personnel.
>
> (3) Officers are usually given greater special responsibilities, aside from normal administrative control, than enlisted personnel on hazardous assignments.[4] [5]

The Hook Commission's reasoning and recommendations led to the introduction and enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949),[6] which ratified the previously

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[3] "*Career Compensation for the Uniformed Forces,* a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 24, December 1948 (italicized in original).

[4] "*Career Compensation for the Uniformed Forces,*" a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, December 1948.

[5] For a short discussion of the treatment accorded hazardous duty incentive pays under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), see House Report No. 81-779 (Committee on Armed Services), p. 15, and Senate Report No. 81-733 (Committee on Armed Services), p. 18, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

[6] See, *e.g.*, House Report No. 81-779 (Committee on Armed Services), p. 2, and Senate Report No. 81-733 (Committee on Armed Services), pp. 1-2, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

existing parachute duty pay rates of $100 a month for officers and $50 a month for enlisted personnel.[7] [8] These rates were raised 10 percent to $110 per month for officers and $55 per month for enlisted personnel by the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(6), 69 Stat. 18, 21 (1955), and remained at that level until October 1, 1981, when the rates for enlisted personnel were raised a further 50 percent, to $83 per month, by the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(c), 95 Stat. 989, 992-993 (1981). As explained in the relevant Congressional report, hazardous duty incentive pay rates for enlisted personnel were increased in 1981 in recognition of the fact that they had "not been adjusted in more than 20 years, and this increase is needed to enhance the incentive value of this pay."[9]

In 1985, two additional changes were made to the parachute duty pay provisions of 37 U.S.C. §301 by the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(3), 99 Stat. 583, 648 (1985). First, hazardous duty incentive pay rates for enlisted personnel involved in parachute duties, as well as for a number of other duty categories denominated as hazardous for the purposes of 37 U.S.C. §301(a), were further increased to $110 per month, thereby eliminating the preexisting pay differential between officers and enlisted personnel. Second, a separate, higher parachute duty pay rate was established for both officers and enlisted personnel engaged in duty an "essential part" of which involves "parachute jumping at a high altitude with a low opening"--so-called "HALO" parachute jumping duties. The rate of pay for HALO duties was set at $165 per month for both officers and enlisted personnel.

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[7] See House Report No. 81-779 (Committee on Armed Services), p. 30, and Senate Report No. 81-733 (Committee on Armed Services), p. 18, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

[8] After enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), the hazardous duty incentive pay provisions thereof, including parachute duty pay, were in the main classified to 37 U.S.C. §235. See 37 U.S.C. §235(a)(1) and (b) (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the hazardous duty pay provisions, including the parachute duty pay provisions here in issue, were codified at 37 U.S.C. §301.

[9] Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981).

The first change, increasing minimum parachute duty pay rates for enlisted personnel to $110 per month, was effected by an amendment to 37 U.S.C. §301(c)(1) that did away with any distinction between officers and enlisted personnel for the vast majority of duties qualifying for hazardous duty incentive pay. The second change was effected by an additional amendment to 37 U.S.C. §301(c)(1) that added a specific proviso concerning HALO duties. Prior to amendment by the Department of Defense Authorization Act, 1986, Public Law 99-145, *id.*, 37 U.S.C. §301(c)(1) read as follows:

> For the performance of the hazardous duty described in [various clauses of subsection (a) of 37 U.S.C. §301, including parachute jumping duty], an officer is entitled to $110 a month and an enlisted member is entitled to $83 a month.

After amendment by the 1986 Authorization Act, 37 U.S.C. §301 (c)(1) reads as follows:

> For the performance of hazardous duty described in [the same clauses set out above, including parachute jumping duty], a member is entitled to $110 a month. However, a member performing hazardous duty [involving parachute jumping] who also performs as an essential part of such duty parachute jumping at a high altitude with a low opening is entitled to $165 a month.[10]

Thus, under 37 U.S.C. §301, all members engaged in parachute duties, both officers and enlisted personnel,[11] were entitled either to $110 per month for the performance of "regular," or "basic," parachute jumping duties or to $165 per month for HALO duties.

The legislative history of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id.*, does not *per se* indicate the reason for doing away with the hazardous duty incentive pay differential for officers and enlisted personnel, whether for parachute jumping or other hazardous duties, nor does it indicate why a higher rate of hazardous duty incentive pay was authorized for HALO parachute jumping duties,

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[10] The increase in hazardous duty incentive pay rates for enlisted personnel engaged in parachute jumping duties became effective October 1, 1985, as did the HALO provisions. Department of Defense Authorization Act, 1986, Public Law 99-145, §635(b), 99 Stat. 583, 648 (1985).

[11] The term "member" is defined in 37 U.S.C. §101(23) to mean "a person appointed or enlisted in, or conscripted into, a uniformed service." As such, "member" includes both officers and enlisted personnel.

primarily because no report was ever submitted on the Senate bill, S. 1160, in which the two changes in issue were proposed.[12] In fact, however, the first change, *i.e*., the proposal to equalize officer and enlisted rates of pay for various hazardous duties, including "basic"--*i.e*., non-HALO--parachute jumping duties, had been made the preceding year in connection with the consideration of the Department of Defense Authorization Act, 1985, Public Law 98-525, 98 Stat. 2492 (1984). At that time, the Senate Committee on Armed Services, reporting out S. 2723, 98th Congress, 2d Session (1984), had included a provision that would, among other things, have equalized officer and enlisted rates of

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[12] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41 (Committee on Armed Services), 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Armed Services Committee reported out a clean bill, S. 1160, but did not issue a report on it. As explained by Senator Goldwater, Chairman of the Armed Services Committee, when S. 1160 came before the Senate for consideration:

> ... The Armed Services Committee reported S. 1029 to the Senate on April 29 of this year. The bill was accompanied by Senate Report No. 99-41.
>
> When the Armed Services Committee learned that the Senate would approve no real growth in the defense budget, it reconvened on Wednesday of this week [May 15, 1985] to make further program reductions to conform to the ceiling in the budget resolution. The Committee has reported a clean bill, S. 1160, reflecting these new budget levels....
>
> Most of the Senate Report 99-41 continues to be applicable to this bill....

131 *Cong. Rec*. 12438, 12500 (1985) (daily ed., 131 *Cong. Rec*. S6415, S6475 (May 17, 1985)) (statement of Senator Goldwater). In "explanatory background information" on some of the differences between S. 1029 and S. 1160, the following appears:

> The compensation and benefits provisions of the bill contain significant differences from those contained in S. 1029....
>
> ... In addition, the Committee recommended increases or enhancements to a number of special and incentive pays....
>
> The special and incentive pays ... involved in these recommendations include:
>
> g. Hazardous duty pays.

Each of these benefit increases or enhancements are in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec*. 12474 (1985) (daily ed., 131 *Cong. Rec*. S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "explanatory background information" provided by Senator Goldwater specifically dealt with the "enhancements" to the hazardous duty incentive pay program in general, or to the parachute duty pay program in particular, that were contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985).

hazardous duty incentive pay for "basic" parachute jumping duties.[13] In support of its recommendation, the Committee stated:

> The committee proposes that the enlisted and officer rates for several hazardous duty incentive pays be equalized....
>
> The *Fifth Quadrennial Review of Military Compensation* (QRMC) examined special and incentive pays in great detail. One of its conclusions was that the differential between enlisted and officer rates for seven hazardous duty incentive pays [including parachute duty pay] should be eliminated....
>
> The committee agrees that enlisted and officer personnel should be paid the same incentive for exposing themselves to similar hazards. Therefore, it recommends that the rates for these seven hazardous duty pays be changed to entitle both enlisted and officer personnel to $110 per month.[14]

The Senate proposal was eliminated in conference.[15]

As indicated immediately above, the Senate's 1984 proposal to equalize officer and enlisted hazardous duty incentive pay rates for parachute jumping duties, the substance of which was adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., closely parallels recommendations advanced by the *Fifth Quadrennial Review of Military Compensation*.[16] The same is true of the proposal to increase the rate of parachute duty pay for HALO jumps. In support of its recommendation to "[i]ncrease enlisted Parachute Duty Pay rates to $110 per month,

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[13] See section 148 of S. 2723, 98th Congress, 2d Session (1984).

[14] Senate Report No. 98-500 (Committee on Armed Services), p. 210 (discussing section 148 of the Senate bill), accompanying S. 2723, 98th Congress, 2d Session (1984).

[15] House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[16] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations … proposing changes" to the compensation system of the uniformed services. The Ninth Quadrennial Review of Military Compensation was convened in 1999, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in late 2001.

eliminating officer and enlisted rate differentials,"[17] the *Fifth Quadrennial Review* concluded:

> An appropriate amount for performing basic parachute duty is $110 per month. This rate should be the same for officer and enlisted jump personnel, since they are exposed to the same risks.[18]

In support of its recommendations to "[a]dd a provision to 37 USC 301 to Compensate HALO jumpers at a level equal to basic Parachute Duty Pay plus 50%,"[19] the *Fifth Quadrennial Review* stated:

> HALO jumpers are exposed to significantly increased risks and should receive compensation equal to regular jump pay plus 50%.[20]

In reaching these conclusions, the *Fifth Quadrennial Review* noted:

> ... The purpose of Parachute Duty Pay is twofold: to provide an incentive to participate in parachute jumping, and to compensate somewhat for the actual risk involved in jumping.
>
> Current rates for Parachute Duty Pay are $110 and $83 per month for officers and enlisted personnel, respectively.... During field interviews, both officers and enlisted personnel indicated that they volunteered for other than monetary reasons. Most believe that the value of the payment has diminished to the point that it is inadequate compensation for the hazards they encounter in jump status. The pay is viewed as a reward for risk and has no measurable effect on their decisions to volunteer for or remain in jump status.

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[17] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 184, November 1983. Also see *id*., p. 9, and Executive Summary, *Report of the Fifty Quadrennial Review of Military Compensation,"* p. VI-6, January 1984.

[18] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 200, November 1983. Also see *id*., p. 10. Cf. Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-6, January 1984.

[19] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 184, November 1983. Also see *id*., p. 9, and Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation,* p. VI-6, January 1984.

[20] "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation,", Volume III, p. 184, November 1983. Also see id., p. 9, and Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-6, January 1984.

> Since the hazards are the same for both officer and enlisted jumpers, it is appropriate to establish a single basic rate for Parachute Duty Pay. This same rate would apply to Novices, Senior and Master jumpers (Army badge categories) since it cannot be demonstrated that the hazard of jumping increases with higher jump rating with one exception, HALO jumpers. The establishment of a higher pay rate for these free-fall jumpers would more adequately remunerate personnel who assume the extra risk of HALO duties....
>
> Since a hazard rate should be the same for officers and enlisted personnel, the enlisted rate should be increased to $110 per month. Furthermore, while it is recognized that HALO jumpers assume greater risks, it is difficult to gauge the degree of these added dangers to arrive at an appropriate amount. We believe, however, that a reasonable amount of compensation for taking on risks significantly greater than the basic parachutist is an additional 50% of the regular rate. *i.e.*, $165.[21]

In further comment on officer-enlisted differentials for various hazardous duty incentive pays, including parachute duties, both “regular," or "basic," and HALO, the *Fifth Quadrennial Review* stated:

During the process of reviewing the various Hazardous Duty Incentive Pays, it became increasingly clear that, although there is some incentive associated with certain pays, the primary purpose is recognition for the hazards or risks involved. It was, therefore, believed that officer/enlisted personnel should receive the same level of payment for seven of the Hazardous Duty Incentive Pays: [including] parachute [duty pay]....[22]

In arriving at this conclusion, the *Fifth Quadrennial Review* implicitly rejected the conclusions reached by the Hook Commission in 1949.[23] In commenting on various arguments that had been advanced in favor of and against continuation of officer-enlisted differentials for hazardous duty incentive pays in general, the *Fifth Quadrennial Review* summarized the argument against the Hook Commission's position in the following terms:

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[21] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 182, November 1983.

[22] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 919, November 1983. Also see *id.*, pp. 36-37.

[23] See discussion of Hook Commission recommendations concerning officer-enlisted differentials at text accompanying footnote 4 to this chapter, above.

> The Hook Commission rationale was based primarily on an examination of the needs of the aviation and submarine communities. Times have changed and those communities now have their own separate career incentive pays and bonuses.[24]

Other arguments in favor of eliminating the differential were summarized as follows:

> * All personnel, officer and enlisted, experience the same hazards.
>
> * One can never really compensate for risk of life, no matter the level.
>
> * Basic pay and bonuses are adequate to cover any differential.
>
> * Most hazard-related pays now cover skills that are not necessarily career oriented (across all Services); hence, a differential is not necessary for purposes of retention. However, exceptions may occur and should be individually addressed, as required.
>
> * [F]ield interviews [conducted by the *Fifth Quadrennial Review of Military Compensation*] with both officer and enlisted personnel indicate "same rate for same risk" is perceived as equitable in the hazardous duty areas.[25]

Whether because of the recommendations of the *Fifth Quadrennial Review* or for some other reasons, Congress, in the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., did eliminate officer-enlisted pay differentials for parachute duties generally and also established a new, and higher, hazardous duty incentive pay entitlement for high-altitude-low-opening, or HALO, parachute duties.

The National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §614, 105 Stat. 1290, 1377 (1991), modified the provisions relating to the higher rate of parachute duty pay authorized for members involved in HALO operations. Under the 1992/1993 Authorization Act, *id*., §614, 105 Stat. at 1377, the description of the type of parachute duties for which the higher rate of pay was authorized was expanded from "parachute jumping at a high altitude with a low opening" to include all

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[24]Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation* , Volume III, p. 920, November 1983; *cf. id*., p. 37.

[25] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 919-920, November 1983.

"parachute jumping in military free fall operations involving parachute deployment by the jumper without the use of a static line". In support of the modification, the Senate Armed Services Committee noted:

> The committee recommends a provision ... that would expand current authority ... which provides for a monthly hazardous duty pay of $165 per month to high altitude/low opening parachute jumps to include all free fall operations involving jumper deployed parachute openings.[26]

The National Defense Authorization act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1787, raised the special pay for all the categories of hazardous duty covered in 37 U.S. Code §301(c)(1), for all personnel engaged in those activities. Accordingly, the measure increased the monthly pay for standard parachute duty from $110 to $150 and for HALO duty from $165 to $225.

Reserve forces personnel[27] entitled to compensation for inactive-duty training are entitled to parachute duty pay when they perform qualifying duties under competent orders, provided Congress has appropriated sufficient funds for that purpose.[28] Under 37 U.S.C. §301(f), members of the reserve forces who perform qualifying parachute jumping duties while entitled to compensation under 37 U.S.C. §206 are also entitled,

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[26] Senate Report No. 102-113 (Committee on Armed Services), p. 222, accompanying S. 1507, 102d Congress, 1st Session (1991). Cf. House Report No. 102-311 (Committee of Conference), pp. 549-550, accompanying H.R. 2100, 102d Congress, 1st Session (1991). See 37 U.S.C. §301(c)(1) as modified by the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §614, 105 Stat. 1290, 1377 (1991).

[27] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[28] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, parachute jumping, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for parachute jumping are explicitly made contingent on Congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties.[29] That is, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, he is, if he is performing qualifying duty under 37 U.S.C. §301(f), also entitled to 1/30th of the parachute duty pay, including both regular parachute duty pay and HALO pay, that would be payable to a member of the active duty force who was performing such duties. Under regulations prescribed by the President, a member of a reserve force who performs parachute jumping duties under 37 U.S.C. §301(f) while engaged in inactive-duty training is entitled to parachute duty pay.[30]

Hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training can, in one sense, be traced to the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926), which was the first legislative enactment that provided for special compensation for inactive duty reserve forces personnel engaged in hazardous duties of one kind or another.[31] In fact, however, parachute jumping duties were not covered by the Army Air Corps Act. Rather, that act merely gave "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled. The first special provision for parachute duty pay for

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[29] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

[30] See Executive Order 11157, Section 108(d), as amended (reproduced, as amended, at 37 U.S.C. §301 note). Also see *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶80315.

[31] For a discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training, see Chapter II.D.1.b.(1) hereof, "Flight Pay (Crew Member)," above.

reserve forces personnel engaged in inactive-duty training came in the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], §3, 62 Stat. 87, 88 (1948), which gave "officers, warrant officers, and enlisted personnel" of all the reserve forces entitlement to special pay for "perform[ing] ... parachute jumping," among other things. As stated in the House Report:

> The purpose of the bill is to standardize inactive training pay for all Reserve components of the various services and also to grant such inactive duty training pay to Army Reservists.
>
> The major departure in the legislation is the giving of this pay to the Army Reserves, including enlisted men. Such pay has been granted by the Congress heretofore to members of the National Guard and the Naval and Marine Corps Reserves [for participating in flight duties of one kind or another]....
>
> The committee considers the need for this pay to be apparent, even though it is unfortunate that the country must resort to it. The Army and Navy must maintain active Reserve components, or else, in time of war emergency, the Nation will have to depend exclusively upon the Regular services for its defense. They are patently incapable of doing such a job alone. So, in order to vitalize the National Guard and Reserve components, to get more people to participate so that they will fit promptly and effectively into the mobilization-day plans of the Armed Forces, inactive duty pay is to be given each participant at the rate of one-thirtieth of 1 month's base and longevity pay for each training period.... Such specialists as pilots, radar technicians, medical people, and so forth, will also be able to earn inactive duty training pay when the standards specified by the Secretaries [of the various departments] are met.[32] [33]

These provisions covered personnel of all the reserve forces performing parachute jumping duties as a part of their inactive-duty training.

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[32] House Report No. 80-971 (Committee on Armed Services), pp. 1-2, accompanying H.R. 3227, 80th Congress, 1st Session (1947). See Senate Report No. 80-625 (Committee on Armed Services), p. 1, accompanying S. 1174, 80th Congress, 1st Session (1947).

[33] Section 14(c) of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §14(c), 56 Stat. 359, 367 (1942), as amended by Section 3 of the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], §3, 62 Stat 87, 88-89 (1948), extended special pay to "personnel required to perform aerial flights, parachute jumping, glider flights, or submarine duty" in connection with inactive-duty training. As stated in Senate Report No. 80-625 (Committee on Armed Services), p. 2, accompanying S. 1174, 80th Congress, 1st Session (1947): Increases in pay authorized by law for flying, parachute jumping, submarine duty, etc., will be paid.

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), restated the provisions of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], 56 Stat. 359 (1942), as amended by the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), insofar as the entitlement of reserve forces personnel to special pay for the performance of hazardous duties was concerned. Section 501 of the Career Compensation Act, ch. 681, *id*., §501, 63 Stat. at 825-827, dealt generally with the entitlement of reserve forces personnel to compensation for inactive-duty training. Subsection (d) of Section 501, 63 Stat. at 826, generalized the hazardous duty incentive pay entitlements of reserve forces personnel performing inactive-duty training by providing that hazardous duty incentive pay was available to such personnel whenever they were required by competent orders to perform any of the hazardous duties, set out at Section 204(a) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a), 63 Stat. at 810, for which active duty personnel were entitled to hazardous duty incentive pay. The duties set out in Section 204(a) as qualifying for such pay included crew member and noncrew member flight duties, submarine duties, glider duties, parachute jumping duties, leprosy duties, explosives demolition duties, duty at a submarine escape training tank, and duty with certain diving units.[34] Section 204(a) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a), 63 Stat. at 809-810.[35] No special reason was given for this reorganization of the provisions of prior law dealing with inactive-duty training pays, including inactive-duty training incentive pays for hazardous duties. The extension of incentive pay for hazardous duty to new classes of reserve forces personnel--*e.g*., to reserve forces personnel in an inactive-duty training

[34] See Section 204(a) of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802, 809-810 (1949).

[35] The inactive-duty training pay provisions contained in section 501 of the Career Compensation Act of 1949, ch. 681, *id*., 63 Stat. at 825-827, were classified to 37 U.S.C. §301, whereas the hazardous duty incentive pay provisions set out in Section 204 of the Career Compensation Act, ch. 681, *id*., 63 Stat. at 809-810, were classified to 37 U.S.C. §235. Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the inactive-duty training pay provisions relating to hazardous duty incentive pay entitlements of reserve forces personnel were codified at 37 U.S.C. §301, together with the hazardous duty incentive pay provisions relating to active duty personnel. The current structure of hazardous duty incentive pay entitlements--including hazardous duty incentive pay for parachute duty--for reserve forces personnel performing inactive-duty training thus derives from the organization imposed on Title 37 by the Act of September 7, 1962, Public Law 87-649, *id*.

status performing leprosy duties, explosives demolition duties, submarine escape training tank duties, *etc*.--appears to have derived from the extension of such pays to active duty personnel, and not from any special concern about reserve forces personnel and whether they should be entitled to incentive pay for performance of various hazardous duties.[36] See, *e.g*., chapters of this book dealing with explosives demolition duty pay, leprosy pay, etc.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §647, 99 Stat. 583, 655 (1985), amended 37 U.S.C. §301(f) by adding certain housekeeping provisions concerning how hazardous duty incentive pay for inactive-duty training was to be computed. As explained by the House Committee on Armed Services:

> Presently, members of the reserve and guard receive hazardous duty incentive pay (HDIP) for frequent and regular flying during active and inactive duty for training periods. To receive active duty HDIP, the reservist must fly four hours each month or a pro rata share of days on duty. For inactive duty, the requirement is two hours each month or a pro rata share of days on duty. The excess hours flown on inactive duty may be credited toward active duty flight requirements, but the reverse is not permitted. This situation is inconsistent and results in less than optimum use of flying hour resources.
>
> To ensure equity for reserve members in the computation of hazardous duty incentive pay, the committee recommends that reserve members who are entitled to HDIP for flying be permitted to credit active duty or inactive duty training flight time to fulfill active or inactive duty flight time requirements.[37]

While the concern that led to the amendment in issue was the appropriate use and apportionment of flying time, the amendment to 37 U.S.C. §301(f) was stated in broader terms, so that it applies to any of the hazardous duties set out in 37 U.S.C. §301(a), including parachute duty, and not just flight duty. Thus, for any month in which a

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[36] The Hook Commission, whose report led to the adoption of the Career Compensation Act of 1949, did not concern itself with reserve forces compensation in any way. See, *e.g*., "Terms of Reference," the charter given to the Hook Commission by the then Secretary of Defense, James Forrestal, in "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," pp. vii-viii, December 1948.

[37] House Report No. 99-81 (Committee on Armed Services), p. 236, accompanying H.R. 1872, 99th Congress, 1st Session (1985). See House Report No. 99-235 (Committee of Conference), p. 434, and Senate Report No. 99-118 (Committee of Conference), p. 434, accompanying S. 1160, 99th Congress, 1st Session (1985).

member of a reserve force is involved both in active duty and inactive-duty training for which he is entitled to hazardous duty incentive pay under 37 U.S.C. §301, the total amount of hazardous duty incentive pay the member may receive is based on his combined entitlement for both active duty and inactive-duty training.

Until 2003, Executive Order 11157 of June 22, 1964, as amended, established performance requirements--minimum exposure standards, normally exceeded by personnel performing the duty on a full-time basis—that must be met to qualify for the pay. Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301(a), relevant to parachute duty pay and other incentive pays, with the Secretaries of Commerce, Defense, Health and Human Services, and Homeland Security, as those entitlements affect military personnel under the respective jurisdictions of those departments.

Parachute duty pay is not awarded for meeting the minimum exposure standard; rather, it is paid for facing as much exposure as the needs of the service may require during a period of parachute duty. In general, one jump meets the minimum exposure standard and qualifies a member for the extra pay for a three-month period. A member who is unable to perform a jump in a three-month period because of military operations or the absence of jump equipment or aircraft may qualify for the pay for the three-month non-jumping period plus the following nine consecutive months by performing four jumps at any time during the nine-month period. Jump requirements may be waived during combat operations in a hostile fire pay area.

**Current rates of parachute duty pay**: The current rates of pay authorized for parachute duty are as follows:

| **Category of parachute jumping duty** | **Pay authorized** |
|---|---|
| Military free fall operations without the use of a static line (HALO) | $ 225 per month |
| All other forms of parachute duty | $ 150 per month |

**Cost**: For the cost of parachute duty pay from 1972 to 2004, see Table II-14 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.D.2.b.**

## Glider Duty Pay

**Legislative Authority**: Formerly, 37 U.S.C. §301(a)(3) and (c)(1). The legislative authority for this hazardous duty incentive pay was repealed by the Department of Defense Authorization Act, 1985, Public Law 98-525, §624(a)(1), 98 Stat. 2492, 2542 (1984).

**Purpose**: To induce Armed Forces personnel to volunteer for and remain in glider flying duties, and to compensate for the more than normally dangerous character of such duties.

**Background**: Glider duty pay was first authorized by the Act of July 1, 1944, ch. 372 [Public Law 409, 78th Congress], 58 Stat. 682 (1944), in order "to place glider units of the Army and Navy on the same parity as to pay as now given to the air forces of the Army and Navy and paratroops."[1] At the time, the existing flight pay rate was 50 percent of base and longevity pay,[2] and the parachute duty pay rate was $100 a month for officers and $50 for enlisted personnel. The Act of July 1, 1944, ch. 372, *id*., achieved the sought-after "parity" for personnel assigned to glider duties by establishing a hybrid glider duty pay rate of 50 percent of base and longevity pay, but not to exceed $100 a month for officers or $50 a month for enlisted personnel.[3] As explained by the House Military Affairs Committee:

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[1]Extra pay for members of the "air forces of the Army and Navy and paratroops" had earlier been authorized primarily in recognition of the hazardous nature of such duties. See Chapters II.D.1.b.(1), II.D.1.b.(2), and II.D.2.a. hereof, above, "Flight Pay (Crew Member)", "Flight Pay (Non-Crew Member)," and "Parachute Duty Pay," respectively.

[2] For an explanation of the base and longevity pay system in operation in 1944, see Chapter II.B.1. hereof, above, "Basic Pay."

[3] For many officer and enlisted pay grades, base and longevity pay was sufficiently low that glider duty pay entitlement was less than the $100 and $50 ceilings, respectively. See 1944 base and longevity pay rates by pay grade in the tables accompanying Chapter II.B.1., "Basic Pay" above.

The bill as amended by your committee would authorize glider personnel to receive an increase of 50 percent of their pay, as is now provided for persons who regularly and frequently participate in aerial flights, but would restrict such pay so as not to exceed that now provided for parachute troops.[4]

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(a)(9) and (c), 63 Stat. 802, 810 (1949), classified glider duty pay, together with crew member flight pay and parachute duty pay, among others, as an incentive pay for hazardous duty. Rates of pay for glider duties were set at a flat $100 per month for officers and $50 per month for enlisted personnel, thereby bypassing the formulaic provisions of the Act of July 1, 1944, ch. 372 [Public Law 409, 78th Congress], 58 Stat. 682 (1944). Gliders went out of operational service in the early 1950s, and as a practical matter hazardous duty incentive pay entitlements for glider duty ceased at that time.[5] Even so, glider duty continued to be classified as one of the duties for which hazardous duty incentive pay was authorized, and every time the rates of pay authorized for such duties in general were adjusted, the adjustment automatically applied to glider duty as well. Thus, when the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(6), 69 Stat. 18, 21 (1955), increased the statutory monthly rates of pay for hazardous duties generally to $110 for officers and to $55 for enlisted personnel, such increases were technically authorized for glider duty as well. Similarly, when the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(c), 95 Stat. 989, 993 (1955), further increased the rates of hazardous duty incentive pay for enlisted personnel to $83 per month, the increase applied to glider duty also.

As explained in the relevant Congressional Report, the rates of pay authorized for the general group of duties classified as hazardous were increased in 1981 in recognition

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[4] House Report No. 1712 (Committee on Military Affairs), p. 2, accompanying H.R. 4466, 78th Congress, 2d Session (1944).

[5] Since then, the Armed Forces have made non-operational use of gliders in some training programs, see, *e.g.*, Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 155-156, November 1983, but no Armed Forces personnel involved in such programs have been authorized to receive glider duty pay on account of such involvement.

of the fact that they had "not been adjusted in more than 20 years, and this increase is needed to enhance the incentive value of this pay."[6] Despite the increase in the rates of pay authorized for hazardous duties generally, however, and the expressed rationale therefor, no one in the Armed Forces received the higher rates of pay for glider duty.

In 1984, the authorization for glider duty pay was repealed, on the grounds that the pay was "no longer necessary,"[7] by Section 624(a)(1) of the Department of Defense Authorization Act, 1985, Public Law 98-525, §624(a), 98 Stat. 2492, 2542 (1984). As explained by Congress, the determination that glider duty pay was "no longer necessary" derived from the recommendation of the *Fifth Quadrennial Review of Military Compensation*[8] that the authorization for such pay be rescinded. The basis for the recommendation by the *Fifth Quadrennial Review* was that there was "no valid need [for such pay]; pay under crew member/non-crew member possible."[9] In short, the *Fifth Quadrennial Review* concluded that the vast majority, if not all, of the nonaviator-rated Armed Forces personnel who might conceivably become entitled to glider duty pay by reason of performing glider duties of some sort would be entitled to receive either crew member flight pay, under present 37 U.S.C. §301(a)(1),[10] or non-crew member flight pay,

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[6] Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981).

[7] Senate Report No. 98-500 (Committee on Armed Services), p. 211, accompanying S. 2723, and House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[8] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ...proposing changes" to the compensation system of the uniformed services. The Ninth Quadrennial Review of Military Compensation was convened in 1999, pursuant to the requirements of 37 U.S.C. §1008(b), and its report and recommendations were submitted to Congress in late 2001.

[9] Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-5, January 1984 (emphasis in original).

[10] After enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), the hazardous duty incentive pay provisions thereof, including glider duty pay, were in the main classified to 37 U.S.C. §235. See 37 U.S.C. §235(a)(1) and (b) (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the hazardous duty pay provisions, including the glider duty pay

under present 37 U.S.C. §301(a)(2),[11] since entitlement to such pays depends, among other things, on whether a person is assigned to duty requiring "frequent and regular participation in aerial flight," 37 U.S.C. §301(a)(1) and (2), and "aerial flight" is defined in implementing Presidential regulations[12] to include "flight" in, among other things, a "glider."[13] Rated personnel assigned to glider duties, on the other hand, would under most circumstances be entitled to aviation career incentive pay under present 37 U.S.C. §301a.[14] Congress appears to have been persuaded by this reasoning.[15]

Before the repeal of glider duty pay authority, reserve forces personnel[16] entitled to compensation for inactive-duty training were technically entitled to glider duty pay

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provisions here in issue, were codified at 37 U.S.C. §301, and the various classifications of hazardous duty for which special pay was authorized were set out in subsection (a) thereof.

[11] See preceding footnote to this chapter, above.

[12] Under 37 U.S.C. §301(a), the President is to prescribe regulations covering the hazardous duty incentive pay program generally.

[13] See Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 7, 155-157, November 1983.

[14] See 37 U.S.C. §301a, generally, and Chapter II.D.1.b.(3) hereof, above, "Aviation Career Incentive Pay (ACIP) and Aviation Career Continuation Pay (AOCP)". Also see Special and Incentive Pays, "Report of the Fifth Quadrennial Review of Military Compensation," Volume III, p. 155, November 1983.

[15] The *Report of the Fifth Quadrennial Review* noted the possibility that non-aviator-rated officers might be assigned to duties involving gliders and glider flight, although it suggested that such an eventuality would be unlikely, having happened "only once in the past 25 years." Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 7, 156-157. At the time the report was issued, a non-aviator-rated officer assigned to glider-related duties would not have been entitled to crew member flight pay under 37 U.S.C. §301(a)(1) since only enlisted personnel were entitled to such pay at that time. See 37 U.S.C. §301(a)(1) as in effect in 1983-1984. The Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(1)(A), 99 Stat. 583, 647 (1985), remedied this possible problem by extending crew member flight pay entitlement to all crew members, not just enlisted crew members. See present 37 U.S.C. §301(a)(1) and Chapter II.D.1.b.(1) hereof, above, "Flight Pay (Crew Member)." Even apart from the 1986 Authorization Act, however, non-aviator-rated officers might have been entitled to non-crew member flight pay under 37 U.S.C. §301(a)(2) if assigned to glider-related duties, provided all requirements of that provision and its implementing regulations otherwise were met.

[16] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public

when they performed qualifying duties under competent orders, provided adequate funds were appropriated by Congress for that purpose.[17] Under 37 U.S.C. §301(f), members of the reserve forces who performed qualifying glider duties while entitled to compensation under 37 U.S.C. §206 were also entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties.[18] That is, before repeal of the basic legal authority for glider duty pay, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces was entitled to compensation under 37 U.S.C. §206, the member was, if performing qualifying glider duty under 37 U.S.C. §301(f), also entitled to 1/30th of the glider duty flight pay that would be payable to a member of the active duty force who was performing such duties. Thus, until the legal authority for glider duty pay was repealed, as set out above, glider duty was one of the duties for which hazardous duty incentive pay was available, at least as a technical matter, to reserve forces personnel performing inactive-duty training: under the now-repealed Executive Order 11157, a member of a reserve force who performed glider duties under 37 U.S.C. §301(f) while engaged in inactive-duty training was entitled to glider duty flight pay.

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Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[17] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, crew member flight duty, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for crew member flight duty are explicitly made contingent on Congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

[18] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

Glider duty pay authority for reserve forces personnel engaged in inactive-duty training can, in one sense, be traced to the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926), which was the first legislative enactment that provided for special compensation for inactive duty reserve forces personnel engaged in hazardous duties of one kind or another.[19] In fact, however, glider duties were not covered by the Army Air Corps Act. Rather, that Act merely gave "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled.[20] The first special provision for glider duty pay for reserve forces personnel engaged in inactive-duty training came in the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], §3, 62 Stat. 87, 88 (1948), which gave "officers, warrant officers, and enlisted personnel" of all the reserve forces entitlement to special pay for "perform[ing] ... glider flights," among other things. As stated in the House Report:

> The purpose of the bill is to standardize inactive training pay for all Reserve components of the various services and also to grant such inactive duty training pay to Army Reservists.
>
> The major departure in the legislation is the giving of this pay to the Army Reserves, including enlisted men. Such pay has been granted by the Congress heretofore to members of the National Guard and the Naval and Marine Corps Reserves [for participating in flight duties]....
>
> The committee considers the need for this pay to be apparent, even though it is unfortunate that the country must resort to it. The Army and Navy must maintain active Reserve components, or else, in time of war emergency, the Nation will have to depend exclusively upon the Regular services for its defense. They are patently incapable of doing such a job alone. So, in order to vitalize the National Guard and Reserve components, to get more people to participate so that they will fit promptly and effectively into the mobilization-day plans of the Armed Forces, inactive duty pay is to be given each participant at the rate of one-thirtieth of 1 month's base and longevity pay for each training period.... Such specialists as pilots, radar technicians, medical people, and so forth, will also be

[19] For a more complete discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training generally, see Chapter II.D.1.b.(1) hereof, above, "Flight Pay (Crew Member)."

[20] Subsequent enactments extended both the categories of duties for which, and the categories of personnel to whom, hazardous duty incentive pay was available for inactive-duty training. See Chapter II.D.1.b.(1) hereof, "Flight Duty (Crew Member)," for a more complete discussion of the history of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training.

able to earn inactive duty training pay when the standards specified by the Secretaries [of the various departments] are met.[21] [22]

These provisions covered personnel of all the reserve forces performing glider duties as a part of their inactive-duty training. The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), restated prior provisions of law relating to the entitlement of reserve forces personnel to special pay for the performance of hazardous duty, including glider duties, while engaged in inactive-duty training. Section 501 of the Career Compensation Act, ch. 681, *id*., §501, 63 Stat. at 825-827, dealt generally with the entitlement of reserve forces personnel to compensation for inactive-duty training. Subsection (d) of Section 501, 63 Stat. at 826, generalized the hazardous duty incentive pay entitlements of reserve forces personnel performing inactive-duty training by providing that hazardous duty incentive pay was available to such personnel whenever they were required by competent orders to perform any of the hazardous duties, set out at Section 204(a) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a), 63 Stat. at 810, for which active duty personnel were entitled to hazardous duty incentive pay. The duties set out in Section 204(a) as qualifying for such pay included crew member and noncrew member flight duties, submarine duties, parachute jumping duties, leprosy duties, explosives demolition duties, duty at a submarine escape training tank, duty with certain diving units, as well as glider duties. Section 204(a) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a), 63 Stat. at 809-810.[23] No special reason

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[21] House Report No. 80-971 (Committee on Armed Services), pp. 1-2, accompanying H.R. 3227, 80th Congress, 1st Session (1947). See Senate Report No. 80-625 (Committee on Armed Services), p. 1, accompanying S. 1174, 80th Congress, 1st Session (1947).

[22] Section 14(c) of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §14(c), 56 Stat. 359, 367 (1942), as amended by Section 3 of the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], §3, 62 Stat 87, 88-89 (1948), extended special pay to "personnel required to perform aerial flights, parachute jumping, glider flights, or submarine duty" in connection with inactive-duty training. As stated in Senate Report No. 80-625 (Committee on Armed Services), p. 2, accompanying S. 1174, 80th Congress, 1st Session (1947): Increases in pay authorized by law for flying, parachute jumping, submarine duty, etc., will be paid.

[23] The inactive-duty training pay provisions contained in section 501 of the Career Compensation Act of 1949, ch. 681, *id*., 63 Stat. at 825-827, were classified to 37 U.S.C. §301, whereas the hazardous duty incentive pay provisions set out in Section 204 of the Career Compensation Act, ch. 681, *id*., 63 Stat. at 809-810, were classified to 37 U.S.C. §235. Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the inactive-duty training pay provisions relating to hazardous duty incentive pay entitlements of reserve forces

was given for this reorganization of the provisions of prior law dealing with inactive-duty training pays, including inactive-duty training incentive pays for hazardous duties. The extension of incentive pay for hazardous duty to new classes of reserve forces personnel--*e.g.*, to reserve forces personnel in an inactive-duty training status performing leprosy duties, explosives demolition duties, submarine escape training tank duties, etc.--appears to derive from the extension of such pays to active duty personnel, and not from any special concern about reserve forces personnel and whether they should be entitled to incentive pay for the performance of various hazardous duties.[24]

The repeal of the basic authority for glider duty pay by the Department of Defense Authorization Act, 1985, Public Law 98-525, §624(a), 98 Stat. 2492, 2542 (1984), effectively cut off reserve entitlements as well as active duty entitlements.

personnel were codified at 37 U.S.C. §301, together with the hazardous duty incentive pay provisions relating to active duty personnel. The current structure of hazardous duty incentive pay entitlements for reserve forces personnel performing inactive-duty training thus derives from the organization imposed on Title 37 by the Act of September 7, 1962, Public Law 87-649, *id.*

[24] The Hook Commission, whose report led to the adoption of the Career Compensation Act of 1949, did not concern itself with reserve forces compensation in any way. See *e.g.*, "Terms of Reference," the charter given to the Hook Commission by the then Secretary of Defense, James Forrestal, in "*Career Compensation for the Uniformed Forces,* a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," pp. vii-viii, December 1948.

**Chapter II.D.2.c.**

## Flight Deck Duty Pay

**Legislative Authority:** 37 U.S.C. §301(a)(8) and (c)(1).

**Purpose**: To provide an additional pay to increase the Navy's ability to attract and retain personnel for duty involving the launching of aircraft from and their recovery on aircraft carriers and other ships from which aircraft are launched, and to compensate for the more than normally dangerous character of such duty.

**Background**: The Act of August 28, 1965, Public Law 89-149, §1(3), 79 Stat. 585 (1965), created a new category of duty for which hazardous duty incentive pay was authorized--namely, "duty involving frequent and regular participation in flight operations on the flight deck of an aircraft carrier." As initially adopted, the rates of pay for such duty were set at $110 per month for officers and $55 per month for enlisted personnel.[1] Congress described the purpose underlying the payment of incentive pay for so-called "flight deck duty" in these terms:

> Payment of incentive pay to flight deck personnel is thus justified, fully and primarily, upon the basis of the hazards involved, aside from all other considerations. Nevertheless, there are important collateral reasons why the proposed legislation would be highly beneficial to the Government as well as to the individual recipient.
>
> A large proportion of flight-deck personnel are newly-rated third-class aviation boatswain's mates (E-4) or nonrated personnel (E-3 or E-2). Their reenlistment rate is about one-third the overall Navy first reenlistment rate.... The inevitable result is an experience level chronically below the optimum desired for maximum safety and efficiency.... However, an improvement in retention rate and

[1] Under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(c), 63 Stat. 802, 810 (1949), officers received $100 per month and enlisted personnel received $50 per month for the hazardous duty incentive pays--other than flight and submarine duty pay--ultimately codified at 37 U.S.C. §301. Hazardous duty incentive pay rates were increased by 10 percent for both officers and enlisted personnel by the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(6), 69 Stat. 18, 21 (1955)--to $110 for officers and to $55 for enlisted personnel. Thus, when members of the uniformed services first became entitled to hazardous duty incentive pay for flight deck duty under amendments to 37 U.S.C. §301 made by the Act of August 28, 1965, Public Law 89-149, §1(3), 79 Stat. 585 (1965), the rates of pay were $110 a month for officers and $55 a month for enlisted personnel.

> experience level could be expected to follow enactment of this legislative proposal, and this improvement should further result in a significant reduction of fatalities, injuries, and property damage, and an increase in the combat potential of naval airpower.[2]

In implementing this new hazardous duty pay authority, the President, through Executive Order 11157 of June 22, 1964, as amended,[3] originally restricted flight deck duty pay to the crews of fixed-wing-aircraft carriers or aviation units operating therefrom.

The initial officer-enlisted differential in flight deck duty pay rates was a product of the hazardous duty incentive pay structure deriving from the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(c), 63 Stat. 802, 809-810 (1949),[4] which was in turn based on recommendations of the Advisory Commission on Service Pay, sometimes referred to as the Hook Commission, in 1948. The Hook Commission's rationale for an officer-enlisted differential was that:

> A higher rate of hazard pay for officers as compared with enlisted personnel is justifiable on several grounds:
>
> (1) Any special pay must be in proportion to the basic pay, so that at all times the compensation for the primary responsibility will be considerably greater than that for any additional duty.
>
> (2) The rates proposed for hazard pay serve as an inducement to undertake and continue special duties; and such an inducement need not be as great in monetary terms for lower paid and less advanced personnel as for higher paid and more highly trained personnel.
>
> (3) Officers are usually given greater responsibilities, aside from normal administrative control, than enlisted personnel on hazardous assignments.[5] [6]

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[2] House Report No. 89-171 (Committee on Armed Services), p. 2, accompanying H.R. 3044, 89th Congress, 1st Session (1965).

[3] Reproduced, as amended, at 37 U.S.C. §301 note.

[4] See footnote 1 to this chapter, above.

[5] "*Career Compensation for the Uniformed Forces*, "A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, December 1948.

[6] For a short discussion of the treatment accorded hazardous duty incentive pays under the Career Compensation Act, see House Report No. 81-779 (Committee on Armed Services), p. 15, and Senate

Under the Uniformed Services Pay Act of 1981, Public Law 97-60, §111, 95 Stat. 989, 993 (1981), Congress expanded the category of personnel eligible for flight deck duty pay and increased the pay rates for enlisted personnel involved in qualifying duty by 50 percent, to $83 per month, effective October 1, 1981. As explained in the Senate report, flight deck duty pay was extended to personnel involved in flight deck duties on ships other than aircraft carriers in recognition of the "extensive personal sacrifices made by military members ... whose routine duties involve hazardous working conditions."[7] Flight deck duty pay rates for enlisted personnel were increased in recognition of the fact that they had "not been adjusted in more than 20 years [in the case of flight deck duty, since original adoption in 1965], and this increase is needed to enhance the incentive value of this pay."[8]

Flight deck duty pay rates for enlisted personnel were further increased to $110 per month in 1985 by the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(3), 99 Stat. 583, 648 (1985). This increase was effected by an amendment to 37 U.S.C. §301(c)(1) that did away with any distinction between officers and enlisted personnel for the vast majority of duties qualifying for hazardous duty incentive pay, specifically including flight deck duty pay. Prior to amendment by the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., 37 U.S.C. §301(c)(1) read as follows:

> For the performance of the hazardous duty described in [various clauses of subsection (a) of 37 U.S.C. §301, including flight deck duty], an officer is entitled to $110 a month and an enlisted member is entitled to $83 a month.

After amendment by the 1986 Authorization Act, Public Law 99-145, *id*., 37 U.S.C. §301(c)(1) reads as follows:

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Report No. 81-733 (Committee on Armed Services), p. 18, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

[7] Senate Report No. 97-146 (Committee on Armed Services), p. 7, accompanying S.1181, 97th Congress, 1st Session (1981).

[8] Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S.1181, 97th Congress, 1st Session (1981).

For the performance of hazardous duty described in [the same clauses set out above, including flight deck duty], a member is entitled to $110 a month.[9]

Thus, under 37 U.S.C. §301, all members, both officers and enlisted personnel,[10] were entitled to $110 per month for the performance of flight deck duties under qualifying orders.

The legislative history of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., does not *per se* indicate the reason for doing away with the distinction between officers and enlisted personnel with respect to the rates of pay authorized for flight deck duties. This omission was primarily because no report was ever submitted on the Senate bill, S. 1160, in which the proposal to equalize the rates of flight deck duty pay for officers and enlisted personnel was made.[11] In fact, however, the

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[9] The increase in hazardous duty incentive pay rates for enlisted personnel engaged in flight deck duties became effective October 1, 1985. Department of Defense Authorization Act, 1986, Public Law 99-145, §635(b), 99 Stat. 583, 648 (1985).

[10] The term "member" is defined in 37 U.S.C. §101(23) to mean "a person appointed or enlisted in, or conscripted into, a uniformed service." As such, "member" includes both officers and enlisted personnel.

[11] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41 (Committee on Armed Services), 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Armed Services Committee reported out a clean bill, S. 1160, but did not issue a report on it. As explained by Senator Goldwater, Chairman of the Armed Services Committee, when S. 1160 came before the Senate for consideration: ... The Armed Services Committee reported S. 1029 to the Senate on April 29 of this year. The bill was accompanied by Senate Report No. 99-41.

When the Armed Services Committee learned that the Senate would approve no real growth in the defense budget, it reconvened on Wednesday of this week [May 15, 1985] to make further program reductions to conform to the ceiling in the budget resolution. The Committee has reported a clean bill, S. 1160, reflecting these new budget levels....

Most of the Senate Report 99-41 continues to be applicable to this bill....

131 *Cong. Rec*. 12438, 12500 (1985) (daily ed., 131 CONG. REC. S6415, S6475 (May 17, 1985)) (statement of Senator Goldwater). In "explanatory background information" on some of the differences between S. 1029 and S. 1160, the following appears:

The compensation and benefits provisions of the bill contain significant differences from those contained in S. 1029....

... In addition, the Committee recommended increases or enhancements to a number of special and incentive pays....
The special and incentive pays ... involved in these recommendations include:

proposal to equalize officer and enlisted rates of pay for various hazardous duties, including flight deck duty, had been made the preceding year in connection with the consideration of the Department of Defense Authorization Act, 1985, Public Law 98-525, 98 Stat. 2492 (1984). At that time, the Senate Committee on Armed Services, reporting out S. 2723, 98th Congress, 2d Session (1984), had included a provision that would, among other things, have equalized officer and enlisted rates of hazardous duty incentive pay for flight deck duty.[12] In support of its recommendation, the committee stated:

> The committee proposes that the enlisted and officer rates for several hazardous duty incentive pays be equalized....
>
> The *Fifth Quadrennial Review of Military Compensation* (QRMC) examined special and incentive pays in great detail. One of its conclusions was that the differential between enlisted and officer rates for seven hazardous duty incentive pays [including flight deck duty pay] should be eliminated....
>
> The committee agrees that enlisted and officer personnel should be paid the same incentive for exposing themselves to similar hazards. Therefore, it recommends that the rates for these seven hazardous duty pays be changed to entitle both enlisted and officer personnel to $110 per month.[13]

The 1984 Senate proposal was eliminated in conference.[14]

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g. Hazardous duty pays.

Each of these benefit increases or enhancements are in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec.* 12474 (1985) (daily ed., 131 CONG. REC. S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "explanatory background information" provided by Senator Goldwater specifically dealt with the "enhancements" to the hazardous duty incentive pay program in general, or to the flight deck duty pay program in particular, that were contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985).

[12] See Section 148 of S. 2723, 98th Congress, 2d Session (1984).

[13] Senate Report No. 98-500 (Committee on Armed Services), p. 210 (discussing section 148 of the Senate bill), accompanying S. 2723, 98th Congress, 2d Session (1984).

[14] House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

As indicated above, the flight deck duty pay "enhancements" adopted as part of the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985), closely parallel recommendations advanced by the *Fifth Quadrennial Review of Military Compensation* in 1984.[15] In support of its recommendation to "[e]liminate the officer/enlisted differential" and "[s]et the FDDP [flight deck duty pay] rate at $110 per month,"[16] the *Fifth Quadrennial Review* stated:

> Flight deck duty is non-voluntary in nature, therefore, the function of FDDP is to recognize that such duty is more hazardous than those assigned to the typical service member.
>
> Since the concept of an incentive pay is not believed applicable to this pay, an officer/enlisted differential is not considered valid.
>
> The appropriate level of payment is $110 per month, irrespective of grade.[17] [18]

In further comment on officer-enlisted differentials for various hazardous duty incentive pays, including flight deck duty, the *Fifth Quadrennial Review* stated:

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[15] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system of the uniformed services. The Fifth Quadrennial Review of Military Compensation was convened in 1982, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in early 1984.

[16] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 150, November 1983. Also see *id*., p. 7, and Executive Summary, "Report of the Fifth Quadrennial Review of Military Compensation," p. VI-5, January 1984.

[17] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 149-150, November 1983. Also see *id*., p. 6 ("Since the performance of flight deck duty is generally nonvoluntary in nature, the dominant feature of this pay is the hazard, not the incentive.") and p. 7, and Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-5, January 1984.

[18] In concluding that "the concept of an incentive pay is not believed applicable" in the case of flight deck duties, the *Fifth Quadrennial Review* apparently rejected Congress's explicitly stated conclusion that implementation of a hazardous duty incentive pay for flight deck duties would result in "an improvement in retention rate[s]" for affected personnel. See House Report No. 89-171 (Committee on Armed Services), p. 2, accompanying H.R. 3044, 89th Congress, 1st Session (1965), quoted in text at footnote 2 to this chapter, above.

> During the process of reviewing the various Hazardous Duty Incentive Pays, it became increasingly clear that, although there is some incentive associated with certain pays, the primary purpose is recognition for the hazards or risks involved. It was, therefore, believed that officer/enlisted personnel should receive the same level of payment for seven of the Hazardous Duty Incentive Pays: [including] ... flight deck [duty pay]....[19]

In arriving at this conclusion, the *Fifth Quadrennial Review* implicitly rejected the conclusions reached by the Hook Commission in 1948.[20] In commenting on various arguments that had been advanced in favor of and against continuation of officer-enlisted differentials for hazardous duty incentive pays in general, the Fifth Quadrennial Review summarized the argument against the Hook Commission's position in the following terms:

> The Hook Commission rationale was based primarily on an examination of the needs of the aviation and submarine communities. Times have changed and those communities now have their own separate career incentive pay and bonuses.[21]

Other arguments in favor of eliminating the differential were summarized as follows:

* All personnel, officer and enlisted, experience the same hazards.

* One can never really compensate for risk of life, no matter the level.

* Basic pay and bonuses are adequate to cover any differential.

* Most hazard-related pays now cover skills that are not necessarily career oriented (across all Services); hence, a differential is not necessary for purposes of retention. However, exceptions may occur and should be individually addressed, as required.

* [F]ield interviews [conducted by the *Fifth Quadrennial Review of Military Compensation*] with both officer and enlisted personnel indicate "same rate for same risk" is perceived as equitable in the hazardous duty areas.[22]

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[19] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 919, November 1983. See *id*., pp. 36-37.

[20] See discussion of Hook Commission recommendations concerning officer-enlisted differentials at text accompanying footnotes 5 and 6 to this chapter, above.

[21] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 920, November 1983; *cf. id*., p. 37.

[22] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 919-920, November 1983.

Whether for these or some other reasons, Congress did in fact eliminate officer-enlisted pay differentials for flight deck duties in the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(3), 99 Stat. 583, 648 (1985).

As stated by Congress, the primary justification for flight deck duty pay is "upon the basis of the hazards involved"[23] in flight deck duties. A "collateral" purpose is to encourage personnel to enter and remain involved in flight-deck operations.[24] Such operations frequently necessitate nearly continuous exposure to the hazards of flight deck duty on a career basis. To carry out this purpose, until 2003 Executive Order 11157 of June 22, 1964, as amended,[25] established performance requirements—minimum exposure standards, normally exceeded by personnel performing flight-deck duty on a full-time basis--that must be met to qualify for the pay. The pay is not awarded for meeting the minimum exposure standard: it is paid for facing as much exposure as the needs of the service may require during a period of carrier flight deck duty. Participation in flight operations a minimum of four days a month, or the equivalent thereof as set out in regulations adopted by the Secretary of the Navy, is required to meet the minimum exposure standard and, subject to certain billet limitations and numerical quotas, qualifies a member for the extra pay. A member's presence during a month at an assigned station on the flight deck of an aircraft carrier where at least 160 aircraft are launched and/or recovered is, under regulations promulgated by the Secretary of the Navy, the equivalent of four days participation in flight operations. For ships other than aircraft carriers, the number of launches and/or recoveries required to meet eligibility criteria varies with the pace of operations. Hazardous duty incentive pay for flight deck duty may not be paid to a member for any month the member is also eligible to receive incentive pay for other hazardous duty under 37 U.S.C. §301.

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[23] House Report No. 89-171 (Committee on Armed Services), p. 2, accompanying H.R. 3044, 89th Congress, 1st Session (1965), quoted in text at footnote 2 to this chapter, above.

[24] House Report No. 89-171 (Committee on Armed Services), p. 2, accompanying H.R. 3044, 89th Congress, 1st Session (1965). Also see footnote 18 to this chapter, above.

[25] Reproduced, as amended, at 37 U.S.C. §301 note.

The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1770, raised the monthly rate for several types of hazardous duty pay covered by 37 U.S.C. 301(c)(1), including pay given for flight-deck duty, from $110 to $150. The increase applied to all personnel engaged in this duty.

Reserve forces personnel[26] entitled to compensation for inactive-duty training are entitled to flight deck duty pay when they perform qualifying duties under competent orders, provided Congress has appropriated sufficient funds for that purpose.[27] Under 37 U.S.C. §301(f), members of the reserve forces who perform qualifying flight deck duty while entitled to compensation under 37 U.S.C. §206 are also entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties.[28] That is, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, the member is, if performing qualifying flight deck duty under 37 U.S.C. §301(f), also

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[26] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[27] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, crew member flight duty, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for crew member flight duty are explicitly made contingent on Congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

[28] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

entitled to 1/30th of the flight deck duty pay that would be payable to a member of the active duty force who was performing such duty. Under regulations prescribed by the President, a member of a reserve force who performs flight deck duty under 37 U.S.C. §301(f) while engaged in inactive-duty training is entitled to flight deck duty pay.[29]

Hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training can, in one sense, be traced to the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926), which was the first legislative enactment that provided for special compensation for inactive duty reserve forces personnel engaged in hazardous duties of one kind or another.[30] In fact, however, flight deck duty was not covered by the Air Corps Act. Rather, that Act merely gave "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled.[31] The first special provision for flight deck duty pay for reserve forces personnel engaged in inactive-duty training came in the Act of August 28, 1965, Public Law 89-149, 79 Stat. 585 (1965), which, as above noted, brought "duty involving frequent and regular participation in flight operations on the flight deck of an aircraft carrier" within the category of duties for which hazardous duty incentive pay was authorized for reserve forces personnel performing inactive-duty training.

As a practical matter, the 1965 act had been intended to extend flight deck duty pay entitlement to active duty personnel performing qualifying duties. The entitlements

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[29] See *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶80316.

[30] For a more complete discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training generally, see Chapter II.D.1.b.(1) hereof, "Flight Pay (Crew Member)."

[31] Subsequent enactments extended both the categories of duties for which, and the categories of personnel to whom, hazardous duty incentive pay was available for inactive-duty training. See Chapter II.D.1.b.(1) hereof, "Flight Duty (Crew Member)," for a more complete discussion of the history of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training.

technically covered reserve forces personnel also because of the way Title 37 of the United States Code was organized. At the time, 37 U.S.C. §301(f) provided that a member of the reserve forces on inactive-duty training was entitled to additional pay for hazardous duty when he "performs, under orders, any duty described in subsection (a) of this section." Subsection (a), in turn, covered hazardous duty incentive pay entitlements of active duty personnel, and it was to that subsection that the flight deck duty entitlement was added. The 1965 act had simply added a new category of duty for which hazardous duty incentive pay was authorized for active duty personnel, but the pay was technically available to reserve forces personnel as well under 37 U.S.C. §301(f). Thus, reserve forces personnel on inactive-duty training had in effect "piggybacked" on active duty personnel insofar as technical entitlement to flight deck duty pay was concerned. Reserve forces personnel similarly benefited when the category of personnel entitled to flight deck duty pay was expanded by the Uniformed Services Pay Act of 1981, Public Law 97-60, 95 Stat. 993 (1981). See discussion of the 1981 act, above.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §647, 99 Stat. 583, 655 (1985), amended 37 U.S.C. §301(f) by adding certain housekeeping provisions concerning how hazardous duty incentive pay for inactive-duty training was to be computed. As explained by the House Committee on Armed Services:

> Presently, members of the reserve and guard receive hazardous duty incentive pay (HDIP) for frequent and regular flying during active and inactive duty for training periods. To receive active duty HDIP, the reservist must fly four hours each month or a pro rata share of days on duty. For inactive duty, the requirement is two hours each month or a pro rata share of days on duty. The excess hours flown on inactive duty may be credited toward active duty flight requirements, but the reverse is not permitted. This situation is inconsistent and results in less than optimum use of flying hour resources.
>
> To ensure equity for reserve members in the computation of hazardous duty incentive pay, the committee recommends that reserve members who are entitled to HDIP for flying be permitted to credit active duty or inactive duty training flight time to fulfill active or inactive duty flight time requirements.[32]

[32] House Report No. 99-81 (Committee on Armed Services), p. 236, accompanying H.R. 1872, 99th Congress, 1st Session (1985). See House Report No. 99-235 (Committee of Conference), p. 434, and Senate Report No. 99-118 (Committee of Conference), p. 434, accompanying S. 1160, 99th Congress, 1st

While the concern that led to the amendment in issue was the appropriate use and apportionment of flying time, the amendment to 37 U.S.C. §301(f) was stated in broader terms, so that it applies to any of the hazardous duties set out in 37 U.S.C. §301(a), and not just flight pay. Thus, for any month in which a member of a reserve force is involved both in active duty and inactive-duty training for which he is entitled to hazardous duty incentive pay under 37 U.S.C. §301, the total amount of hazardous duty incentive pay the member may receive is based on his combined entitlement for both active duty and inactive-duty training.

Until 2003, the conditions of entitlement to flight deck duty pay for both active duty and reserve personnel were set out in Section 109(g) of Executive Order 11157, as amended, and in various supplementary regulations adopted by the service Secretaries pursuant to Section 113 of Executive Order 11157. Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301(a), relevant to flight deck duty pay and other incentive pays, with the Secretaries of commerce, defense, health and human services, and homeland security, as those entitlements affect military personnel under the respective jurisdictions of those departments. To the extent reserve forces personnel can claim entitlement to such pays, the language of the current executive order is applicable to them as well.

**Current rate of flight deck duty pay**: The current rate of pay for flight deck duty is $150 per month for both officers and enlisted personnel.

**Cost**: For the cost of compensation for flight deck duty from 1972 to 2004, see Table II-15 of *Military Compensation Statistics Tables*, volume II of this edition.

Session (1985).

**Chapter II.D.2.d.**

## Toxic Fuels and Propellants and Chemical Munitions Exposure Pay

**Legal Authority**: 37 U.S.C. §301(a)(10) and (c)(1).

**Purpose**: To provide an additional incentive for uniformed services personnel to engage in various activities in which they may be exposed to toxic fuels or propellants, or to chemical munitions, and to compensate such personnel for the more than normally dangerous character of such duty.

**Background**: The Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-993 (1981), amended 37 U.S.C. §301 to authorize the payment of hazardous duty incentive pay to uniformed services personnel assigned to duty "involving the servicing of aircraft or missiles with highly toxic fuels or propellants." As explained in relevant Congressional documents, military personnel who "service aircraft or missiles with highly toxic fuels or propellants" were added to the "categories of personnel whose duties have been determined to be hazardous" for the purposes of 37 U.S.C. §301 in recognition of the "extensive personal sacrifices made by military members whose daily duties place them in imminent danger from hazards such as toxic, lethal, or carcinogenic substances or whose routine duties involve hazardous working conditions."[1] Under other amendments to the hazardous duty incentive pay program made by the Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., §111(c), 95 Stat. at 993, the rate of pay for enlisted personnel performing duty "involving the servicing of aircraft or missiles with highly toxic fuels or propellants" was set at $83 per month, an increase of 50 percent over the rate that had applied theretofore, and the rate of pay for officers performing such duties was maintained at $110 per month.[2]

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[1] Senate Report No. 97-146 (Committee on Armed Services), pp. 7-8, accompanying S. 1181, 97th Congress, 1st Session (1981). See House Report No. 97-265 (Committee of Conference), p. 22, accompanying S. 1181, 97th Congress, 1st Session (1981).

[2] Under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(c), 63 Stat. 802, 810 (1949), officers received $100 per month and enlisted personnel received $50 per month for the hazardous duty incentive pays--other than flight and submarine duty pay--ultimately codified at 37 U.S.C.

The Department of Defense Authorization Act, 1984, Public Law 98-94, §903(a), 97 Stat. 614, 635 (1983), extended entitlement to toxic fuels and propellants exposure pay to uniformed services personnel involved in "the testing of aircraft or missile systems (or components of such systems) during which highly toxic fuels or propellants are used." As explained by the House Armed Services Committee, Congress, in adopting the toxic fuels and propellants pay provisions of the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-993 (1981), had originally intended to include this category of personnel within the general class entitled to toxic fuels and propellants exposure pay but, having inadvertently excluded them, was now taking action specifically to include them:

> Recently, the committee recommended extension of hazardous duty pay to service members whose daily duties placed them in imminent danger from hazards, such as toxic fuels. Due to an inadvertent oversight, some individuals meeting this general criterion were not covered by the legislative language.
>
> The committee recommends minor changes to clarify the original intent to provide hazardous duty pay to fuel handlers who work on components of rocket engines and aircraft, as well as other fuel handlers who work on rockets and aircraft themselves. For example, fuel handlers who work on rocket test sleds experience the same hazards as those who fuel large scale rockets. It is the committee's intent to cover all such similarly situated categories equally.[3]

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§301. Hazardous duty incentive pay rates were increased by 10 percent for both officers and enlisted personnel by the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(6), 69 Stat. 18, 21 (1955)--to $110 for officers and to $55 for enlisted personnel. Enlisted personnel received a further increase to $83 per month--a 50 percent raise--by the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(c), 95 Stat. 989, 993 (1981), the same act that extended hazardous duty incentive pay entitlements to personnel exposed to toxic fuels and propellants. See Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., §111(a), 95 Stat. at 992-993. As indicated by Congress, the reason for the 1981 increase in hazardous duty incentive pay rates for enlisted personnel was that such rates had "not been adjusted in more than 20 years, and this increase is needed to enhance the incentive value of this pay." Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981). Thus, when members of the uniformed services first became entitled to hazardous duty incentive pay for exposure to toxic fuels or chemicals under amendments to 37 U.S.C. §301 made by the Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., §111(a), 95 Stat. at 992-993, the rates of pay were $110 a month for officers and $83 a month for enlisted personnel.

[3] House Report No. 98-107 (Committee on Armed Services), p. 210, accompanying H.R. 2969, 98th Congress, 1st Session (1983). Cf. House Report No. 98-352 (Committee of Conference), p. 224, accompanying S. 675, 98th Congress, 1st Session (1983).

When duties involving personal exposure to toxic fuels and propellants were added to the "categories of personnel whose duties [were] determined to be hazardous" for the purposes of 37 U.S.C. §301 by the Uniformed Services Pay Act of 1981, and, later, by the Department of Defense Authorization Act, 1984, Public Law 98-94, §903(a), 97 Stat. 614, 635 (1983), the rates of pay for the hazardous duties covered by that provision were $110 per month for officers and $83 per month for enlisted personnel, and these rates applied, *pari passu*, to personnel entitled to hazardous duty incentive pay on account of exposure to toxic fuels and propellants. The officer-enlisted rate differential was a product of the hazardous duty incentive pay structure adopted in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949),[4] which had in turn been based on the recommendations of the Advisory Commission on Service Pay, sometimes referred to as the Hook Commission. The Hook Commission's rationale for an officer-enlisted pay differential was that:

> A higher rate of hazard pay for officers as compared with enlisted personnel is justifiable on several grounds:
>
> (1) Any special pay must be in proportion to the basic pay, so that at all times the compensation for the primary responsibility will be considerably greater than that for any additional duty.
>
> (2) The rates proposed for hazard pay serve as an inducement to undertake and continue special duties; and such an inducement need not be as great in monetary terms for lower paid and less advanced personnel as for higher paid and more highly trained personnel.
>
> (3) Officers are usually given greater special responsibilities, aside from normal administrative control, than enlisted personnel on hazardous assignments.[5] [6]

In 1985, the rates of hazardous duty incentive pay generally, and for duty involving exposure to toxic fuels and propellants in particular, were increased to $110 per month for enlisted personnel by the Department of Defense Authorization Act, 1986,

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[4] For a history of the different rates of hazardous duty incentive pay authorized under 37 U.S.C. §301 and its predecessor provisions, beginning with the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), see footnote 2 to this chapter, above.

[5] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, December 1948.

[6] For a short discussion of the treatment accorded hazardous duty incentive pays under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), see House Report No. 81-779 (Committee on Armed Services), p. 15, and Senate Report No. 81-733 (Committee on Armed Services), p. 18, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

Public Law 99-145, §635(a)(3), 99 Stat. 583, 648 (1985). This increase was effected by an amendment to 37 U.S.C. §301(c)(1) that did away with any distinction between officers and enlisted personnel for the vast majority of duties qualifying for hazardous duty incentive pay, including duty involving exposure to toxic fuels and propellants. Prior to amendment by the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., 37 U.S.C. §301(c)(1) read as follows:

> For the performance of the hazardous duty described in [various clauses of subsection (a) of 37 U.S.C. §301, including exposure to toxic fuels and propellants], an officer is entitled to $110 a month and an enlisted member is entitled to $83 a month.

After amendment by the Department of Defense Authorization Act, 1986, 37 U.S.C. §301(c)(1) read as follows:

> For the performance of hazardous duty described in [the same clauses set out above, including exposure to toxic fuels and propellants], a member is entitled to $110 a month.[7]

Thus, under 37 U.S.C. §301, all members, both officers and enlisted personnel,[8] were entitled to $110 per month for the performance of duty involving exposure to toxic fuels and propellants under qualifying orders.

The legislative history of the Department of Defense Authorization Act, 1986, does not *per se* indicate the reason for doing away with the distinction between officers and enlisted personnel with respect to the rates of pay authorized for exposure to toxic fuels and propellants. This omission was primarily because no report was ever submitted on the Senate bill, S. 1160, in which the proposal to equalize the rates of toxic fuels and

[7] The increase in hazardous duty incentive pay rates for enlisted personnel engaged in personal exposure duties became effective October 1, 1985. Department of Defense Authorization Act, 1986, Public Law 99-145, §635(b), at 99 Stat. 583, 648 (1985).

[8] The term "member" is defined in 37 U.S.C. §101(23) to mean "a person appointed or enlisted in, or conscripted into, a uniformed service." As such, "member" includes both officers and enlisted personnel.

propellants exposure pay for officers and enlisted personnel was made.[9] In fact, however, the proposal to equalize officer and enlisted rates of pay for various hazardous duties, including toxic fuels and propellants exposure duties, had been made the preceding year in connection with the consideration of the Department of Defense Authorization Act, 1985, Public Law 98-525, 98 Stat. 2492 (1984). At that time, the Senate Committee on Armed Services, reporting out S. 2723, 98th Congress, 2d Session (1984), had included a provision that would, among other things, have equalized officer and enlisted rates of

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[9] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41 (Committee on Armed Services), 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Armed Services Committee reported out a clean bill, S. 1160, but did not issue a report on it. As explained by Senator Goldwater, Chairman of the Armed Services Committee, when S. 1160 came before the Senate for consideration:

> ... The Armed Services Committee reported S. 1029 to the Senate on April 29 of this year. The bill was accompanied by Senate Report No. 99-41.
>
> When the Armed Services Committee learned that the Senate would approve no real growth in the defense budget, it reconvened on Wednesday of this week [May 15, 1985] to make further program reductions to conform to the ceiling in the budget resolution. The Committee has reported a clean bill, S. 1160, reflecting these new budget levels....
>
> Most of Senate Report 99-41 continues to be applicable to this bill....

131 *Cong. Rec*. 12438, 12500 (1985) (daily ed., 131 *Cong. Rec*. S6415, S6475 (May 17, 1985)) (statement of Senator Goldwater). In "explanatory background information" on some of the differences between S. 1029 and S. 1160, the following appears:

> The compensation and benefits provisions of the bill contain significant differences from those contained in S. 1029....
>
> ... In addition, the Committee recommended increases or enhancements to a number of special incentive pays....
>
> The special and incentive pays ... involved in these recommendations include:
>
> g. Hazardous duty pays.

Each of these benefit increases or enhancements are in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec.*12474 (1985) (daily ed., 131 *Cong. Rec*. S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "explanatory background information" provided by Senator Goldwater specifically dealt with the "enhancements" to the hazardous duty incentive pay program in general, or to the toxic fuels and propellants exposure pay program in particular, that were contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985).

hazardous duty incentive pay for toxic fuels and propellants exposure duties.[10] In support of its recommendation, the Committee stated:

> The committee proposes that the enlisted and officer rates for several hazardous duty incentive pays be equalized....
>
> > The Fifth Quadrennial Review of Military Compensation (QRMC) examined special and incentive pays in great detail. One of its conclusions was that the differential between enlisted and officer rates for seven hazardous duty incentive pays [including toxic fuels and propellants exposure pay] should be eliminated....
> >
> > The committee agrees that enlisted and officer personnel should be paid the same incentive for exposing themselves to similar hazards. Therefore, it recommends that the rates for these seven hazardous duty pays be changed to entitle both enlisted and officer personnel to $110 per month.[11]
>
> The Senate proposal was eliminated in conference.[12]

As indicated above, the toxic fuels and propellants exposure pay "enhancements" adopted as part of the Department of Defense Authorization Act, 1986, closely parallel recommendations advanced by the Fifth Quadrennial Review of Military Compensation in 1984.[13] In support of its recommendation to "[e]ntitle both officer and enlisted personnel to $110/month for performance of TF&P [toxic fuels and propellants] duties,"[14] the Fifth Quadrennial Review stated:

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[10] See section 148 of S. 2723, 98th Congress, 2d Session (1984).

[11] Senate Report No. 98-500 (Committee on Armed Services), p. 210 (discussing section 148 of the Senate bill), accompanying S. 2723, 98th Congress, 2d Session (1984).

[12] House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[13] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ...proposing changes" to the compensation system. The Fifth Quadrennial Review of Military Compensation was convened in 1982, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in early 1984.

[14] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 200, November 1983. Also see *id*., p. 10, and Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-6, January 1984.

> The effectiveness of TF&P Pay rates cannot be determined because of the recent authorization of the pay.
>
> Officer and enlisted personnel serving in the TF&P fields should receive equal compensation for exposure to TF&Ps.
>
> An appropriate rate for both officer and enlisted personnel receiving TF&P Pay is $110 per month.[15]

In reaching this conclusion, the Fifth Quadrennial Review also noted:

> The rates of TF&P Pay are identical to the rates for other Hazardous Duty Incentive Pays. The enlisted rate of $83 per month was increased by 50% from $55.00 per month at the same time TF&P Pay was authorized [by the Uniformed Services Pay Act of 1981]. Assuming $83.00 per month was an appropriate value at the time of the 1981 Pay Act, the current rate of TF&P Pay for enlisted members based upon CPI [Consumer Price Index] increases should be roughly $100.00 per month.

Here, the issue of different rates for officer and enlisted personnel should also be addressed. In determining the degree of hazard to which personnel receiving TF&P Pay are exposed, it is difficult, if not impossible, to gauge an exact measure of hazard in comparison to other types of duty. To discern a measurable difference in the degree of hazard to which officers versus enlisted personnel are exposed would prove equally futile. Thus, equal rates of hazard pay for both are believed to be appropriate as each is subjected to the same general degree of hazard. The current officer rate is $110 per month. As previously discussed, $100 per month is believed to be a generally appropriate enlisted rate. In order to avoid reductions in payments to officers, and because the $100 rate was based primarily on a generally increasing CPI, a flat rate of $110 per month for both officer and enlisted is believed appropriate.[16]

In further comment on officer-enlisted differentials for various hazardous duty incentive pays, including toxic fuels and propellants exposure duties, the Fifth Quadrennial Review stated:

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[15] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 200, November 1983. Also see *id*., p. 10. *cf*. Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-6, January 1984.

[16] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 198, November 1983.

> During the process of reviewing the various Hazardous Duty Incentive Pays, it became increasingly clear that, although there is some incentive associated with certain pays, the primary purpose is recognition for the hazards or risks involved. It was, therefore, believed that officer/enlisted personnel should receive the same level of payment for seven of the Hazardous Duty Incentive Pays: [including] ... toxic fuels [and propellants exposure pay]....[17]

In arriving at this conclusion, the Fifth Quadrennial Review implicitly rejected the conclusions reached by the Hook Commission in 1948.[18] In commenting on various arguments that had been advanced in favor of and against continuation of officer-enlisted differentials for hazardous duty incentive pays in general, the Fifth Quadrennial Review summarized the argument against the Hook Commission's position in the following terms:

> The Hook Commission rationale was based primarily on an examination of the needs of the aviation and submarine communities. Times have changed and those communities now have their own separate career incentive pays and bonuses.[19]

Other arguments in favor of eliminating the differential were summarized as follows:

* All personnel, officer and enlisted, experience the same hazards.

* One can never really compensate for risk of life, no matter the level.

* Basic pay and bonuses are adequate to cover any differential.

* Most hazard-related pays now cover skills that are not necessarily career oriented (across all Services); hence, a differential is not necessary for purposes of retention. However, exceptions may occur and should be individually addressed, as required.

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[17] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 919, November 1983. See *id*., pp. 36-37.

[18] See discussion of Hook Commission recommendations concerning officer-enlisted differentials at text accompanying footnotes 5 and 6 to this chapter, above.

[19] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 920, November 1983; *cf. id*., p. 37.

> * [F]ield interviews [conducted by the Fifth Quadrennial Review of Military Compensation] with both officer and enlisted personnel indicate "same rate for same risk" is perceived as equitable in the hazardous duty areas.[20]

In addition to eliminating officer-enlisted pay differentials for toxic fuels and propellants exposure pay, the Department of Defense Authorization Act, 1986, also extended entitlement to hazardous duty incentive pay under 37 U.S.C. §301(a)(10) to a third category of personnel--namely, personnel involved in "the handling of chemical munitions (or components of such munitions)."[21] For reasons previously discussed,[22] the legislative history of the 1986 Authorization Act does not deal with the reasons for extension of toxic fuels and propellants exposure pay entitlement to personnel involved in handling chemical munitions. Insofar as can be determined, however, the extension of hazard duty pay to chemical munitions handlers under 37 U.S.C. §301(a)(10) derives from the recommendations of the Fifth Quadrennial Review of Military Compensation[23] to "[i]nclude duty involving the handling of chemical munitions within the definition of hazardous duties."[24] In support of this recommendation, the Fifth Quadrennial Review noted:

> Certain personnel in the chemical munitions field risk exposure to chemicals of an equal or greater toxicity than many highly toxic fuels and propellants for which no Hazardous Duty Incentive Pay entitlement exists.[25]

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[20] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 919-920, November 1983.

[21] In effecting this amendment, the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., restructured 37 U.S.C. §301(a)(10) by designating the two previous categories of duties qualifying for toxic fuels and propellants exposure pay as clauses (A) and (B), respectively, and the new category of duties as clause (C). See Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., §635(a)(1)B), 99 Stat. at 648, and new 37 U.S.C. §301(a)(10)(A), (B), and (C), as amended.

[22] See footnote 9 to this chapter and accompanying text, above.

[23] See footnote 13 to this chapter, above.

[24] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 10 and 200, November 1983. See Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-6, January 1984.

[25] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 200, November 1983. See *id*., p. 10.

Expanding on this observation, the Fifth Quadrennial Review went on:

> Personnel assigned to duties requiring the handling of chemical munitions belong to a spectrum of career fields...Assignments are not made on a volunteer basis and thus, manning shortfalls in these positions do not exist. Department of Defense Civilian Personnel involved in chemical munitions maintenance are paid environmental differentials of 8 or 4 percent, depending on whether the job represents a high or low degree of hazard. Under the current provision of Title 37 [United States Code], military personnel are not entitled to Hazardous Duty Incentive Pay for handling chemical munitions. [26]

Whether for these or some other reasons, Congress, in the Department of Defense Authorization Act, 1986, did in fact eliminate officer-enlisted pay differentials for duties involving exposure to toxic fuels and propellants and also extended hazardous duty incentive pay entitlement under 37 U.S.C. §301(a)(10) to personnel handling chemical munitions. Because of this new, broadened scope of hazardous duty incentive pay entitlements under 37 U.S.C. §301(a)(10), the pay is referred to herein as toxic fuels and propellants and chemical munitions exposure pay. The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1770, raised the monthly rate for several types of hazardous duty pay covered by 37 U.S.C. 301(c)(1), including pay given for duty involving toxic fuels and propellants and chemical munitions exposure, from $110 to $150. The increase applied to all personnel engaged in this duty.

Reserve forces personnel[27] entitled to compensation for inactive-duty training are technically entitled to toxic fuels and propellants exposure pay when they perform duties "involving (A) the servicing of aircraft or missiles with highly toxic fuels or propellants, (B) the testing of aircraft or missile systems (or components of such systems) during

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[26] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 199-200, November 1983.

[27] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

which highly toxic fuels or propellants are used, or (C) the handling of chemical munitions (or components of such munitions)" under competent orders, provided Congress has appropriated sufficient funds for that purpose.[28] Under 37 U.S.C. §301(f), members of the reserve forces who perform qualifying exposure duties while entitled to compensation under 37 U.S.C. §206 are also technically entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties.[29] That is, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, the member is, if performing qualifying toxic fuels and propellants and chemical munitions exposure duties under 37 U.S.C. §301(f), also entitled to 1/30th of the toxic fuels and propellants exposure duty pay that would be payable to a member of the active duty force who was performing such duty. Under regulations, the only personnel entitled to toxic fuels and propellants and chemical munitions exposure pay are personnel whose "primary duty" involves exposure to such hazards, and it is doubtful whether reserve forces personnel performing inactive-duty training could qualify for exposure pay under this provision. In any event, the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay,* Volume 7A, DOD 7000.14-R, makes no provision for entitlement of reserve forces personnel to toxic

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[28] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, crew member flight duty, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for crew member flight duty are explicitly made contingent on Congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

[29] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

fuels and propellants and chemical munitions exposure pay.[30] Thus, while technically entitled to hazardous duty incentive pay for duty involving exposure to toxic fuels and propellants and chemical munitions under 37 U.S.C. §301, reserve forces personnel would appear to be excluded from such entitlement by regulations prescribed by the President and the Department of Defense.[31] It is always possible, however, that the President may prescribe regulations extending toxic fuels and propellants and chemical munitions exposure pay to reserve forces personnel on inactive-duty training.

Legislative authority to make toxic fuels and propellants and chemical munitions exposure pay technically available to reserve forces personnel engaged in inactive-duty training--independently of whether they could ever in practice actually qualify for it--can, in one sense, be traced to the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926), which was the first legislative enactment that provided for special compensation for inactive-duty reserve forces personnel engaged in hazardous duties of one kind or another.[32] In fact, however, toxic fuels and propellants and chemical munitions exposure duty was not covered by the Air Corps Act. Rather, that Act merely gave "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled.[33] The first special provision for toxic fuels

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[30] See *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶80311-80316, generally (dealing with incentive pay entitlements of members of the reserve forces performing inactive-duty training).

[31] While it is possible that reserve forces personnel are assigned to, and do perform, duty involving exposure to toxic fuels and propellants or chemical munitions during inactive-duty training, it would seem unlikely that they do so "as a primary duty."

[32] For a more complete discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training generally, see Chapter II.D.1.b.(1) hereof, "Flight Pay (Crew Member)," above.

[33] Subsequent enactments extended both the categories of duties for which, and the categories of personnel to whom, hazardous duty incentive pay was available for inactive-duty training. See Chapter II.D.1.b.(1) hereof, "Flight Duty (Crew Member)," above, for a more complete discussion of the history of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training.

and propellants exposure duty pay for reserve forces personnel engaged in inactive-duty training came in the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-993 (1981), which, as above noted, brought toxic fuels and propellants exposure duty within the category of duties for which hazardous duty incentive pay was technically authorized for reserve forces personnel performing inactive-duty training. The Department of Defense Authorization Act, 1984, Public Law 98-94, §903, 97 Stat. 614, 635 (1983), and the Department of Defense Authorization Act, 1986, expanded the categories of reserve forces personnel for whom exposure pay was technically authorized in connection with the performance of inactive-duty training.

As a practical matter, the 1981 Pay Act and the 1984 and 1986 authorization acts had been intended to extend toxic fuels and propellants and chemical munitions exposure pay entitlements to active duty personnel performing qualifying duties. The entitlements technically covered reserve forces personnel also because of the way Title 37 of the United States Code was organized. At the time, 37 U.S.C. §301(f) provided that a member of the reserve forces on inactive-duty training was entitled to additional pay for hazardous duty when he "performs, under orders, any duty described in subsection (a) of this section." Subsection (a), in turn, covered hazardous duty incentive pay entitlements of active duty personnel, and it was to that subsection that the toxic fuels and propellants and chemical munitions exposure entitlements were added. The 1981 Pay Act and the 1984 and 1986 authorization acts had simply added a new category of duty for which hazardous duty incentive pay was authorized for active duty personnel, but the pay was technically available to reserve forces personnel as well under 37 U.S.C. §301(f). Thus, reserve forces personnel on inactive-duty training had in effect "piggybacked" on active duty personnel insofar as technical entitlement to personal exposure pay was concerned. See discussion of the 1981 Pay Act and the 1984 and 1986 Authorization Acts, above.

In addition to expanding the categories of personnel for whom toxic fuels and propellants and chemical munitions exposure pay was authorized, the Department of Defense Authorization Act, 1986, also amended 37 U.S.C. §301(f) by adding certain

housekeeping provisions concerning how hazardous duty incentive pay for inactive-duty training was to be computed. As explained by the House Committee on Armed Services:

> Presently, members of the reserve and guard receive hazardous duty incentive pay (HDIP) for frequent and regular flying during active and inactive duty for training periods. To receive active duty HDIP, the reservist must fly four hours each month or a pro rata share of days on duty. For inactive duty, the requirement is two hours each month or a pro rata share of days on duty. The excess hours flown on inactive duty may be credited toward active duty flight requirements, but the reverse is not permitted. This situation is inconsistent and results in less than optimum use of flying hour resources.
>
> To ensure equity for reserve members in the computation of hazardous duty incentive pay, the committee recommends that reserve members who are entitled to HDIP for flying be permitted to credit active duty or inactive duty training flight time to fulfill active or inactive duty flight time requirements.[34]

While the concern that led to the amendment in issue was the appropriate use and apportionment of flying time, the amendment to 37 U.S.C. §301(f) was stated in broader terms, so that it applies to any of the hazardous duties set out in 37 U.S.C. §301(a), including toxic fuels and propellants and chemical munitions exposure duties, and not just flight duty. Thus, for any month in which a member of a reserve force is involved both in active duty and inactive-duty training for which he is entitled to hazardous duty incentive pay under 37 U.S.C. §301, the total amount of hazardous duty incentive pay the member may receive is based on his combined entitlement for both active duty and inactive-duty training.

Until 2003, the conditions of entitlement to toxic fuels and propellants and chemical munitions exposure pays, for both active duty and reserve personnel, were set out in Section 109(g) of Executive Order 11157, as amended, and in various supplementary regulations adopted by the service Secretaries pursuant to Section 113 of Executive Order 11157. Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301(a), relevant to flight deck duty pay and other incentive pays, with the Secretaries of Commerce, Defense, Health and Human Services, and Homeland Security, as those entitlements affect military personnel under the respective jurisdictions of those departments. To the extent reserve forces personnel

[34]House Report No. 99-81 (Committee on Armed Services), p. 236, accompanying H.R. 1872, 99th Congress, 1st Session (1985). See House Report No. 99-235 (Committee of Conference), p. 434, and Senate Report No. 99-118 (Committee of Conference), p. 434, accompanying S. 1160, 99th Congress, 1st Session (1985).

can claim entitlement to such pays, the language of the current executive order is applicable to them as well.

**Current rate of pay**: The current rate of pay for duties involving exposure to toxic fuels and propellants and chemical munitions is $150 per month for both officers and enlisted personnel.

**Cost**: For the cost of compensation for exposure to toxic fuels and propellants and chemical munitions from 1982 to 2004, see Table II-16 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.D.3.a.**

## Submarine Duty Incentive Pay

**Legislative Authority**: 37 U.S.C. §301c.

**Purpose**: To provide an additional pay to increase the Navy's ability to attract and retain volunteers for submarine duty, and to compensate for the more than normally dangerous character of such duty.

**Background**: Extra pay of $5 a month for submarine service was authorized for enlisted members by an Executive Order of January 1, 1901, soon after the commissioning of the first submarine in October 1900. Executive Order No. 366-B of November 8, 1905, provided that, in addition to the $5 a month, enlisted personnel who were "qualified for submarine torpedo boat work" were entitled to $1 for each day they submerged in a submarine, not to exceed an additional $15 in any one month.

A 1971 special study of the historical development of submersible duty pay commissioned by the Department of Defense concluded that the $5 monthly component of such pay was awarded to enable enlisted personnel "to purchase new dungarees to replace those ruined by battery acid."[1] Though the uncommon wear and tear on clothing inherent in submarine duty may well have inspired the pay, its announced purpose was to compensate for the arduous and hazardous nature of submarine duty. As the Comptroller of the Treasury put it, "[T]he $5 was provided on account of the hazardous character of service on board this type of vessel and the $1 per day was to be given for experience and skill as well as on account of hazardous service."[2] A Navy representative voiced a similar rationale for the pay in testifying on a bill to raise the rates of submersible duty pay:

> Every man on the submarine gets $5 a month extra now--every man; and in addition, those who are qualified get a dollar a day per dive, not to exceed $15 per month....

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[1] *Report of the 1971 Quadrennial Review of Military Compensation*, p. I.1, December 1971.

[2] 19 *Comp. Dec*. (Treasury) 468 (1913).

> Now, that provides for the risk of all hands that go down with submarines, and in addition, pays an extra compensation to the qualified men who do the work in diving.[3]

Congress first took cognizance of the desirability of offering a special payment for submarine duty in the Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §21, 42 Stat. 625, 633 (1922), by providing that "nothing in this Act shall operate to change in any way existing laws, or regulations ... governing ... extra pay to enlisted men ... engaged in ... service on submarines." The Act of April 9, 1928, ch. 327 [Public Law 244, 70th Congress], 45 Stat. 412 (1928), authorized submarine duty pay of 25 percent of base and longevity pay for officers and not less than $5 nor more than $30 a month for enlisted personnel. The $5 floor was adopted to ensure that all enlisted submariners would be compensated, at least to some extent, for the hazards of their duty, regardless of their special qualifications. The Act of August 4, 1942, ch. 546 [Public Law 697, 77th Congress], 56 Stat. 736 (1942), set submarine duty pay at 50 percent of base and longevity pay for both officers and enlisted personnel.[4] This latter act brought the rate of pay for submarine duty up to that for flight duty, thereby reflecting Congress's view that the hazards of submarine duty and flying duty were equivalent.

In 1948, at the request of the Secretary of Defense, the Advisory Commission on Service Pay, sometimes referred to as the Hook Commission, undertook the first comprehensive study of the military pay system since 1908. In reviewing military pay generally, and submarine duty pay in particular, the Hook Commission concluded that, although special pays such as submarine duty pay were designed in part to compensate for arduous and hazardous duties, their main purpose should be to fill a supply-demand

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[3] Hearing of February 2, 1927, on the Bill (H.R. 14251) "To Provide for Enlisted Men of the United States Navy Assigned to Duty on Submarine Vessels of the Navy printed in Hearings before the House Naval Affairs Committee on Sundry Legislation Affecting the Naval Establishment," 1926-1927, p. 688, 69th Congress, 2d Session (1927) (testimony of Rear Admiral Edward H. Campbell, USN, Judge Advocate General of the Navy).

[4] For base and longevity pay rates by pay grade in 1942, see Basic Pay Schedule set out above in this volume.

function--to induce personnel to enter upon and remain in hazardous military occupations. The commission's rationale was expressed in these terms:

> Close examination of the nature of hazardous duty and the expressed or implied reasons for accepting risks indicated that the incentive to engage and remain in hazardous occupations provided a more realistic and practical basis for determining the rates of special pay than the theory of recompense for shorter career expectancy. The recompense or replacement concept, although promoted for many years as the sole argument for hazard pay, was found wanting for several reasons.[5]]

The Hook Commission's rationale for higher submarine duty pay rates for officers than for enlisted personnel, which was subsequently reflected in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802, 809-810 (1949), was that:

> A higher rate of hazard pay for officers as compared with enlisted personnel is justifiable on several grounds:
>
> (1) Any special pay must be in proportion to the basic pay, so that at all times the compensation for the primary responsibility will be considerably greater than that for any additional duty.
>
> (2) The rates proposed for hazard pay serve as an inducement to undertake and continue special duties; and such an inducement need not be as great in monetary terms for lower paid and less advanced personnel as for higher paid and more highly trained personnel.
>
> (3) Officers are usually given greater special responsibilities, aside from normal administrative control, than enlisted personnel on hazardous assignments.[6]

Under the Hook Commission recommendations, submarine duty pay was paired with crew member flight pay, and the rates for these two pays ranged from $30 monthly for pay grade E-1, through $75 for pay grade E-7, and $100 for pay grade O-1, up to

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[5] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 24, December 1948.

[6] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, December 1948.

$210 for pay grade O-6.[7] With respect to the special treatment accorded flight and submarine duty pays as compared with other types of incentive pay, the Commission noted:

> A separate scale was developed for flying and submarine duty, compensable today at 50 percent of pay. Because of the demonstrated greater actual or potential danger and the supreme importance of these services, the inducement must be greater. The Commission's proposals maintain approximately the same dollar differential for these duties as now exists except in the general officer ranks. This differential, plus the proposed basic compensation, should be adequate to attract and keep men in these pursuits at the grade and age at which, in the Commission's opinion, based on present practice, they are most effective.[8]

Congress adopted the major portion[9] of the Hook Commission's reasoning and recommendations concerning submarine duty incentive pay in the Career Compensation Act of 1949, ch. 681, *id*., referred to above, and it is this Act that is the effective source of existing submarine duty pay authority.[10] The Career Compensation Act provisions concerning submarine duty pay were, however, amended by the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(5), 69 Stat. 18, 20-21 (1955), through the introduction of longevity step increments into the incentive pay structure.[11] In addition,

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[7]The Hook Commission recommended that officers in pay grades O-7 and O-8 receive $100 per month on account of submarine duty. "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, Table XI, December 1948.

[8] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 26, December 1948.

[9] The rates of pay differed to some extent from those recommended by the Hook Commission. Compare, *e.g*., Section 204(b) of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(b), 63 Stat. 802, 810 (1949), with Table XI of the Hook Commission's Report, "*Career Compensation for the Uniformed Services*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, December 1948.

[10] After enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(b), 63 Stat. 802, 810 (1949), the hazardous duty incentive pay provisions thereof, including submarine duty pay, were in the main classified to 37 U.S.C. §235. See 37 U.S.C. §235(a)(1) and (b) (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the hazardous duty pay provisions, including the submarine duty pay provisions here in issue, were codified at 37 U.S.C. §301.

[11]Hazardous duty incentive pay rates for submarine duty were the same as hazardous duty incentive pay rates for the precursor of today's crew-member flight duty under both the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(b), 63 Stat. 802, 809-810 (1949), and the Career

the Career Incentive Act of 1955, ch. 20, *id*., increased the rates of pay for submarine duty along with those for other "hazardous" duties.During the hearings on the 1955 legislation, defense witnesses again emphasized the incentive-based purpose of the pay:

> So long as these [flying and submarine] services must be staffed by volunteers the incentives offered must be enough to attract and retain the numbers required to maintain peak performance capabilities.[12]

> My comments concerning personnel losses have been confined to flying personnel; however, in the Navy, the submarine service, too, has experienced considerable difficulty in recruiting and retaining qualified personnel.... Resignations among submarine officers are five times as high as they were in 1948 and applications for this type of duty have sharply decreased.[13]

The submarine duty pay rates established in 1955 ranged from a low of $50 a month for members in pay grades E-1 or E-2 with less than two years of service to a high of $245 for members in pay grades O-5 or O-6 with over 18 years of service. Under the submarine duty pay system in effect until January 1, 1981, a member required by competent orders to perform submarine duty was entitled to submarine duty pay starting on (1) the date he reported for duty aboard an active submarine or one under construction, or (2) the date he reported to the crew or off-ship augment crew of a two-crew submarine, or (3) the convening date of a class of submarine instruction for personnel qualified in submarines (Navy ships carrying the designation SS). Entitlement stopped on the day after detachment, or the last day of instruction, as the case may be. In addition, a command staff member whose duties required service on a submarine during underway operations was entitled to monthly submarine duty pay for meeting minimum underway performance requirements of 48 hours a month.

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Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(5), 69 Stat. 18, 20-21 (1955). The rates of pay under the Career Compensation Act of 1949 and the Career Incentive Act of 1955 are set out above in this volume.

[12] Career Incentive Act of 1955: Hearings on H.R. 2607 before Subcommittee No. 2 of the House Armed Services Committee, 84th Congress, 1st Session 478 (1955) (testimony of Asst. Sec. Carter Burgess, Department of Defense).

[13]Career Incentive Act of 1955: Hearings on H.R. 2607 before Subcommittee No. 2 of the House Armed Services Committee, 84th Congress, 1st Session 520 (1955) (testimony of General Morris F. Lee, USAF).

In 1980, Congress, through the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §3(d), 94 Stat. 3359, 3360-3364 (1980), as technically amended by the Department of Defense Supplemental Authorization Act, 1981, Public Law 97-39, §701, 95 Stat. 939, 942 (1981), changed the entire basis for the payment of special compensation for submarine duty. In simplest terms, the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id.*, replaced the preexisting submarine duty pay provisions found in 37 U.S.C. §301 with a new submarine career incentive pay structure patterned after aviation career incentive pay, thus maintaining the parallel treatment established in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949). Under the new system, set out at 37 U.S.C. §301c, submarine duty incentive pay may be paid continuously to members who hold a submarine duty designator, or are in training leading to such designation, and who remain in submarine service on a career basis.[14] That is, so long as a member continues to qualify, as explained more fully below, that member is entitled to submarine duty incentive pay even when not assigned to, or performing, operational submarine duty. In addition, personnel who do not have submarine designators, such as supply, medical, and intelligence personnel, are entitled to submarine duty incentive pay during periods they are required to perform "frequent and regular operational submarine duty." As set out in the statute, entitlement to continuous submarine duty incentive pay--for personnel with career designation--turns on meeting certain standards concerning performance of "operational submarine duty," not on actual performance of such duty within any particular time period.

The standards governing entitlement to continuous submarine duty incentive pay are similar to the operational flying time standards, or "gates," used for determining

[14] Emphasizing the "career" aspect of the new submarine duty incentive pay program, specific provisions were incorporated into 37 U.S.C. § 301c prohibiting payment of submarine duty incentive pay to officers who fail of selection for assignment as executive officers or commanding officers of submarines, or who decline such service, as well as to enlisted members assigned to shore duty who do not have sufficient time remaining under existing enlistments to be reassigned to a normal tour of submarine sea duty. See *e.g.*, 37 U.S.C. § 301c(c)(1) and (2). Cf. Senate Report No. 96-1051 (Committee on Armed Services), p. 4, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

entitlement to aviation career incentive pay. The general rule for entitlement to continuous monthly submarine duty incentive pay is that a member must perform qualifying "operational submarine duty," as defined under 37 U.S.C. §301c(a)(5)(A), for at least six of the first 12, and at least 10 of the first 18, years of "submarine service," as defined at 37 U.S.C. §301c(a)(5)(B), if the member to receive such pay through 26 years of creditable service. On the other hand, if a member performs at least eight but less than 10 years of qualifying service during his first 18 years of submarine service, the member is nevertheless entitled to continuous monthly submarine duty incentive pay through 22 years of service.[15] If a member fails to meet such standards, his entitlement to continuous submarine duty incentive pay ceases upon completion of 12 or 18 years of service, as applicable, although he is still entitled to operational submarine duty incentive pay--even though not on a "continuous", i.e., independent of assignment, basis--whenever he actually performs "operational submarine duty" within the meaning of 37 U.S.C. § 301c(a)(5)(A).

In explanation of this change to the submarine duty pay system, the Senate Committee on Armed Services noted:

> The committee amendment recommends approval of the new submarine duty pay rates proposed by the Administration and that the submarine duty pay for officers be converted to an incentive pay, similar to flight pay. A submarine officer will be continuously eligible for the incentive pay, provided specified amounts of operational submarine duty are accumulated. As long as he meets those operational requirements on a regular and frequent basis, he will receive the submarine duty incentive pay, even when assigned to shore duty.
>
> The Administration's proposal did not recommend converting enlisted submarine pay into continuous incentive-type pay. However, the committee recommends that enlisted submariners receive submarine pay on the same basis as officers--that is, as an incentive pay--which the enlisted member will receive whether or not he is assigned to the submarine, as long as he meets specific operational requirements on a frequent and regular basis.

[15] A qualifying officer with prior enlisted service is entitled to such pay for a full 22 or 26 years of officer service, as applicable. That is, if a qualifying officer has prior enlisted service, that service may be discounted in determining how long the officer may continue to receive operational submarine duty incentive pay. See 37 U.S.C. §301c(a)(3) and (4), as amended by the Uniformed Services Pay Act of 1981, Public Law 97-60, §114, 95 Stat. 989, 995 (1981).

Under current law, officers and enlisted members who serve on submarines and meet specific operational requirements are paid a monthly special pay. The Committee recommendation continues this special pay and increases the rates of pay. In addition, members who hold a submarine duty designator and who are in and remain in the submarine service on a career basis will be paid continuous monthly submarine duty incentive pay for the regular and frequent performance of operational submarine duty required by orders. Officers who fail selection for assignment as a submarine executive officer or commanding officer or who decline to serve in either such billet and enlisted members who do not have sufficient obligated service to be reassigned to submarine sea duty are not eligible for continuous submarine duty incentive pay.[16]

The rates of submarine duty incentive pay under the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id*., were as follows:

**COMMISSIONED OFFICERS**

| **Pay Grade** | **Years of Service Computed Under Section 205 of Title 37, United States Code** | | | | | | |
|---|---|---|---|---|---|---|---|
| | **2 OR LESS** | **OVER 2** | **OVER 3** | **OVER 4** | **OVER 6** | **OVER 8** | **OVER 10** |
| O-10 | $265 | $265 | $265 | $265 | $265 | $265 | $265 |
| O-9 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-8 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-7 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-6 | 440 | 440 | 440 | 440 | 440 | 440 | 440 |
| O-5 | 440 | 440 | 440 | 440 | 440 | 440 | 440 |
| O-4 | 270 | 270 | 270 | 300 | 440 | 440 | 440 |
| O-3 | 265 | 265 | 265 | 290 | 440 | 440 | 440 |
| O-2 | 175 | 175 | 175 | 175 | 175 | 175 | 265 |
| O-1 | 130 | 130 | 130 | 130 | 130 | 130 | 265 |

| **Pay Grade** | | | | | | | |
|---|---|---|---|---|---|---|---|
| | **OVER 12** | **OVER 14** | **OVER 16** | **OVER 18** | **OVER 20** | **OVER 22** | **OVER 26** |
| O-10 | $265 | $265 | $265 | $265 | $265 | $265 | $265 |
| O-9 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-8 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-7 | 265 | 265 | 400 | 395 | 395 | 305 | 265 |

[16] Senate Report No. 96-1051 (Committee on Armed Services), p. 4, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| O-6 | 440 | 440 | 440 | 395 | 395 | 305 | 265 |
| O-5 | 440 | 440 | 440 | 395 | 395 | 350 | 265 |
| O-4 | 440 | 440 | 440 | 395 | 395 | 350 | 265 |
| O-3 | 440 | 440 | 440 | 395 | 395 | 350 | 265 |
| O-2 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-1 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |

## WARRANT OFFICERS

**Pay Grade** **Years of Service Computed Under Section 205 of Title 37, United States Code**

| | 2 OR LESS | OVER 2 | OVER 3 | OVER 4 | OVER 6 | OVER 8 | OVER 10 |
|---|---|---|---|---|---|---|---|
| W-4 | $175 | $230 | $230 | $230 | $265 | $265 | $265 |
| W-3 | 175 | 230 | 230 | 230 | 265 | 265 | 265 |
| W-2 | 175 | 230 | 230 | 230 | 265 | 265 | 265 |
| W-1 | 175 | 230 | 230 | 230 | 265 | 265 | 265 |

**Pay Grade**

| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
|---|---|---|---|---|---|---|---|
| W-4 | $265 | $265 | $265 | $265 | $265 | $265 | $265 |
| W-3 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| W-2 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| W-1 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |

## ENLISTED MEMBERS

**Pay Grade** **Years of Service Computed Under Section 205 of Title 37, United States Code**

| | 2 OR LESS | OVER 2 | OVER 3 | OVER 4 | OVER 6 | OVER 8 | OVER 10 |
|---|---|---|---|---|---|---|---|
| E-9 | $165 | $165 | $165 | $200 | $220 | $230 | $235 |
| E-8 | 165 | 165 | 165 | 185 | 200 | 220 | 230 |
| E-7 | 165 | 165 | 165 | 185 | 190 | 195 | 205 |
| E-6 | 115 | 125 | 130 | 160 | 170 | 180 | 190 |
| E-5 | 105 | 115 | 115 | 130 | 140 | 145 | 145 |
| E-4 | 60 | 70 | 75 | 125 | 130 | 130 | 130 |
| E-3 | 60 | 65 | 70 | 70 | 105 | 65 | 65 |
| E-2 | 55 | 65 | 65 | 65 | 65 | 65 | 65 |
| E-1 | 55 | 55 | 55 | 55 | 55 | 55 | 55 |

**Pay Grade**

| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
|---|---|---|---|---|---|---|---|
| E-9 | $245 | $255 | $265 | $265 | $265 | $265 | $265 |
| E-8 | 235 | 245 | 245 | 255 | 255 | 255 | 255 |
| E-7 | 220 | 230 | 230 | 230 | 230 | 230 | 230 |
| E-6 | 195 | 195 | 195 | 195 | 195 | 195 | 195 |
| E-5 | 145 | 145 | 145 | 145 | 145 | 145 | 145 |
| E-4 | 130 | 130 | 130 | 130 | 130 | 130 | 130 |
| E-3 | 65 | 65 | 65 | 65 | 65 | 65 | 65 |
| E-2 | 65 | 65 | 65 | 65 | 65 | 65 | 65 |
| E-1 | 55 | 55 | 55 | 55 | 55 | 55 | 55 |

The Department of Defense Authorization Act, 1986, Public Law 99-145, §633, 99 Stat. 583, 646 (1985), modified the submarine duty incentive pay structure for officers in pay grades O-3 through O-6 with more than 18 years of service. Under the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id*., submarine duty incentive pay entitlements for officers in pay grades O-3 through O-6 began to decrease for officers with more than 18 years of service.[17] These decreases effectively followed the decreases programmed into the aviation career incentive pay structure, upon which the submarine duty incentive pay program had initially been patterned.[18] Under the amendment to the submarine duty incentive pay structure effected by the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., the programmed decreases in entitlements for officers in pay grades O-3 through O-6 with more than 18 years of service were eliminated, and the entitlement levels applicable to officers in the affected pay grades with more than 16 years, but less than 18 years, of qualifying service were continued for all further years-of-service categories--that is, for the over-18-years-of-service category, for the over-20 category, for the over-22 category, and, finally, for the over-26 category. Thus, under the amendment to the submarine duty incentive pay program made by the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., the rates of pay for commissioned officers were as follows:

[17]See rates of submarine duty incentive pay for officers in pay grades O-3 through O-6 as set out in the table on the preceding page.

[18] See discussion of the aviation career incentive pay program and the structure of that pay for so-called Phase II officers in Chapter II.D.1.b.(3), "Aviation Career Incentive Pay (ACIP) and Aviation Career Continuation Pay (AOCP)," above.

**COMMISSIONED OFFICERS**

| Pay Grade | Years of Service Computed Under Section 205 of Title 37, United States Code | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2 OR LESS | OVER 2 | OVER 3 | OVER 4 | OVER 6 | OVER 8 | OVER 10 |
| O-10 | $265 | $265 | $265 | $265 | $265 | $265 | $265 |
| O-9 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-8 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-7 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-6 | 440 | 440 | 440 | 440 | 440 | 440 | 440 |
| O-5 | 440 | 440 | 440 | 440 | 440 | 440 | 440 |
| O-4 | 270 | 270 | 270 | 300 | 440 | 440 | 440 |
| O-3 | 265 | 265 | 265 | 290 | 440 | 440 | 440 |
| O-2 | 175 | 175 | 175 | 175 | 175 | 175 | 265 |
| O-1 | 130 | 130 | 130 | 130 | 130 | 130 | 265 |

| Pay Grade | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
|---|---|---|---|---|---|---|---|
| O-10 | $265 | $265 | $265 | $265 | $265 | $265 | $265 |
| O-9 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-8 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-7 | 265 | 265 | 400 | 395 | 395 | 305 | 265 |
| O-6 | 440 | 440 | 440 | 440 | 440 | 440 | 440 |
| O-5 | 440 | 440 | 440 | 440 | 440 | 440 | 440 |
| O-4 | 440 | 440 | 440 | 440 | 440 | 440 | 440 |
| O-3 | 440 | 440 | 440 | 440 | 440 | 440 | 440 |
| O-2 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| O-1 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |

The rates of submarine duty incentive pay for enlisted members, warrant officers, and officers in pay grades other than O-3 through O-6 were not affected by the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*. The new rates of pay for officers in pay grades O-3 through O-6 became effective October 1, 1985.[19]

[19] See Department of Defense Authorization Act, 1986, Public Law 99-145, §633(b), 99 Stat. 583, 646 (1985). Also see 37 U.S.C. §301c note.

As explained in the Report of the House Committee on Armed Services, the structure of the submarine duty incentive pay program was modified for officers in the affected pay grades for the following reasons:

> The shortage of experienced submarine officers in pay grades O-4 through O-6 is becoming critical.... Requiring back-to-back sea tours with the abandonment of more traditional career pattern opportunities only exacerbates the situation.
>
> Under the current structure, submarine career incentive pay is reduced when an officer completes 18 years of service and is again reduced when he is promoted to captain [Navy pay grade O-6]. These reductions usually occur during an officer's command tour and again during his post command tour. Thus, submarine pay for the commanding officer of a submarine is reduced during his command tour to levels below that received by his executive officer and department heads. Additionally, post command tours are required because a number of billets can only be filled by officers with nuclear submarine command experience.
>
> The committee, therefore, recommends a change in the current structure of nuclear submarine incentive pay to eliminate the reduction in the level of this incentive pay upon completion of 18 years of service and upon promotion to captain. This revision will more effectively target the severe shortage of submarine officers in pay grades O-4 to O-6.[20]

As ultimately enacted by Congress, the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., also eliminated the reduction in submarine duty incentive pay for officers in pay grade O-3 that was implicit in the structure of the program deriving from the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id*.[21] Thus, under the 1986 restructuring of submarine duty incentive pay, the only commissioned officers subject to a reduction in the level of submarine pay with increasing years of service were officers in pay grade O-7, *i.e*., rear admirals of the lower

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[20] House Report No. 99-81 (Committee on Armed Services), pp. 231-232, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

[21] Although the House Report did not specifically deal with officers in pay grade O-3, the bill, H.R. 1872, 99th Congress, 1st Session (1985), that was accompanied by the report did in fact eliminate the reduction in submarine duty incentive pay for officers in pay grade O-3. See House Report No. 99-81 (Committee on Armed Services), p. 404, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

half. In addition, an officer in pay grade O-6 who was promoted to pay grade O-7 was subject to a reduction in submarine duty incentive pay.[22]

The rates of submarine duty incentive pay were again increased by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §623(b), 101 Stat. 1019, 1101-1103 (1987). The rates of submarine duty incentive pay that became effective January 1, 1988 were as follows:[23]

**COMMISSIONED OFFICERS**

| **Pay Grade** | **Years of Service Computed Under Section 205 of Title 37, United States Code** | | | | | | |
|---|---|---|---|---|---|---|---|
| | **2 OR LESS** | **OVER 2** | **OVER 3** | **OVER 4** | **OVER 6** | **OVER 8** | **OVER 10** |
| O-10 | $355 | $355 | $355 | $355 | $355 | $355 | $355 |
| O-9 | 335 | 335 | 335 | 335 | 335 | 335 | 335 |
| O-8 | 335 | 335 | 335 | 335 | 335 | 335 | 335 |
| O-7 | 335 | 335 | 335 | 335 | 335 | 335 | 335 |
| O-6 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-5 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-4 | 365 | 365 | 365 | 405 | 595 | 595 | 595 |
| O-3 | 355 | 355 | 355 | 390 | 595 | 595 | 595 |
| O-2 | 235 | 235 | 235 | 235 | 235 | 235 | 355 |
| O-1 | 175 | 175 | 175 | 175 | 175 | 175 | 355 |

[22] These reductions still obtain under the current rates of submarine duty incentive pay adopted in the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §623(b), 101 Stat. 1019, 1101-1103 (1987). See current rates of submarine duty incentive pay, set out in this chapter, below.

[23] The Warrant Officer Management Act, enacted as Title XI of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, 105 Stat. 1290, 1491-1506 (1991), established the new warrant officer pay grade, W-5, National Defense Authorization Act for Fiscal Years 1992 and 1993, *id*., §1111(a), 105 Stat. at 1491, and authorized members serving in that pay grade to receive submarine duty incentive pay at the monthly rates set out on the lines relating to that pay grade in the table below, National Defense Authorization Act for Fiscal Years 1992 and 1993, *id*., §1111(d)(2), 105 Stat. at 1492. For the reasons underlying the establishment of the new pay grade, see footnote 13 to Chapter II.B.1 hereof, above, "Basic Pay."

**Pay Grade**

| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
|---|---|---|---|---|---|---|---|
| O-10 | $335 | $335 | $335 | $335 | $335 | $335 | $335 |
| O-9 | 335 | 335 | 335 | 335 | 335 | 335 | 335 |
| O-8 | 335 | 335 | 335 | 335 | 335 | 335 | 335 |
| O-7 | 335 | 335 | 540 | 535 | 535 | 410 | 335 |
| O-6 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-5 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-4 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-3 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-2 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-1 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |

## WARRANT OFFICERS

**Pay Grade** **Years of Service Computed Under Section 205 of Title 37, United States Code**

| | 2 OR LESS | OVER 2 | OVER 3 | OVER 4 | OVER 6 | OVER 8 | OVER 10 |
|---|---|---|---|---|---|---|---|
| W-5 | $235 | $310 | $310 | $355 | $355 | $355 | $355 |
| W-4 | 235 | 310 | 310 | 355 | 355 | 355 | 355 |
| W-3 | 235 | 310 | 310 | 355 | 355 | 355 | 355 |
| W-2 | 235 | 310 | 310 | 355 | 355 | 355 | 355 |
| W-1 | 235 | 310 | 310 | 355 | 355 | 355 | 355 |

**Pay Grade**

| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
|---|---|---|---|---|---|---|---|
| W-5 | $355 | $355 | $355 | $355 | $355 | $355 | $355 |
| W-4 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| W-3 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| W-2 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| W-1 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |

## ENLISTED MEMBERS

**Pay Grade** **Years of Service Computed Under Section 205 of Title 37, United States Code**

| | 2 OR LESS | OVER 2 | OVER 3 | OVER 4 | OVER 6 | OVER 8 | OVER 10 |
|---|---|---|---|---|---|---|---|
| E-9 | $225 | $225 | $225 | $270 | $295 | $310 | $315 |
| E-8 | 225 | 225 | 225 | 250 | 270 | 295 | 310 |
| E-7 | 225 | 225 | 225 | 250 | 255 | 265 | 275 |
| E-6 | 155 | 170 | 175 | 215 | 230 | 245 | 255 |
| E-5 | 140 | 155 | 155 | 175 | 190 | 195 | 195 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| E-4 | 80 | 95 | 100 | 170 | 175 | 175 | 175 |
| E-3 | 80 | 90 | 100 | 170 | 175 | 175 | 90 |
| E-2 | 75 | 90 | 90 | 90 | 90 | 90 | 90 |
| E-1 | 75 | 75 | 75 | 75 | 75 | 75 | 75 |

**Pay Grade**

| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
|---|---|---|---|---|---|---|---|
| E-9 | $330 | $345 | $355 | $355 | $355 | $355 | $355 |
| E-8 | 315 | 330 | 330 | 345 | 345 | 345 | 345 |
| E-7 | 295 | 310 | 310 | 310 | 310 | 310 | 310 |
| E-6 | 265 | 265 | 265 | 265 | 265 | 265 | 265 |
| E-5 | 195 | 195 | 195 | 195 | 195 | 195 | 195 |
| E-4 | 175 | 175 | 175 | 175 | 175 | 175 | 175 |
| E-3 | 90 | 90 | 90 | 90 | 90 | 90 | 90 |
| E-2 | $90 | 90 | 90 | 90 | 90 | 90 | 90 |
| E-1 | 75 | 75 | 75 | 75 | 75 | 75 | 75 |

The restructuring of submarine duty incentive pay rates effected by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, *id*., came about as a result of recommendations made to Congress by the Department of Defense. As indicated by the Senate Armed Services Committee:

> The Department of Defense requested that submarine duty pay be increased in value by 35 percent to restore its retention incentive. Currently, submariners spend on the average of 15 to 16 years of their first 20 year [*sic*] of service at sea. Submarine duty pay recognizes this and serves to provide a monetary incentive to offset to some extent the career disincentive of unusually arduous duty and prolonged family separation. The committee recommends a provision ... restoring this incentive to approximately the same level it held for members when it was first authorized in 1980.[24]

As was the case when Congress adopted aviation career incentive pay in the Aviation Career Incentive Act of 1974, Public Law 93-294, 88 Stat. 177 (1974), and as made clear in the relevant congressional report in the present case, submarine duty incentive pay was adopted to deal with what Congress thought to be real and significant retention problems in the submarine service.[25] In the perception of the Senate Armed

[24] Senate Report No. 100-57 (Committee on Armed Services), p. 146, accompanying S. 1174, 100th Congress, 1st Session (1987). *cf*. House Report No. 100-446 (Committee of Conference), p. 644, 100th Congress, 1st Session (1987).

[25] Senate Report No. 96-1051 (Committee on Armed Services), pp. 3-4, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

Services Committee, there was a "critical shortage" of career personnel in the submarine service--officer as well as enlisted--and

> [T]he extension of submarine duty pay to a continuous incentive pay to include those years spent on shore duty will increase the attractiveness of the submarine career path, which will continue to remain dominated by sea duty, and should increase retention.[26]

This language made the incentive-based nature of submarine duty incentive pay for members of the career submarine service clear beyond doubt.

The National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, 115 Stat. 1137, changed the authority for setting rates for submarine duty incentive pay set out in 37 U.S.C. 301c(b). Whereas before this change Congress had established pay rates for each level of service and pay grade, beginning January 1, 2002 the Secretary of the Navy had the authority to prescribe these rates, which could not exceed $1,000 per month. Thus the table of rates given in 37 U.S.C. 301c(b) was abolished in favor of a table issued by the Department of the Navy, whose authority in this matter was prescribed in a revision of that subsection of U.S.C. 37. The pay tables below are those issued by the Department of the Navy in January 2003 in response to this revision.

**COMMISSIONED OFFICERS**

| **Pay Grade** | **Years of Service Computed Under Section 205 of Title 37, United States Code** | | | | | | |
|---|---|---|---|---|---|---|---|
| | **2 OR LESS** | **OVER 2** | **OVER 3** | **OVER 4** | **OVER 6** | **OVER 8** | **OVER 10** |
| O-10 | $355 | $355 | $355 | $355 | $355 | $355 | $355 |
| O-9 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-8 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-7 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-6 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-5 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |

[26] Senate Report No. 96-1051 (Committee on Armed Services), p. 4, accompanying H.R. 7626, 96th Congress, 2d Session (1980). *cf.* text accompanying footnote 16, above, quoted from Senate Report No. 96-1051 (Committee on Armed Services), p. 4, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| O-4 | 365 | 365 | 365 | 525 | 595 | 595 | 595 |
| O-3 | 355 | 355 | 355 | 510 | 595 | 595 | 595 |
| O-2 | 305 | 305 | 305 | 305 | 305 | 305 | 425 |
| O-1 | 230 | 230 | 230 | 230 | 230 | 230 | 425 |

**Pay Grade**

| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
|---|---|---|---|---|---|---|---|
| O-10 | $355 | $355 | $355 | $355 | $355 | $355 | $355 |
| O-9 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-8 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-7 | 355 | 355 | 540 | 535 | 535 | 410 | 355 |
| O-6 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-5 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-4 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-3 | 595 | 425 | 425 | 425 | 425 | 425 | 425 |
| O-2 | 425 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-1 | 425 | 595 | 595 | 595 | 595 | 595 | 595 |

## WARRANT OFFICERS

**Pay Grade** **Years of Service Computed Under Section 205 of Title 37, United States Code**

| | 2 OR LESS | OVER 2 | OVER 3 | OVER 4 | OVER 6 | OVER 8 | OVER 10 |
|---|---|---|---|---|---|---|---|
| W-5 | $285 | $375 | $375 | $425 | $425 | $425 | $425 |
| W-4 | 285 | 375 | 375 | 425 | 425 | 425 | 425 |
| W-3 | 285 | 375 | 375 | 425 | 425 | 425 | 425 |
| W-2 | 285 | 375 | 375 | 425 | 425 | 425 | 425 |
| W-1 | 285 | 375 | 375 | 425 | 425 | 425 | 425 |

**Pay Grade**

| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
|---|---|---|---|---|---|---|---|
| W-5 | $425 | $425 | $425 | $425 | $425 | $425 | $425 |
| W-4 | 425 | 425 | 425 | 425 | 425 | 425 | 425 |
| W-3 | 425 | 425 | 425 | 425 | 425 | 425 | 425 |
| W-2 | 425 | 425 | 425 | 425 | 425 | 425 | 425 |
| W-1 | 425 | 425 | 425 | 425 | 425 | 425 | 425 |

**ENLISTED MEMBERS**

| Pay Grade | Years of Service Computed Under Section 205 of Title 37, United States Code | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2 OR LESS | OVER 2 | OVER 3 | OVER 4 | OVER 6 | OVER 8 | OVER 10 |
| E-9 | $425 | $425 | $425 | $425 | $425 | $425 | $425 |
| E-8 | 415 | 415 | 415 | 415 | 415 | 415 | 415 |
| E-7 | 405 | 405 | 405 | 405 | 405 | 405 | 405 |
| E-6 | 155 | 170 | 175 | 300 | 325 | 375 | 375 |
| E-5 | 140 | 155 | 155 | 250 | 275 | 275 | 275 |
| E-4 | 80 | 95 | 100 | 245 | 245 | 245 | 245 |
| E-3 | 80 | 90 | 95 | 95 | 90 | 90 | 90 |
| E-2 | 75 | 90 | 90 | 90 | 90 | 90 | 90 |
| E-1 | 75 | 75 | 75 | 75 | 75 | 75 | 75 |

| Pay Grade | | | | | | | |
|---|---|---|---|---|---|---|---|
| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
| E-9 | $425 | $425 | $425 | $425 | $425 | $425 | $425 |
| E-8 | 415 | 415 | 415 | 415 | 415 | 415 | 415 |
| E-7 | 405 | 405 | 405 | 405 | 405 | 405 | 405 |
| E-6 | 375 | 375 | 375 | 375 | 375 | 375 | 375 |
| E-5 | 275 | 275 | 275 | 275 | 275 | 275 | 275 |
| E-4 | 245 | 245 | 245 | 245 | 245 | 245 | 245 |
| E-3 | 90 | 90 | 90 | 90 | 90 | 90 | 90 |
| E-2 | 90 | 90 | 90 | 90 | 90 | 90 | 90 |
| E-1 | 75 | 75 | 75 | 75 | 75 | 75 | 75 |

Reserve forces personnel[27] entitled to compensation for inactive-duty training are entitled to submarine duty incentive pay when they perform qualifying duties under competent orders. Under 37 U.S.C. §301c(d), members of the reserve forces who perform, under competent orders, "duty on a submarine during underway operations" while entitled to compensation under 37 U.S.C. §206 are also entitled, subject to such

[27] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively

regulations as may be prescribed by the President, to "an increase in ...compensation equal to one-thirtieth of the monthly incentive pay" payable to active duty personnel performing qualifying duties.[28] That is, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, the member is, if performing qualifying submarine duty under 37 U.S.C. §301c(d), also entitled to 1/30th of the monthly submarine duty incentive pay that would be payable to a member of the active duty force who was performing such duties. Under regulations prescribed by the President, a member of a reserve force who performs qualifying submarine duties while engaged in inactive-duty training is entitled to submarine duty incentive pay under 37 U.S.C. §301c(d).[29]

Submarine duty incentive pay for reserve forces personnel can, in one sense, be traced to the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926), which was the first legislative enactment that provided special compensation for inactive-duty reserve forces personnel engaged in hazardous duties of one kind or another. In fact, however, incentive pay for submarine duty was not covered by the Army Air Corps Act. Rather, that act merely gave "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled.[30]

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[28] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training," which is defined for purposes of Title 37, United States Code, at 37 U.S.C. §101(22), is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

[29] See *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, Paragraph 80314; *cf. id*., Paragraph 80311.

[30] For a more complete discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training generally, see Chapter II.D.1.b.(1), "Flight Pay (Crew Member)," above.

Reserve forces personnel of the Navy were first authorized hazardous duty incentive pay while engaged in inactive-duty training by the Naval Reserve Act of 1938, ch. 690 [Public Law 732, 75th Congress], §313, 52 Stat. 1175, 1184 (1938). This act extended flight pay for inactive-duty training to "[o]fficers and enlisted men of the Naval Reserve ... performing aerial flights in the capacity of pilots ... as a part of their training." Members of the Marine Corps Reserve were covered by a separate provision that gave such members the same benefits as conferred on members of the Naval Reserve.[31]

The Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), substantially reorganized the provisions of preceding law relating to inactive-duty training pay for reserve forces personnel. Section 3 of the Act of March 25, 1948, ch. 157, *id*., §3(c), 62 Stat. at 88-89, amended Section 14 of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §14, 56 Stat. 359, 367 (1942), to give "officers, warrant officers, and enlisted personnel" of all the reserve forces entitlement to special pay for "perform[ing] ... submarine duty," among other things. As stated in the House Report:

> The purpose of the bill is to standardize inactive training pay for all Reserve components of the various services and also to grant such inactive duty training pay to Army Reservists.
>
> . . .
>
> The committee considers the need for this pay to be apparent, even though it is unfortunate that the country must resort to it. The Army and Navy must maintain active Reserve components, or else, in time of war emergency, the Nation will have to depend exclusively upon the Regular services for its defense. They are patently incapable of doing such a job alone. So, in order to vitalize the National Guard and Reserve components, to get more people to participate so that they will fit promptly and effectively into the mobilization-day plans of the Armed Forces, inactive duty pay is to be given each participant at the rate of one-thirtieth of 1 month's base and longevity pay for each training period.... Such specialists as pilots, radar technicians, medical people, and so forth, will also be

[31]Naval Reserve Act of 1938, ch. 690 [Public Law 732, 75th Congress], §2, 52 Stat. 1175 (1938).

> able to earn inactive duty training pay when the standards specified by the Secretaries [of the various departments] are met.[32] [33]

The Career Compensation Act of 1949, ch. 681 [Public 351, 81st Congress], 63 Stat. 802 (1949), restated the provisions of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], 56 Stat. 359 (1942), as amended by the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), insofar as the entitlement of reserve forces personnel to special pay for the performance of hazardous duties was concerned. Section 501 of the Career Compensation Act of 1949, ch. 681, *id*., §501, 63 Stat. at 825-827, dealt generally with the entitlement of reserve forces personnel to compensation for inactive-duty training. Subsection (d) of Section 501, 63 Stat. at 826, generalized the hazardous duty incentive pay entitlements of reserve forces personnel performing inactive-duty training by providing that hazardous duty incentive pay was available to such personnel whenever they were required by competent orders to perform any of the hazardous duties, set out at Section 204(a) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a), 63 Stat. at 810, for which active duty personnel were entitled to hazardous duty incentive pay. The duties set out in Section 204(a) as qualifying for such pay included crew member and non-crew member flight duties, submarine duties, glider duties, parachute jumping duties, leprosy duties, explosives demolition duties, duty at a submarine escape training tank, and duty with certain diving units. See Section 204(a) of the Career Compensation Act of 1949, ch. 681, id., §204(a), 63 Stat. at 809-810.[34] No special reason was given for this reorganization of the provisions of prior law

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[32] House Report No. 80-971 (Committee on Armed Services), pp. 1-2, accompanying H.R. 3227, 80th Congress, 1st Session (1947). See Senate Report No. 80-625 (Committee on Armed Services), p. 1, accompanying S. 1174, 80th Congress, 1st Session (1947).

[33] Section 14(c) of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §14(c), 56 Stat. 359, 367 (1942), as amended by Section 3 of the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], §3, 62 Stat 87, 88-89 (1948), extended special pay to "personnel required to perform aerial flights, parachute jumping, glider flights, or submarine duty" in connection with inactive-duty training. As stated in Senate Report No. 80-625 (Committee on Armed Services), p. 2, accompanying S. 1174, 80th Congress, 1st Session (1947): Increases in pay authorized by law for flying, parachute jumping, submarine duty, etc., [for active duty personnel] will be paid [to reserve forces personnel participating in such duties while performing inactive duty training].

[34] The inactive-duty training pay provisions contained in Section 501 of the Career Compensation Act of 1949, ch. 681, *id*., 63 Stat. at 825-827, were classified to 37 U.S.C. §301, whereas the hazardous duty incentive pay provisions set out in Section 204 of the Career Compensation Act, ch. 681, *id*., 63 Stat. at 809-810, were classified to 37 U.S.C. §235. Later, when Title 37 of the United States Code was enacted

dealing with inactive-duty training pays, including inactive-duty training incentive pays for hazardous duties. The extension of incentive pay for hazardous duty to new classes of reserve forces personnel--*e.g.*, to reserve forces personnel in an inactive-duty training status performing parachute duties, explosives demolition duties, submarine escape training tank duties, etc.--appears to have derived from the extension of such pays to active duty personnel, and not from any special concern about reserve forces personnel and whether they should be entitled to incentive pay for performance of various hazardous duties.[35] [36]

As above indicated, the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, 94 Stat. 3359, 3360-3364 (1980), further reorganized the hazardous duty incentive pay provisions relating to submarine duties. While substantive changes to the submarine duty incentive pay program were made for active duty personnel, the submarine duty pay program for reserve forces personnel performing inactive-duty training remained unchanged. In effect, preexisting provisions of law respecting the entitlement of reserve forces personnel performing inactive-duty training were moved intact, without substantive change, from 37 U.S.C. §301(f) to 37 U.S.C. §301c(d).

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into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the inactive-duty training pay provisions relating to hazardous duty incentive pay entitlements of reserve forces personnel were codified at 37 U.S.C. §301, together with the hazardous duty incentive pay provisions relating to active duty personnel. When submarine duty incentive pay was first authorized by the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §3(d), 94 Stat. 3359, 3360-3364 (1980), reserve forces personnel performing inactive-duty training on submarines were covered under 37 U.S.C. §301c(d), in much the same fashion as they had been under the preceding submarine duty pay program. The current structure of hazardous duty incentive pay entitlements--including incentive pay for submarine duty--for reserve forces personnel performing inactive-duty training thus effectively derives from the organization imposed on Title 37 by the Act of September 7, 1962, Public Law 87-649, *id*.

[35] See, *e.g.*, chapters of this book dealing with explosives demolition duty pay, parachute duty pay, etc.

[36] The Hook Commission, whose report led to the adoption of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), did not concern itself with reserve forces compensation in any way. See, *e.g.*, "Terms of Reference," the charter given to the Hook Commission by the then Secretary of Defense, James Forrestal, in "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," at pp. vii-viii, December 1948.

Until 2003, the conditions of entitlement to submarine duty incentive pay for both active duty and reserve forces personnel were set out in Section 106 of Executive Order 11157, as amended, and in various supplementary regulations adopted by the Secretary of the Navy pursuant to delegated authority under Section 113 of Executive Order 11157. Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301(a), relevant to submarine duty pay and other incentive pays, with the Secretaries of Commerce, Defense, Health and Human Services, and Homeland Security, as those entitlements affect military personnel under the respective jurisdictions of those departments.

**Current rates of pay**: The current rates of pay for submarine duty are as set out on the following pages:

**COMMISSIONED OFFICERS**

| **Pay Grade** | **Years of Service Computed Under Section 205 of Title 37, United States Code** | | | | | | |
|---|---|---|---|---|---|---|---|
| | **2 OR LESS** | **OVER 2** | **OVER 3** | **OVER 4** | **OVER 6** | **OVER 8** | **OVER 10** |
| O-10 | $355 | $355 | $355 | $355 | $355 | $355 | $355 |
| O-9 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-8 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-7 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-6 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-5 | 595 | 595 | 595 | 595 | 595 | 595 | 595 |
| O-4 | 365 | 365 | 365 | 525 | 595 | 705 | 705 |
| O-3 | 355 | 355 | 355 | 510 | 595 | 705 | 705 |
| O-2 | 305 | 305 | 305 | 305 | 305 | 305 | 425 |
| O-1 | 230 | 230 | 230 | 230 | 230 | 230 | 425 |

| **Pay Grade** | **OVER 12** | **OVER 14** | **OVER 16** | **OVER 18** | **OVER 20** | **OVER 22** | **OVER 26** |
|---|---|---|---|---|---|---|---|
| O-10 | $355 | $355 | $355 | $355 | $355 | $355 | $355 |
| O-9 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-8 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-7 | 355 | 355 | 355 | 355 | 355 | 355 | 355 |
| O-6 | 595 | 595 | 595 | 835 | 835 | 835 | 835 |
| O-5 | 595 | 790 | 835 | 835 | 835 | 835 | 835 |
| O-4 | 705 | 790 | 790 | 790 | 790 | 790 | 790 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| O-3 | 705 | 705 | 705 | 705 | 705 | 705 | 705 |
| O-2 | 425 | 425 | 425 | 425 | 425 | 425 | 425 |
| O-1 | 425 | 425 | 425 | 425 | 425 | 425 | 425 |

## WARRANT OFFICERS

**Pay Grade** **Years of Service Computed Under Section 205 of Title 37, United States Code**

| | 2 OR LESS | OVER 2 | OVER 3 | OVER 4 | OVER 6 | OVER 8 | OVER 10 |
|---|---|---|---|---|---|---|---|
| W-5 | $285 | $375 | $375 | $425 | $425 | $425 | $425 |
| W-4 | 285 | 375 | 375 | 425 | 425 | 425 | 425 |
| W-3 | 285 | 375 | 375 | 425 | 425 | 425 | 425 |
| W-2 | 285 | 375 | 375 | 425 | 425 | 425 | 425 |
| W-1 | 285 | 375 | 375 | 425 | 425 | 425 | 425 |

**Pay Grade**

| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
|---|---|---|---|---|---|---|---|
| W-5 | $425 | $425 | $425 | $425 | $425 | $425 | $425 |
| W-4 | 425 | 425 | 425 | 425 | 425 | 425 | 425 |
| W-3 | 425 | 425 | 425 | 425 | 425 | 425 | 425 |
| W-2 | 425 | 425 | 425 | 425 | 425 | 425 | 425 |
| W-1 | 425 | 425 | 425 | 425 | 425 | 425 | 425 |

## ENLISTED MEMBERS

**Pay Grade** **Years of Service Computed Under Section 205 of Title 37, United States Code**

| | 2 OR LESS | OVER 2 | OVER 3 | OVER 4 | OVER 6 | OVER 8 | OVER 10 |
|---|---|---|---|---|---|---|---|
| E-9 | $425 | $425 | $425 | $425 | $425 | $425 | $425 |
| E-8 | 415 | 415 | 415 | 415 | 415 | 415 | 415 |
| E-7 | 405 | 405 | 405 | 405 | 405 | 405 | 405 |
| E-6 | 155 | 170 | 175 | 300 | 325 | 375 | 375 |
| E-5 | 140 | 155 | 155 | 250 | 275 | 275 | 275 |
| E-4 | 80 | 95 | 100 | 245 | 245 | 245 | 245 |
| E-3 | 80 | 90 | 95 | 95 | 90 | 90 | 90 |
| E-2 | 75 | 90 | 90 | 90 | 90 | 90 | 90 |
| E-1 | 75 | 75 | 75 | 75 | 75 | 75 | 75 |

**Pay Grade**

| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 | OVER 22 | OVER 26 |
|---|---|---|---|---|---|---|---|
| E-9 | $425 | $425 | $425 | $425 | $425 | $425 | $425 |
| E-8 | 415 | 415 | 415 | 415 | 415 | 415 | 415 |
| E-7 | 405 | 405 | 405 | 405 | 405 | 405 | 405 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| E-6 | 375 | 375 | 375 | 375 | 375 | 375 | 375 |
| E-5 | 275 | 275 | 275 | 275 | 275 | 275 | 275 |
| E-4 | 245 | 245 | 245 | 245 | 245 | 245 | 245 |
| E-3 | 90 | 90 | 90 | 90 | 90 | 90 | 90 |
| E-2 | 90 | 90 | 90 | 90 | 90 | 90 | 90 |
| E-1 | 75 | 75 | 75 | 75 | 75 | 75 | 75 |

**Cost**: For the cost of compensation for submarine duty from 1972 to 2004, see Table II-17 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.D.3.b.**

## Operational Submersible Duty Pay

**Legislative Authority**: 37 U.S.C. §301c.

**Purpose**: To provide an additional pay to increase the Navy's ability to attract and retain volunteers for duty in deep submergence vessels and deep submergence rescue vessels, and to compensate for the more than normally dangerous character of such duty.

**Background**: The Act of July 12, 1960, Public Law 86-635, 74 Stat. 469 (1960), created a new category of duty for which hazardous duty incentive pay was authorized under 37 U.S.C. §301--namely, for personnel assigned "as an operator or crew member of an operational, self-propelled submersible, including undersea exploration and research vehicles." The act followed by about two years the U.S. Navy's purchase and placement in service of the bathyscaphe *Trieste*. The comptroller general of the United States had taken the position that the *Trieste* was not a "submarine" and that its operators were thus not entitled to hazardous duty incentive pay for submarine service. The purpose of the act was to overcome the effect of the comptroller general's decision and to make operators and crew members of self-propelled submersibles eligible for the same extra pay as members performing submarine duty.

As was true of all hazardous duty incentive pays covered by 37 U.S.C. §301, rates of pay for self-propelled submersible duty were generally higher for officers than for enlisted personnel. These differentials resulted from the incentive pay structure adopted in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(c), 63 Stat. 802, 810 (1949) under recommendations of the Advisory Commission on Service Pay, sometimes referred to as the Hook Commission. The commission's rationale for these differentials was as follows:

A higher rate of hazard pay for officers as compared with enlisted personnel is justifiable on several grounds:

(1) Any special pay must be in proportion to the basic pay, so that at all times the compensation for the primary responsibility will be considerably greater than that for any additional duty.

(2) The rates proposed for hazard pay serve as an inducement to undertake and continue special duties; and such an inducement need not be as great in monetary terms for lower paid and less advanced personnel as for higher paid and more highly trained personnel.

(3) Officers are usually given greater special responsibilities, aside from normal administrative control, than enlisted personnel on hazardous assignments.[1]

Under the Act of July 12, 1960, Public Law 86-635, *id*., adopting self-propelled submersible pay entitlements, rates of pay for such duty were the same as those for submarine duty and hence ranged from $50 a month for members in pay grades E-1 and E-2 with less than two years of service to $245 a month for members in pay grades O-5 and O-6 with over 18 years of service. In practice, however, only qualified submarine personnel in pay grades E-4 through O-4 were in fact assigned to submersibles, with the result that rates of pay ranged from a low of $55 to a high of $240 per month. These rates remained in effect for roughly 25 years until the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §3(d), 94 Stat. 3359, 3360-3364 (1980), as technically amended by the Department of Defense Supplemental Authorization Act, 1981, Public Law 97-39, §701, 95 Stat. 939, 942 (1981), changed the entire structure of the pay. In simplest terms, the two acts cited immediately above have the effect of extending the pay structure adopted under the former Act for submarine duty to "operational submersible" duty as well, thereby setting up a career incentive pay structure patterned after aviation career incentive pay. Under this structure, personnel assigned to "operational submersible" duty are entitled to submarine duty incentive pay to the same extent and under the same circumstances as personnel in submarine service.[2]

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[1] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, December 1948.

[2] Under 37 U.S.C. §301c(a)(5)(A)(i), as amended by Section 701(b) of the Department of Defense Supplemental Authorization Act, 1981, Public Law 97-39, §701(b), 95 Stat. 939, 942 (1981), undersea exploration or research vehicles are included within the category of "operational submersibles," with the result that duty on such vessels qualifies as "operational submarine duty."

In practice, most of the personnel assigned to duty on operational submersibles, including undersea exploration or research vehicles, hold submarine duty designators and are in the submarine service on a career basis. Such personnel are, accordingly, entitled to continuous monthly submarine duty incentive pay. Other personnel, such as divers, are occasionally assigned to duty on operational submersibles and, when so assigned, are entitled to monthly submarine duty incentive pay while actually performing "frequent and regular operational submarine duty." 37 U.S.C. §301c(a)(2). For a description of the submarine duty incentive pay to which personnel assigned to submarine duty are entitled, and the rates of such pay for affected personnel,[3] see Chapter II.D.3.a., "Submarine Duty Incentive Pay," above.

Before operational submersible duty pay was subsumed within the submarine duty incentive pay program, reserve forces personnel performing inactive-duty training were technically entitled to hazardous duty incentive pay under 37 U.S.C. §301(f) if, while performing inactive-duty training, they also performed qualifying duty aboard an operational submersible under competent orders. This technical entitlement arose out of the Act of July 12, 1960, Public Law 86-635, 74 Stat. 469 (1960), discussed above, which extended hazardous duty incentive pay entitlement to personnel performing operational submersible duties. When the 1960 Act added a new category of duty to 37 U.S.C. §301(a) for which hazardous duty incentive pay was authorized for active duty personnel, reserve forces personnel performing operational submersible duties while engaged in inactive-duty training also became automatically entitled to operational submersible duty pay under 37 U.S.C. §301(f). Under this latter provision, reserve forces personnel performing inactive-duty training were entitled to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel for performing

[3] The rates of submarine duty incentive pay authorized for persons assigned to an operational submersible have been increased twice since the current submarine duty incentive pay program was adopted in the Military Pay and Allowances Benefits Act of 1980--first, by the Department of Defense Authorization Act, 1986, Public Law 99-145, §633, 99 Stat. 583, 646 (1985), and second, and most recently, by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §623(b), 101 Stat. 1019, 1101-1103 (1987). For a discussion of these changes, the reasons therefor, and the rates of submarine duty incentive pay for personnel assigned to duty on operational submersibles, see Chapter II.D.3.a., "Submarine Duty Incentive Pay," above.

operational submersible duties for every "period of instruction ... or ... appropriate duty" during which they performed qualifying duties. Because the overall entitlement to operational submersible pay was essentially intended to parallel the entitlement to submarine duty pay,[4] the reader is referred to Chapter II.D.3.a., "Submarine Duty Incentive Pay," for a more complete description of the background and history of this entitlement.

> Because of the peculiar conditions surrounding assignment to and duty on an operational submersible, it is doubtful if any reserve forces personnel performing inactive-duty training ever actually received hazardous duty incentive pay for the performance of operational submersible duties.

**Current rates of pay**: For current rates of pay involving duty on an operational submersible, see Chapter II.D.3.a. hereof, "Submarine Duty Incentive Pay," above.

**Cost**: Beginning in 1977, budgeting of compensation for operational submersible duty was including in budgeting for submarine duty compensation. For the cost of compensation for duty on an operational submersible from 1972 to 1976, see Table II-18 of *Military Compensation Statistics Tables*, volume II of this edition.

[4] See discussion of the reasons underlying enactment of the Act of July 12, 1960, Public Law 86-635, 74 Stat. 469 (1960), above.

**Chapter II.D.3.c.**

## Diving Duty Pay

**Legislative Authority**: 37 U.S.C. §304.

**Purpose**: To provide additional pay to increase the ability of the uniformed services to attract and retain volunteers for diving duty, and to compensate for the more than normally dangerous character of such duty.

**Background**: Extra pay of $1.20 an hour for actual underwater diving, other than for diving under instruction, was authorized for Navy enlisted members by Navy Department General Order No. 346 of April 20, 1886. Entitlement to diving duty pay continued to be dependent wholly on regulations until the pay was legislatively recognized in the Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §21, 42 Stat. 625, 633 (1922), which provided that "nothing in this Act shall operate to change in any way existing laws, or regulations ... governing ... extra pay to enlisted men ... engaged in submarine diving...."[1]

The Act of April 9, 1928, ch. 327 [Public Law 244, 70th Congress], 45 Stat. 412 (1928), which dealt with, among other things, both submarine duty pay and diving pay, changed the $1.20 hourly rate for actual diving to a monthly rate of not less than $5 nor more than $30 for enlisted personnel assigned to such duty; it also provided for a payment of an additional $5 per hour to divers engaged in salvage operations in water depths over 90 feet, with the pay authorized for the number of hours, or fractions thereof, while so employed.[2] A Navy representative explained the purpose of the additional pay for diving duties in these terms:

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[1] The phrase, "submarine diving," was intended to apply to undersea, *i.e.*, "submarine," diving; it had nothing to do with service on a submarine. Indeed, a fuller rendition of the text of Section 21 of the Joint Service Pay Readjustment Act of 1922, ch. 212, *id*., §21, 42 Stat. at 633, provided "nothing in this Act shall operate to change in any way existing laws, or regulations ... governing ... extra pay to enlisted men ... engaged in submarine diving or service on submarines." Thus, "service on submarines" was quite distinct from "submarine diving."

[2] In dealing with submarine duty, the Act of April 9, 1928, authorized submarine duty pay in the amount of 25 percent of base and longevity pay for officers and not less than $5 nor more than $30 a month for enlisted personnel. See Chapter II.B.3.a., "Submarine Duty Incentive Pay," above.

The present law does not meet the needs of the service, for under it there is not sufficient inducement for sufficient men to become qualified for deep-sea diving and to undertake sufficient diving operations to keep themselves fit and fully qualified for actual service should the occasion arise.... Under the plan in view, a certain amount of practice diving would be required periodically in order for a man to maintain his qualification. At the same time extra compensation, beyond what might be termed retainer pay for qualification, would be paid to men engaged in the especially hazardous work incident to salvage operations in depths beyond 90 feet.[3]

The Act of January 16, 1936, ch. 1 [Public Law 415, 74th Congress], 49 Stat. 1091 (1936), amended the Act of April 9, 1928, ch. 327, *id*., by adding authority for the payment of an extra 25 percent of base and longevity pay to officers on duty at submarine escape training tanks, the Navy Deep Sea Diving School, and the Naval Experimental Diving Unit. This action was taken by Congress to make officers performing such duty eligible for the same extra pay as officers performing submarine duty.[4] The Act of June 27, 1942, ch. 448 [Public Law 627, 77th Congress], 56 Stat. 391 (1942), further amended the Act of April 9, 1928, ch. 327, *id*., by stipulating that the additional $5 per hour previously payable for diving at depths in excess of 90 feet of water could also be paid for actual diving at depths of less than 90 feet under "extraordinarily hazardous conditions" as well as for depths greater than 90 feet, that the $5 per hour could be paid to officers as well as to enlisted personnel, and that it could be paid for either "salvage or repair operations" instead of being restricted to salvage work alone. This amendment was adopted because of the extensive and dangerous salvage and repair operations then being carried out at Pearl Harbor, where the water depth was generally no more than 50 feet. The Act of April 10, 1943, ch. 47 [Public Law 33, 78th Congress], 57 Stat. 60 (1943), extended the same pay to Army personnel assigned to diving duty.

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(a)(8) and (9), 63 Stat. 802, 810 (1949), separately categorized "duty at a submarine

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[3] A Hearing on the Bill (H.R. 9289) Providing Additional Pay for Personnel of the United States Navy Assigned to Duty on Submarine Vessel and Diving Duty (March 1, 1928) printed in "Hearings before the House Committee on Naval Affairs on Sundry Legislation Affecting the Naval Establishment," 1927-1928, p. 1475, 70th Congress, 1st Session (1928) (statement of Rear Admiral R. H. Leigh, USN, Chief of the Bureau of Navigation).

[4] See footnote 1 to this chapter, above.

escape training tank" and "duty at the Navy Deep Sea Diving School or the Navy Experimental Diving Unit, when such duty involves participation in training," as duties for which hazardous duty incentive pay was authorized at the monthly rate of $100 for officers and $50 for enlisted personnel.[5] [6] For diving duty in general, however, the Career Compensation Act of 1949, ch. 681, *id*., §205, 63 Stat. at 810-811, continued the existing monthly pay of not less than $5 nor more than $30 per month for enlisted personnel, and the $5 per hour additional pay for "[m]embers of the uniformed services [*i.e*., both officers and enlisted personnel] ... employed as divers in actual salvage or repair operations in depths of over ninety feet, or in depths of less than ninety feet, when the officer in charge of the ... operation shall find ... that extraordinary hazardous conditions exist...."[7] [8] Despite the classification of the general diving duty provisions as a "special" pay, it appears certain that Congress intended that diving duty pay serve the same

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[5] These provisions, adopted as Section 204(a)(8) and (9), respectively, were subsequently classified to 37 U.S.C. §235(a). See 37 U.S.C. §235(a) (1952).

[6] With the adoption of these specific provisions, the assumed linkage of pay for "duty at a submarine escape training tank" and "duty at the Navy Deep Sea Diving School or the Navy Experimental Diving Unit" with submarine duty pay, see footnote 1 and accompanying text as well as text accompanying footnote 3 to this chapter, above, was broken, as the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), effectively paired submarine duty pay with crew member flight pay. See Chapter II.D.3.a., "Submarine Duty Incentive Pay," above.

[7] Senate Report No. 81-733 (Committee on Armed Services), p. 19, accompanying H.R. 5007, 81st Congress, 1st Session (1949). See House Report No. 81-779 (Committee on Armed Services), p. 30, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

[8] These latter diving duty provisions, which were enacted as Section 205 of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §205, 63 Stat. 802, 810-811 (1949), were subsequently classified to 37 U.S.C. §236. See 37 U.S.C. §236 (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the general diving duty provisions deriving from the Career Compensation Act of 1949, ch. 681, *id*., §205, 63 Stat. at 810-811, were codified at 37 U.S.C. §304. (The provisions of the Career Compensation Act of 1949, ch. 681, *id*., §204(a)(8) and (9), 63 Stat. at 810, relating to "duty at a submarine escape training tank" and "duty at the Navy Deep Sea Diving School or the Navy Experimental Diving Unit, when such duty involves participation in training," were not separately codified in the new Title 37, United States Code, after its enactment into positive law by the Act of September 7, 1962, Public Law 87-649, *id*.; rather, to the extent such duty qualified as "diving duty," persons engaged in activities formerly covered by Section 204(a)(8) or (9) of the Career Compensation Act of 1949, ch. 681, *id*., §204(a)(8) and (9), 63 Stat. at 810, became entitled to diving duty pay under new 37 U.S.C. §304. See discussion of the Act of August 17, 1961, Public Law 87-145, 75 Stat. 382 (1961), which consolidated all diving duty pays into one statutory provision, at text accompanying footnotes 12 and 13, below.)

purpose as incentive pay--that is, to attract and retain volunteers for the hazardous duty of diving.[9]

The Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §§2(6), 2(8), 2(9), and 2(10), 69 Stat. 18, 21 (1955), increased the rates of the various extra pays relating to diving duty by 10 percent--to $110 a month for officers and to $55 a month for enlisted personnel under 37 U.S.C. §235 (1952) (hazardous duty incentive pay) and to $5.50 and $33 under 37 U.S.C. §236 (1952) (diving duty pay). It also added another type of diving duty to the general class of duties for which hazardous duty incentive pay was authorized under the precursor of present 37 U.S.C. §301[10]--"duty involving the use of helium-oxygen for a breathing mixture in the execution of deep-sea diving." Although this duty had previously qualified members for diving pay, its reclassification as a hazardous duty incentive pay allowed the payment of a higher monthly rate of pay to those divers who had to dive deeper and undergo a greater hazard than those equipped with a normal breathing mixture. That is, classification as a hazardous duty under the precursor of present 37 U.S.C. §301 permitted a higher rate of pay than duty for which diving duty pay was authorized under the precursor of present 37 U.S.C. §304.[11] The net result was three categories of hazardous duty incentive pay related to diving duty: the first, covered by the precursor of present 37 U.S.C. §301, was payable at the monthly rate of $110 for officers and $55 for enlisted personnel, and the second and third, covered by the precursor of present 37 U.S.C. §304, consisted of a two-component special pay for

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[9] The Career Compensation Act of 1949, ch. 681, *id*., denominated extra pay for physicians and dentists as a "special pay" also, see Section 203 of the Career Compensation Act of 1949, ch. 681, *id*., §203, 63 Stat. at 809, but the legislative history of the act shows that those pays were being "continued because of the critical shortage of such personnel in the uniformed services." House Report No. 81-779 (Committee on Armed Services), p. 15, accompanying H.R. 5007, 81st Congress, 1st Session (1949). Moreover, although diving duty pay was not specifically mentioned in the House report, the general group of hazardous duty incentive pays were grouped together for discussion purposes with extra pay for physicians and dentists under the comprehensive heading of "[s]pecial incentive pays." *id*. (emphasis added). (As far as the present, incentive-based nature of diving duty pay is concerned--despite the continued denomination of diving duty pay as a "special pay," see headnote to present 37 U.S.C. §304--consult text accompanying footnotes 14 through 17 to this chapter, below.)

[10] See footnote 5 to this chapter, above.

[11] See footnote 5 to this chapter, above.

diving duty--namely, a special pay of not less than $5.50 nor more than $33 per month for enlisted personnel assigned generally to diving duty and a further special pay at the rate of $5.50 per hour for officers and enlisted personnel engaged in salvage or repair diving operations deemed hazardous, either because of the depth of water in which they were performed, *i.e.*, "over ninety feet," or because of a finding of "extraordinary hazardous conditions" by the officer in charge.

The Act of August 17, 1961, Public Law 87-145, §1, 75 Stat. 382 (1961), replaced all these separate pays with a special pay for diving duty payable at a rate of not more than $110 a month under regulations to be prescribed by the "Secretary concerned," thereby consolidating all diving duty provisions under one statutory heading. Under this new, consolidated provision, a member could not be paid special pay for diving duty in addition to incentive pay for hazardous duty. The hazardous duty incentive pay program, on the other hand, allowed the payment of up to two types of incentive pay for the same period. See, *e.g.*, former 37 U.S.C. §236(e) (as in effect after enactment of the Act of August 17, 1961, Public Law 87-145, *id.*) and present 37 U.S.C. §301(e). Thus, for example, under the Act of August 17, 1961, Public Law 87-145, *id.*, a member required by competent orders to perform parachute jumping duty in addition to explosive ordnance demolition duty could be paid hazardous duty incentive pay for both parachute and demolition duty, whereas a member required to perform diving duty in addition to demolition duty could not be paid both diving pay and demolition duty pay.

Congress described the purpose of consolidating the various diving duty pays in the Act of August 17, 1961, Public Law 87-145, *id.*, in these terms:

> Because of the inequities which occur under the present system of computing special pay for diving duty, and because the rates of diving pay have remained substantially static for 30 years, for the past several years there has been a shortage of divers in the Navy. Insufficient members who can meet the stringent physical requirements are attracted to this hazardous duty....
>
> To lessen the burden of administering special diving pay and to render the administration of the pay more equitable, the enclosed draft bill prescribes a maximum flat rate of special pay for diving duty. Under regulations

> promulgated by the Secretary concerned, varying amounts of special pay would be authorized for the different categories of divers.... The flat rate to be paid a particular diver would depend solely upon his current qualifications as a diver, the master diver, for example, receiving greater pay than the first-class diver, who is less qualified and who will, in general, carry out less difficult and less hazardous diving assignments. Those clauses of Section 204(a) of the Career Compensation Act of 1949 [ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949)] authorizing incentive pay for hazardous duty relating to diving ... would be repealed....
>
> The simplified procedures which could be followed under the flat-rate system would enhance efficiency, morale, equity, and long-term incentive.[12]

The Uniformed Services Pay Act of 1981, Public Law 97-60, §115, 95 Stat. 989, 995-996 (1981), changed the basic structure of diving duty pay, increasing the maximum rates of such pay--from $110 to $300 per month for enlisted personnel and to $200 per month for officers--in addition to providing the first authority for a person receiving such pay to also receive one form of hazardous duty incentive pay under 37 U.S.C. §301. As indicated in the relevant Congressional report, Congress concluded that, the maximum rates having last been changed in 1961 (in 1955 for officers), diving duty pay had "lost its incentive value,"[13] and increases were accordingly necessary to attract required numbers of personnel to the duty.

As explained in the Senate report dealing with the Uniformed Services Pay Act of 1981, Public Law 97-60, *id.*, maximum diving duty pay in 1961 amounted to 42 to 47 percent of basic pay, depending on grade and classification of the diver, whereas in 1981 it amounted to less than 15 percent of such pay.[14] In addition, the Senate report noted low manning levels and the lack of sufficient volunteers for training to warrant holding

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[12] Senate Report No. 662 (Committee on Armed Services), pp. 5-6, accompanying H.R. 4323, 87th Congress, 1st Session (1961).

[13] Senate Report No. 97-146 (Committee on Armed Services), p. 10, accompanying S. 1181, 97th Congress, 1st Session (1981).

[14] Senate Report No. 97-146 (Committee on Armed Services), pp. 10-11, accompanying S. 1181, 97th Congress, 1st Session (1981).

special classes.[15] To increase incentives for personnel to enter, and remain in, diving duty specializations, Congress felt it necessary both to increase the maximum rates payable and to allow personnel receiving special pay for diving duty also to receive one other form of hazardous duty incentive pay.[16] The National Defense Authorization Act for Fiscal Year 2000 Public Law 106-65, 113 Stat. 652, improved this incentive by eliminating the limitation to one other form of hazardous duty pay. Thus, effective October 1, 1999, a qualified diver could receive such pay for "each hazardous duty for which the member is qualified."

As restructured, diving duty pay is payable, during periods diving duty is actually performed, to personnel assigned to diving duty who are required to maintain proficiency by "frequent and regular" dives. 37 U.S.C. §304(a). Under regulations adopted by each service, actual rates are dependent on the skill level of the diver and on the specific billet to which the diver is assigned.[17]

Thus, under the pay structure resulting from the Uniformed Services Pay Act of 1981, Public Law 97-60, §115, 95 Stat. 989, 995-996 (1981), the position of diving duty vis-à-vis the duties for which hazardous duty incentive pay is authorized has been effectively reversed. Under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §205, 63 Stat. 802, 810-811 (1949), the rates of pay for regular diving duties were less than those for duties classified as hazardous. Today, at least insofar as the maximum rates of pay authorized are concerned, the rates of pay for diving duties generally exceed the rates applicable to the hazardous duties governed by 37

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[15] Senate Report No. 97-146 (Committee on Armed Services), pp. 10-11, accompanying S. 1181, 97th Congress, 1st Session (1981).

[16] In allowing personnel to receive one form of hazardous duty pay in addition to special pay for diving duty, Congress referred to the consistency of such a practice "with the existing dual pay restriction incorporated in 37 U.S.C. 301" relating to incentive pay for hazardous duties. Senate Report No. 97-146 (Committee on Armed Services), p. 11, accompanying S. 1181, 97th Congress, 1st Session (1981).

[17] See *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶11102 AND 11103.

U.S.C. §301.[18] The National Defense Authorization Act for Fiscal Year 2000 raised the monthly rate for enlisted members from $300 to $340, and for officers from $200 to $240. This was the first rate change since the program was restructured by the Uniformed Services Pay Act of 1981.

With the passage of the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §624(a), 101 Stat. 1019, 1103-1104 (1987), reserve forces personnel[19] entitled to compensation for inactive-duty training became entitled to diving duty pay when performing qualifying duties under competent orders, provided Congress had appropriated sufficient funds for that purpose.[20] Under 37 U.S.C. §304(d), members of the reserve forces who perform qualifying diving duties while entitled to compensation under 37 U.S.C. §206, are also entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly special pay" payable to active duty personnel performing such duties.[21] That is,

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[18] Some air weapons control officer flight pay rates exceed the maximum rates of pay authorized for diving duty. See, *e.g.*, 37 U.S.C. §301(c)(2)(A). Also see Chapter II.D.1.b.(4), "Flight Pay (Air Weapons Controllers)," above.

[19] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[20] Unlike various provisions of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to special and incentive pays, the corresponding provisions of Section 304 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to special pay for diving duty are explicitly made contingent on Congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §304(d)(1).

[21] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is

for every "regular period of instruction or period of appropriate duty" or "such other equivalent training, instruction, duty, or appropriate duties" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, the member is, if performing qualifying duty under 37 U.S.C. §304(d), also entitled to 1/30th of the diving duty pay that would be payable to a member of the active duty force who was performing such duties. Under regulations prescribed by the "Secretary concerned," a member of a reserve force who performs diving duties under 37 U.S.C. §304(d), while engaged in inactive-duty training is entitled to diving duty pay.[22] [23]

Congress explained its reasons for extending diving duty pay to reserve forces personnel performing inactive-duty training in the following terms:

> The Department of Defense has requested that divers in the Reserve Components be entitled to diving duty pay when they meet the requirements established for the pay that apply to active duty personnel. The Committee recommends approval of this Defense Department proposal....[24]

In making the above-noted "request," the Department of Defense relied heavily on the conclusions and recommendations of the Sixth Quadrennial Review of Military Compensation.[25] As noted by the Sixth Quadrennial Review:

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commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

[22] For a discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training, see Chapter II.D.1.b.(1) hereof, "Flight Pay (Crew Member)," above.

[23] Pursuant to Section 624(b) of the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, *id*., §624(b), 101 Stat. at 1104, the extension of diving duty pay entitlement to reserve force members performing inactive-duty training became effective "on the first day of the fourth calendar month following the month in which this Act is enacted"--or, in other words, on April 1, 1988.

[24] Senate Report No. 100-57 (Committee on Armed Services), p. 147, accompanying S. 1174, 100th Congress, 1st Session (1987). *Cf*. House Report No. 100-446 (Committee of Conference), p. 644, accompanying H.R. 1748, 100th Congress, 1st Session (1987) (indicating merely that the House acceded to the Senate amendment extending diving duty pay to reserve forces personnel performing inactive-duty training).

[25] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ...proposing changes" to the compensation system of the uniformed services. *The Ninth Quadrennial Review of Military Compensation* was convened in 1999,

Until December 1987, the law restricted entitlement to Diving Duty Pay to officer and enlisted divers in receipt of basic pay who were assigned by competent orders to diving duty positions, and who maintained the required qualifications and performed diving duty. Reservists were not eligible for diving duty pay during periods of IDT [inactive-duty training], because they were not entitled to basic pay. This restriction precluded reservists from drawing diving duty pay during drill weekends even though they performed diving duties.

The 6th QRMC [Quadrennial Review of Military Compensation] review indicated that undermanning existed in the diving programs of the Navy, Marine Corps and, to a lesser extent, the Air Force. Most critical was the Naval Reserve, where only 38 percent of authorized diving positions were manned. The 6th QRMC recommended that legislation be prepared to extend the eligibility for diving duty pay to Selected Reservists performing inactive duty for training. Subsequently Section 624 of Public Law 100-180 authorized the payment of diving duty pay to reservists during periods of IDT.[26]

**Current rate of pay**: The current rates of pay for diving duty are:

| **Category of personnel** | **Rate of pay** |
|---|---|
| Officers | Not to exceed $240 per month[27] |
| Enlisted members | Not to exceed $340 per month[28] |

**Cost**: For the cost of diving duty pay from 1972 to 2004, see Table II-19 of *Military Compensation Statistics Tables*, volume II of this edition.

pursuant to Presidential directive, and its report and recommendations were submitted to Congress in late 2001.

[26] Executive Summary, "Recommendations of the Sixth Quadrennial Review of Military Compensation," p. 51, August 1988. Also see National Guard and Reserve Compensation, "Report of the Sixth Quadrennial Review of Military Compensation," Volume I, p. 5-9, August 1988.

[27] For specific rates of pay authorized for different categories of officers, see *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶11103.a.

[28] For specific rates of pay authorized for different categories of enlisted members, see *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶11103.b.

**Chapter II.D.3.d.**

## Special Pay for Career Sea Duty

**Legislative Authority**: 37 U.S.C. §305a.

**Purpose**: To provide a special payment to personnel serving on sea duty in recognition of the greater-than-normal rigors of service attending such duty, and to efficiently target manpower dollars to improve the retention of personnel in sea-service skills.

**Background**: The Act of March 3, 1835, ch. 27, §1, 4 Stat. 755, 755-757 (1835), established pay rates for Navy officers that included within-grade differentials linked to duty status--at sea, on other duty, or on leave or waiting orders. These differentials were the earliest legislative manifestation of a "sea duty pay" principle, though the higher rates for service at sea were then looked upon as regular pay for normal service rather than as "extra" pay. An officer who was not at sea was considered to be performing less than full-fledged duty and thus was entitled to only part of the regular pay of his grade. This theory governed Navy officers' pay for almost 75 years. The Act of March 3, 1899, ch. 413, §13, 30 Stat. 1004, 1007 (1899), illustrated the theory clearly by providing that, while performing sea duty, Navy officers were entitled to no less pay than Army officers of corresponding rank, but when ashore or waiting orders, to 15 percent less than Army officers.

The Act of June 1, 1860, ch. 67, §1, 12 Stat. 23, 24 (1860), illustrates a step in the gradual evolution of sea duty pay principles. Under that act, for the first time, the length of an officer's cumulative sea service was recognized as a pay factor in some officer grades. The act continued the within-grade differentials linked to an officer's sea duty, other duty, or leave/waiting orders status. But, for the grades of lieutenant, boatswain, gunner, carpenter, and sailmaker, it also prescribed pay steps based on length of sea service. These sea-service pay steps lasted two years for the grade of lieutenant and until 1870 for the warrant officer grades.

The Act of May 13, 1908, ch. 166 [Public Law 115, 60th Congress], §1, 35 Stat. 127, 127-128 (1908), ended the 73-year reign of duty status differentials and established pay rates for Navy officers based strictly on grade and length of service. Concomitantly, with the establishment of a new special category of pay for officers assigned to sea duty, sea duty pay came to be seen as "extra" compensation, since officers became entitled to an additional 10 percent of base pay while performing such duty. The 10 percent provision remained in effect until repealed by the Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §2, 42 Stat. 625, 627 (1922). There was no added pay for sea duty between 1922 and 1942.

The Act of March 7, 1942, ch. 166 [Public Law 490, 77th Congress], §18, 56 Stat. 143, 148 (1942), revived sea duty pay as a wartime measure and for the first time included enlisted personnel within its scope. The act provided for commissioned officers to receive an additional 10 percent of base pay, and for warrant officers and enlisted personnel to receive an additional 20 percent, while performing sea duty. A few months later, the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §2, 56 Stat. 359, 360 (1942), enacted these sea duty pay provisions into permanent law.

In 1948, at the request of the Secretary of Defense, the Advisory Commission on Service Pay, sometimes referred to as the Hook Commission, undertook the first comprehensive study of military compensation since 1908. In reviewing military compensation generally, and sea duty pay in particular, the Hook Commission recommended that sea duty pay be abolished for officers but continued, albeit in a modified form, for enlisted personnel. In support of this recommendation, the Commission stated:

> The Commission has concluded that sea duty for naval personnel, as well as oversea duty for the Army and Air Force, although probably involving more inconvenience than military activity ashore or at home, is a part of their normal career.... Officers, especially, do not deserve extra pay for this type of duty, since the pay recommended for them is apportioned to their relative responsibility as executives and administrators, regardless of their site of operation. Additional compensation is unnecessary and undesirable for work which should be expected as a normal incident in a chosen career.

> For enlisted personnel, the Commission proposes a flat rate increase, as in keeping with accepted industry practice for disagreeable or unpleasant work and as a morale factor. A percentage of pay increase for these duties bears no relation to the inconvenience felt by the individual nor is the unpleasantness in proportion to the grade or rating.[1]

Congress adopted the major portion of the Hook Commission's reasoning and recommendations concerning sea duty pay in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §206, 63 Stat. 802, 811 (1949).[2] The act eliminated sea duty pay authorization for officers entirely. In addition, it changed the way the entitlement was computed for enlisted personnel, establishing rates ranging from $8 for the lowest enlisted pay grade to $22.50 for the highest enlisted grade.

In dealing with the Hook Commission's recommendations on sea duty pay, the House Committee on Armed Services stated:

> The committee is in complete agreement with the Hook Commission that sea and foreign duty pay is part of the normal career of all members of the uniformed services. It especially recognizes that officers should not be compensated with special pay for overseas assignments which must be anticipated as part of an average career in the services. On the other hand, the committee also agrees with the Commission that some small remuneration should be granted to enlisted personnel who serve at sea or in foreign stations because of the morale factor involved. In view of the pay increases provided in the bill, the committee is of the opinion that the sums provided for sea and foreign duty for enlisted personnel are sufficient.[3] [4]

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[1] "*Career Compensation For the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," pp. 28-29, December 1948. (In recommending against continuation of sea duty pay for officers, the Commission noted that "[u]nusual expenses incurred by virtue of foreign or sea duty may be reimbursable under the post and duty allowance recommended by the Commission." *Id.*, p. 29. Despite the Hook Commission's recognition of the possibility of higher costs or expenses incurred by personnel assigned to sea or foreign duty, Congress, in acting on the Commission's recommendations, did not adopt any special allowance program to assist affected personnel in defraying such costs.)

[2] But see the parenthetical in footnote 1 to this chapter, above.

[3] House Report No. 81-779 (Committee on Armed Services), p. 16, accompanying H.R. 5007, 81st Congress, 1st Session (1949). Also see Senate Report No. 81-733 (Committee on Armed Services), p. 19, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

[4] Section 206 of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §206, 63 Stat. 802, 811 (1949), which dealt with sea duty pay, also covered foreign duty pay. After enactment of the Career Compensation Act of 1949, ch. 681, *id.*, the sea and foreign duty pay provisions thereof were

Even if sea duty pay rates were "sufficient" in 1949, questions concerning their continued sufficiency for specific purposes arose in ensuing years. In 1949, sea duty pay for enlisted personnel approximated 10 percent of basic pay; by 1979, however, with the various intervening increases in military pay rates, sea duty pay had declined in general to something less than 2 1/2 percent of basic pay. When increases in the consumer price level were also taken into account, the decline in the value of sea duty pay to recipient personnel became even more pronounced in terms of the "morale factor" that had been the intellectual underpinning of the enlisted sea duty pay program in the first instance. As a result, sea duty pay had come more and more to be regarded as a "token" payment and, as such, had little incentive--or, for that matter, morale--value for affected personnel.

To address a perceived problem with retention of qualified enlisted personnel in the Navy, the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §804(a)(1), 92 Stat. 1611, 1620-1621 (1978), adopted a new special pay program for "career sea duty." Under that program, an enlisted member of a uniformed service in pay grade E-4 or above who had served more than three years on "sea duty" became entitled to so-called "career sea pay" when actually performing such duty. As authorized, career sea pay varied depending on the number of years of cumulative sea duty, with persons having more sea duty entitled to greater amounts of pay.[5] For fiscal years 1979 and 1980, three cumulative-years-of-sea-duty categories were authorized--over three years, over five, and over twelve; for fiscal year 1981, four--over three years, over five, over seven, and over twelve; and beginning October 1, 1981, seven--over three, over five, over seven, over nine, over ten, over eleven, and over twelve. For fiscal years 1979, 1980, and 1981, career sea duty pay rates varied from a low of $25 per month to a high of $55; beginning October 1, 1981, such rates were programmed to vary from a low of $25 per

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classified to 37 U.S.C. §237. See 37 U.S.C. §237 (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the sea and foreign duty pay provisions were codified at 37 U.S.C. §305. For an explanation of foreign duty pay, formally denominated "special pay while on duty at certain places," 37 U.S.C. §305, and the reasons for its adoption, see Chapter II.E.2.f. hereof, "Special Pay While on Duty at Certain Places (Hardship Duty Pay)," below.

[5] For a partial precursor of this provision, see the discussion of the Act of June 1, 1860, ch. 67, §1, 12 Stat. 23, 24 (1860), in this chapter, above.

month to a high of $100. In implementing the career sea pay program, a member was to be credited with all periods of sea duty served before the effective date of the new pay--namely, October 1, 1978. The "career sea pay" provisions of the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, *id.*, were codified at 37 U.S.C. §305a.

"Career sea pay" was initially proposed as a part of the Carter Administration's Defense Legislative Program for the 95th Congress. In a Departmental Recommendation, the Department of Defense noted that sea pay had "historically been a means of recognizing and compensating those who were willing to serve under the unique conditions of service associated with sea duty."[6] Among the unique conditions cited were (1) cramped living and working conditions aboard ship, (2) the unpredictability of operating schedules of Navy ships, (3) limited recreational facilities at sea, (4) inport duties assigned to shipboard personnel to maintain ship readiness, (5) long working hours at sea, (6) long and repetitive deployments, and (7) family separations.[7] Because of the "unattractive" features associated with the "unique conditions" of sea duty and the "competition for quality manpower among the services and with civilian industry," the Department of Defense recommended a new career sea pay program to achieve "stabilized manning [of Navy ships] with experienced personnel."[8] Although recommended to Congress as a "special pay," the "career sea pay" proposal was held out by the Department of Defense as being very important in "influencing the decision of skilled individuals to continue a career of service entailing repetitive reassignment to duty

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[6] Quoted in Senate Report No. 95-826 (Committee on Armed Services), p. 124, accompanying S. 2571, 95th Congress, 2d Session (1978) (enclosure to letter from W. Graham Claytor, Jr., Secretary of the Navy, as designated representative of the Department of Defense on the recommended sea pay legislation).

[7] Senate Report No. 95-826 (Committee on Armed Services), p. 124, accompanying S. 2571, 95th Congress, 2d Session (1978) (enclosure to letter from W. Graham Claytor, Jr., Secretary of the Navy, as designated representative of the Department of Defense on the recommended sea pay legislation).

[8] Senate Report No. 95-826 (Committee on Armed Services), pp. 124-126, accompanying S. 2571, 95th Congress, 2d Session (1978) (enclosure to letter from W. Graham Claytor, Jr., Secretary of the Navy, as designated representative of the Department of Defense on the recommended sea pay legislation).

at sea."[9] In short, the Department of Defense's "career sea pay" proposal may appropriately be regarded as an incentive pay designed to meet manpower management goals. Congress agreed with the need to meet such goals and, noting that sea duty pay rates had not be "adjusted" since originally established in 1949, adopted the Department of Defense proposal in order to, in Congress's own words,

> (1) establish rates which would be more meaningful compared to current compensation levels;
>
> (2) offer increased rates for increased years of sea duty experience; [and]
>
> (3) remain within reasonable budgetary limitations.[10] [11]

Before the provisions of the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, *id*., relating to fiscal year 1981 became effective, the rates of pay for career sea duty were changed by the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §3(a), 94 Stat. 1123, 1124 (1980). As explained in the conference report, the rates of career sea pay that would have become effective on October 1, 1981, were increased by 15 percent and made effective on September 1, 1980, a year before they were due to become effective under the 1979 appropriation authorization act. The reason for this increase in and acceleration of the effective date of the career sea pay rates was identified as the Navy's shortage of petty officers--particularly those with from six to twelve years of service.[12] This provision, put

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[9] Senate Report No. 95-826 (Committee on Armed Services), p. 124, accompanying S. 2571, 95th Congress, 2d Session (1978) (enclosure to letter from W. Graham Claytor, Jr., Secretary of the Navy, as designated representative of the Department of Defense on the recommended sea pay legislation).

[10] Senate Report No. 95-826 (Committee on Armed Services), p. 122, accompanying S. 2571, 95th Congress, 2d Session (1978) (enclosure to letter from W. Graham Claytor, Jr., Secretary of the Navy, as designated representative of the Department of Defense on the recommended sea pay legislation).

[11] As ultimately adopted, the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §804(c), 92 Stat. 1611, 1621 (1978), contained a saved-pay provision that allowed all personnel receiving special pay for sea duty under preexisting 37 U.S.C. §305 who were not eligible for "career sea pay" under the new 37 U.S.C. §305a to continue to receive the old sea duty pay until September 30, 1981. See 37 U.S.C. §305 note, where the text of Section 804(c) of the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, *id*., §804(c), 92 Stat. at 1621, is reproduced.

[12] See, *e.g*., 126 CONG. REC. S829, S840, S841, S859, S860, S868 (daily ed., February 4, 1980)).

forward as a floor amendment to a proposal that would have adopted an across-the-board increase in basic pay rates,[13] was said to be specially "targeted" or "focused" on special retention problem areas,[14] and was proposed by the Senate to provide retention incentives to Navy personnel coming to the end of their first term of enlistment.

The Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §4(a), 94 Stat. 3359, 3364-3366 (1980), adopted an entirely new structure of special pay for "career sea duty." Effective January 1, 1981,[15] special pay for career sea duty was authorized for officers as well as enlisted personnel in pay grades E-4 and above, with the exception of officers in pay grades O-1 and O-2 who had less than four years of active enlisted or noncommissioned warrant officer service. The rates of career sea pay for enlisted personnel were increased substantially and, for all personnel, made to depend on pay grade and years of cumulative sea duty. In addition, under the new career sea pay structure, all qualifying enlisted members--*i.e*., all such members in pay grade E-4 or above--and all warrant officers actually assigned to sea duty were entitled to career sea pay, not just those with more than three years of sea duty; in the case of officers, however, only those with more than three years of sea duty were entitled to such pay. Finally, a special provision allowed a $100 per month career sea pay "premium" to be paid to any member of a uniformed service entitled to career sea pay for each subsequent month of sea duty served immediately following completion of 36 months of consecutive sea duty. Under the act, career sea pay was payable to qualifying personnel assigned to a ship, a ship-based staff, or a ship-based aviation unit while actually serving on a ship.[16] [17]

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[13] The proposal for an across-the-board pay raise was not adopted as a part of the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, *id*., but was instead adopted as part of the Department of Defense Authorization Act, 1981 Public Law 96-342, 94 Stat. 1077, 1090-1091 (1980), enacted the same day.

[14] *e.g*., 126 *Cong. Rec*. S841 (daily ed., February 4, 1980).

[15] Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id*., §4(b), 94 Stat. at 3366.

[16] In the case of service on a ship having a primary mission normally performed in port, career sea pay was payable only when the ship was away from its homeport 30 consecutive days or more. See 37 U.S.C. §305a(d) (2) as in effect after adoption of the Military Pay and Allowances Benefits Act of 1980.

Under amendments made by the Uniformed Services Pay Act of 1981, Public Law 97-60, §116, 95 Stat. 989, 996 (1981), career sea pay also became payable to members of the "off-crew" of a two-crew submarine.[18]

According to the Senate Report on the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id*., career sea duty pay rates were increased because such action "specifically targets manpower dollars in an efficient way to improve the retention of Naval personnel in sea service skills."[19] In extending career sea pay entitlement to officers for the first time since 1949, despite the fact such authority had not been sought by the administration, Congress, citing the "long history of granting officers at sea a differential in pay," specifically addressed itself to, and abandoned, the Hook Commission's 1948 conclusion that special pay to officers for sea duty was not warranted because "sea duty was normal service for Navy officers."[20] Officer sea pay was reinstituted "because of the arduous duty and family separations involved in long deployments at sea and because of retention problems among Navy officers in certain skills."[21] "Premium career sea pay" for three or more years of consecutive sea duty was,

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[17] The saved-pay provision incorporated in the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, *id*., was not affected by the new career sea duty provisions of the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id*.. See footnote 11, above.

[18] As explained by Senator Tower of Texas, who offered the provision in question as a floor amendment to a bill that did not otherwise address career sea pay, the purpose of extending entitlement to such pay to the off-crew of a two-crew submarine was "to correct what we believe to be a deficiency and ... to be an incentive and a compensation to these crews for our SSBN vessels [ballistic missile submarines] that do have to remain on station for a prolonged period of time." 127 *Cong. Rec*. 20171 (1981) (daily ed., 127 *Cong. Rec*. S9393 (September 10, 1981)) (statement of Senator Tower). In particular, Senator Tower pointed out that affected crew members, spending 50 percent of their time at sea, frequently spent more time at sea than other personnel entitled to career sea pay. He also pointed out that, since officers had to have three years of cumulative sea duty before being entitled to career sea pay, officers on two-crew submarines took excessively long to qualify for such pay, with adverse effects on retention incentives. *id*.

[19] Senate Report No. 96-1051 (Committee on Armed Services), p. 2, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

[20] Senate Report No. 96-1051 (Committee on Armed Services), p. 2, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

[21] Senate Report No. 96-1051 (Committee on Armed Services), p. 3, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

on the other hand, adopted at the urging of the Navy "to compensate ... members who are on prescribed sea tours of greater than three years and as an incentive for ... members who are on three year shore tours or less and who volunteer beyond the prescribed sea service tour."[22] As explained by the Navy, the revised career sea pay program was intended primarily to address retention problems:

> Sea pay rates at the current level are insignificant in relation to basic pay and as such are not achieving career force retention and accession objectives which currently impact the at sea manning. The additional compensation realized from the proposed sea pay will be most effective in the retention of skilled enlisted personnel. This sea pay proposal is a specifically directed cost-effective method of correcting the critical shortage of career force personnel in sea duty assignments.[23]

Taken together, the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, *id*., and the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id*., highlight the incentive purpose intended to be served by the current version of sea pay--namely, to induce service personnel to enter on, and remain in, skill specialties entailing career sea duty.

The Department of Defense Authorization Act, 1985, Public Law 98-525, §623(a), 98 Stat. 2492, 2541 (1984), further revised the career sea pay program, increasing the rates of pay for enlisted members in pay grades E-6 through E-9 and adding four additional cumulative-years-of-sea-duty categories for all qualifying enlisted personnel--over 13 years, over 14, over 16, and over 18.[24] As explained by Congress,

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[22] Senate Report No. 96-1051 (Committee on Armed Services), p. 27, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

[23] Senate Report No. 96-1051 (Committee on Armed Services), p. 27, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

[24] Pursuant to Section 623(c) of the Department of Defense Authorization Act, 1985, Public Law 98-525, *id*., §623(c), 98 Stat. at 2542, these revisions to the career sea pay program for enlisted personnel became effective October 1, 1984.

... the increased rates of career sea pay should provide a substantial incentive for enlisted personnel to remain at sea. This, in turn, should ease sea-to-shore rotation pressures, thereby facilitating increased utilization of the reserves.[25]

The Department of Defense Authorization Act, 1986, Public Law 99-145, §634(a), 99 Stat. 583, 647 (1985), increased the rates of career sea pay for warrant officers in pay grades W-3 and W-4 and added four new cumulative-years-of-sea-duty categories for all warrant and commissioned officers--namely, over 14 years, over 16, over 18, and over 20. In addition, the 1986 Authorization Act, Public Law 99-145, *id*., also removed the prohibition on payment of career sea pay to officers in pay grades O-1 and O-2 with less than four years of active enlisted or noncommissioned warrant officer service. The legislative history of the 1986 Authorization Act does not indicate the reason for these increases,[26] primarily because no report was ever submitted on the Senate bill, S. 1160, 99th Congress, 1st Session (1985), in which the career sea pay "enhancements" were first proposed.[27] In fact, the career sea pay "enhancements" adopted as part of the

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[25] House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[26] See Senate Report No. 99-118 (Committee of Conference), p. 431, and House Report No. 99-235 (Committee of Conference), p. 431, accompanying S. 1160, 99th Congress, 1st Session (1985).

[27] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41 (Committee on Armed Services), 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Armed Services Committee reported out a clean bill, S. 1160, but did not issue a report on it. As explained by Senator Goldwater, Chairman of the Armed Services Committee, when S. 1160 came before the Senate for consideration:

... The Armed Services Committee reported S. 1029 to the Senate on April 29 of this year. The bill was accompanied by Senate Report No. 99-41.

When the Armed Services Committee learned that the Senate would approve no real growth in the defense budget, it reconvened on Wednesday of this week [May 15, 1985] to make further program reductions to conform to the ceiling in the budget resolution. The Committee has reported a clean bill, S. 1160, reflecting these new budget levels ....

Most of the Senate Report 99-41 continues to be applicable to this bill....

131 *Cong. Rec*. 12438, 12500 (1985) (daily ed., 131 *Cong. Rec*. S6415, S6475 (May 17, 1985)) (statement of Senator Goldwater). In "explanatory background information" on some of the differences between S. 1029 and S. 1160, the following appears:

The compensation and benefits provisions of the bill contain significant differences from those contained in S. 1029....

1986 Authorization Act exactly mirror recommendations advanced by the *Fifth Quadrennial Review of Military Compensation* in 1984.[28] In support of its recommendations concerning career sea pay for officers, the *Fifth Quadrennial Review* had stated:

> ... It is appropriate to establish incremental rates beyond 12 years through 20 years of sea duty to properly compensate those personnel with such creditable sea time for the hardships of sea duty. A new maximum of $410 is sufficient.
>
> ... Commissioned officers should be eligible for Career Sea Pay after accruing three years' creditable sea service, regardless of paygrade [sic].[29]

With respect to the extension of career sea pay to all officers in pay grades O-1 and O-2 with over three years of sea duty, the *Fifth Quadrennial Review* also stated:

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... In addition, the Committee recommended increases or enhancements to a number of special and incentive pays....

The special and incentive pays ... involved in these recommendations include:

e. Career sea pay.

Each of these benefit increases or enhancements are in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec*. 12474 (1985) (daily ed., 131 *Cong. Rec*. S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "explanatory background material" provided by Senator Goldwater specifically dealt with the "enhancements" to the career sea pay program contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985).

[28] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system of the uniformed services. The Ninth Quadrennial Review of Military Compensation was convened in 1999, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in late 2001.

[29] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 604-605 (November 1983). Also see Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 24-25, 605 (November 1983), and "*Executive Summary*, Report of the Fifth Quadrennial Review of Military Compensation," p. VI-10 and 11 (January 1984). (The rates of career sea pay for commissioned and warrant officers adopted in the 1986 Authorization Act are the same as those proposed by the *Fifth Quadrennial Review* in the table at page 603 of Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, November 1983.)

> Related to th[e] issue of junior personnel [being entitled to career sea duty pay] is the dual requirement for officer personnel both to be in pay grade O-3 and to have accrued three years' creditable sea duty before eligibility to draw Career Sea Pay. The intent of Congress appears to have been to preclude officers from drawing the pay until they had served an appropriate period of apprenticeship at sea. The three-year minimum will accomplish this.
>
> For those O-2's who accrue three years' creditable sea service prior to regular promotion to O-3, it is an inappropriate penalty to preclude payment of Career Sea Pay. Additionally, in this period of improved retention, promotion flow points may change. This has already occurred in the NOAA [National Oceanic and Atmospheric Administration, one of the uniformed services whose members are frequently assigned to sea duty] corps. Thus, officers may be beyond their obligated service and have up to 4 1/2 years of sea service before promotion to O-3. Congress stated that they were reinstating officer sea pay "because of the arduous duty involved in long deployments and because of the retention problems among Navy officers in certain skills." Surface warfare O-2's, less than a 1000 of whom would be affected by this change, continue to have retention rates well below 50 percent.[30]

It would appear that Congress was persuaded by the analysis and reasoning of the *Fifth Quadrennial Review*.

The National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §621, 101 Stat. 1019, 1097-1100 (1987), further revised the career sea pay program, again at the urging of the Department of Defense. This revision made three structural changes and adopted a "save pay" provision. First, the 1988/1989 Authorization Act, Public Law 100-180, *id*., adjusted the rates of career sea duty pay for enlisted personnel and warrant officers, making no adjustments to the rates for commissioned officers. Under these adjustments, career sea duty pay rates for enlisted personnel with more than five years of sea duty were generally increased; rates for enlisted personnel with less than five years of sea duty were generally decreased; and rates for warrant officers in pay grades W-1, W-2, and W-3 with more than nine years of sea duty and warrant officers in pay grade W-4 with more than ten years of sea duty were increased. Second, entitlements to the career sea pay premium for enlisted personnel in pay grades above E-4 with more than five years of sea duty were eliminated. The

[30] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*," Volume III, p. 604 (November 1983). *cf. id*., pp. 24-25.

combined effect of these two changes is that enlisted personnel with more than five years of sea duty are now automatically entitled to roughly the same career sea duty pay they would have been entitled to if they had served more than 36 consecutive months of sea duty and had accordingly been entitled to the career sea duty premium in addition to their regular career sea duty pay. Third, the definition of "sea duty" was changed in two particulars: first, in contrast to prior practice, the term "sea duty" as now defined includes all time spent on a ship the primary mission of which is accomplished in port, so that if a member is assigned to such duty for, *e.g.*, two years, the member would be given credit for two years of sea duty for the purpose of determining the amount of career sea pay to which he or she might be entitled during his or her next sea duty assignment; and second, members assigned to ships the primary mission of which is accomplished in port are eligible to draw sea pay whenever the ship is away from its homeport, whereas under prior practice members assigned to such ships were entitled to sea pay only when their ship was away from its homeport for more than 30 consecutive days. Finally, in a change that did not effectively revise the career sea pay program, the 1988/1989 Authorization Act, Public Law 100-180, *id*., adopted a "save pay" provision to ensure that personnel whose career sea pay entitlements would otherwise have been cut under the new rates did not in fact suffer any cut in entitlement so long as they remained assigned to the same sea duty station.

As explained by the House Armed Services Committee:

> The committee recommends restructuring Career Sea Pay: (1) to provide increased compensation to those on their second sea tour and less to those on their first sea tour; (2) to protect members during fiscal year 1988 who would be adversely affected by the change with a "save pay" provision; and (3) to correct a sea pay inequity associated with members assigned to ships whose primary mission is accomplished in port.
>
> Specifically, [the Committee proposal] would increase the rates of Career Sea Pay for enlisted members with more than five years of cumulative sea duty and eliminate the Career Sea Pay premium for these members. Rates for warrant officers would also be adjusted to avoid potential pay inversions associated with the small number of enlisted members annually selected as warrants who would continue sea intensive careers. In addition, this [proposal] would permit all time assigned to and served in ships whose primary mission to

accomplished [sic] in port (e.g. destroyer and submarine repair ships and tenders) to be credited as sea duty and allow members assigned to these ships to receive Career Sea Pay for each day the ship is away from homeport.[31]

Career sea pay and the career sea pay premium are not authorized for Reserve Forces personnel performing inactive-duty training.

Following passage of the rates National Defense Authorization Act for Fiscal Years 1988 and 1989, rates of special pay for career sea duty for Navy personnel were:[32]

**COMMISSIONED OFFICERS**

| **Pay Grade** | **Years of Sea Duty** | | | | | | |
|---|---|---|---|---|---|---|---|
| | **OVER 3** | **OVER 4** | **OVER 5** | **OVER 6** | **OVER 7** | **OVER 8** | **OVER 9** |
| O-1 | $150 | $160 | $185 | $190 | $195 | $205 | $215 |
| O-2 | 150 | 160 | 185 | 190 | 195 | 205 | 215 |
| O-3 | 150 | 160 | 185 | 190 | 195 | 205 | 215 |
| O-4 | 185 | 190 | 200 | 205 | 215 | 215 | 220 |
| O-5 | 225 | 225 | 225 | 225 | 230 | 245 | 250 |
| O-6 | 225 | 230 | 230 | 240 | 255 | 265 | 280 |

| **Pay Grade** | | | | | | | |
|---|---|---|---|---|---|---|---|
| | **OVER 10** | **OVER 11** | **OVER 12** | **OVER 14** | **OVER 16** | **OVER 18** | **OVER 20** |
| O-1 | $225 | $225 | $240 | $250 | $260 | $270 | $280 |
| O-2 | 225 | 225 | 240 | 250 | 260 | 270 | 280 |
| O-3 | 225 | 225 | 240 | 260 | 270 | 280 | 290 |
| O-4 | 225 | 225 | 240 | 270 | 280 | 290 | 300 |
| O-5 | 260 | 265 | 265 | 285 | 300 | 315 | 340 |
| O-6 | 290 | 300 | 310 | 325 | 340 | 355 | 380 |

[31]House Report No. 100-58 (Committee on Armed Services), p. 204, accompanying H.R. 1748, 100th Congress, 1st Session (1987). Cf. Senate Report No. 100-57 (Committee on Armed Services), p. 146, accompanying S. 1174, and House Report No. 100-446 (Committee of Conference), p. 643, 100th Congress, 1st Session (1987).

[32] The Warrant Officer Management Act, enacted as Title XI of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, 105 Stat. 1290, 1491-1506 (1991), established the new warrant officer pay grade, W-5, National Defense Authorization Act for Fiscal Years 1992 and 1993, *id*., §1111(a), 105 Stat. at 1491, and authorized members serving in that pay grade to receive special pay for career sea duty at the rates set out on the lines relating to that pay grade in the table below, National Defense Authorization Act for Fiscal Years 1992 and 1993, *id*., §1111(d)(3), 105 Stat. at 1492. For the reasons underlying the establishment of the new pay grade, see Chapter II.B.1 hereof, above, "Basic Pay".

## WARRANT OFFICERS

| Pay Grade | Years of Sea Duty | | | | |
|---|---|---|---|---|---|
| | LESS THAN 1 | OVER 1 | OVER 2 | OVER 3 | OVER 4 |
| W-1 | $130 | $135 | $140 | $150 | $170 |
| W-2 | 150 | 150 | 150 | 150 | 170 |
| W-3 | 150 | 150 | 150 | 150 | 170 |
| W-4 | 150 | 150 | 150 | 150 | 170 |
| W-5 | 150 | 150 | 150 | 150 | 170 |

| Pay Grade | OVER 5 | OVER 6 | OVER 7 | OVER 8 |
|---|---|---|---|---|
| W-1 | $175 | $200 | $250 | $270 |
| W-2 | $260 | $265 | $265 | $270 |
| W-3 | $270 | $280 | $285 | $290 |
| W-4 | $290 | $310 | $310 | $310 |
| W-5 | $290 | $310 | $310 | $310 |

| Pay Grade | OVER 9 | OVER 10 | OVER 11 | OVER 12 |
|---|---|---|---|---|
| W-1 | $300 | $325 | $325 | $340 |
| W-2 | 310 | 340 | 340 | 375 |
| W-3 | 310 | 350 | 375 | 400 |
| W-4 | 310 | 350 | 375 | 400 |
| W-5 | 310 | 350 | 375 | 400 |

| Pay Grade | OVER 14 | OVER 16 | OVER 18 | OVER 20 |
|---|---|---|---|---|
| W-1 | $360 | $375 | $375 | $375 |
| W-2 | 400 | 400 | 400 | 400 |
| W-3 | 425 | 425 | 450 | 450 |
| W-4 | 450 | 450 | 500 | 500 |
| W-5 | 450 | 450 | 500 | 500 |

## ENLISTED MEMBERS

| Pay Grade | Years of Sea Duty | | | | |
|---|---|---|---|---|---|
| | 1 OR LESS | OVER 1 | OVER 2 | OVER 3 | OVER 4 |
| E-4 | $50 | $60 | $120 | $150 | $160 |
| E-5 | 50 | 60 | 120 | 150 | 170 |
| E-6 | 100 | 100 | 120 | 150 | 170 |
| E-7 | 100 | 100 | 120 | 175 | 190 |
| E-8 | 100 | 100 | 120 | 175 | 190 |
| E-9 | 100 | 100 | 120 | 175 | 190 |

| Pay Grade | OVER 5 | OVER 6 | OVER 7 | OVER 8 |
|---|---|---|---|---|
| E-4 | $160 | $160 | $160 | $160 |
| E-5 | 315 | 325 | 350 | 350 |
| E-6 | 315 | 325 | 350 | 350 |
| E-7 | 350 | 350 | 375 | 390 |
| E-8 | 350 | 350 | 375 | 390 |
| E-9 | 350 | 350 | 375 | 390 |

| Pay Grade | OVER 9 | OVER 10 | OVER 11 | OVER 12 |
|---|---|---|---|---|
| E-4 | $160 | $160 | $160 | $160 |
| E-5 | 350 | 350 | 350 | 350 |
| E-6 | 365 | 365 | 365 | 380 |
| E-7 | 400 | 400 | 410 | 420 |
| E-8 | 400 | 400 | 410 | 420 |
| E-9 | 400 | 400 | 410 | 420 |

| Pay Grade | OVER 13 | OVER 14 | OVER 16 | OVER 18 |
|---|---|---|---|---|
| E-4 | $160 | $160 | $160 | $160 |
| E-5 | 350 | 350 | 350 | 350 |
| E-6 | 395 | 410 | 425 | 450 |
| E-7 | 450 | 475 | 500 | 500 |
| E-8 | 450 | 475 | 500 | 520 |
| E-9 | 450 | 475 | 520 | 520 |

The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-156, made substantial changes in the rate structure for both career sea pay and the career sea pay premium. The congressionally established pay table that had been in existence since the Military Pay and Allowances Benefits Act of 1980 was eliminated, and the "Secretary concerned" received authorization to prescribe the rates for all members serving under his/her jurisdiction. This meant in effect personnel of each branch received career sea duty pay at a different rate in the relatively rare case of an Army or Air Force member being assigned to long-term sea duty. The maximum monthly rate was set at $750.

As the law stood following the National Defense Authorization Act for Fiscal Years 1988 and 1989, the amount of the career sea pay premium remained $100 for all members, with the exclusion of those in grade E-4 with more than five years of sea duty. The revisions in the National Defense Authorization Act for Fiscal Year 2001 eliminated

that exclusion. As in the case of regular career sea pay, authorization for setting rates for the premium pay was moved from "regulations prescribed by the President" to the "Secretary concerned." Although the law stipulated a maximum of $350 per month, in practice the amount of this pay remained at $100 for all members through Fiscal Year 2004.

Until 2003, the conditions of entitlement to career sea pay and premium career sea pay for uniformed services personnel were set out in Sections 201 and 202 of Executive Order 11157, as amended, in various supplementary regulations adopted by the service Secretaries pursuant to Section 203 of Executive Order 11157, and in the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R.[33] Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301(a), relevant to career sea pay and other incentive pays, with the Secretaries of Commerce, defense, Health and Human Services, and Homeland Security, as those entitlements affect military personnel under the respective jurisdictions of those departments. This change reflected the change from Presidential authority to departmental authority that had been prescribed for setting the amounts and conditions of career duty pay in §630 of the National Defense Authorization Act for Fiscal Year 2001. Thus the rates for career sea duty pay continued to vary among the branches.

**Current rates of pay for career sea duty:** As of fiscal year 2004, the pay rates for career sea duty for Navy personnel were as follows:

[33] See, in particular, *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, Part 1, Chapter 18, Section A, ¶¶11801-11806 (Career Sea Pay), and Section B, ¶¶11811-11813 (Premium Career Sea Pay).

## COMMISSIONED OFFICERS

**Pay Grade**

**Years of Sea Duty**

| | OVER 3 | OVER 4 | OVER 5 | OVER 6 | OVER 7 | OVER 8 | OVER 9 |
|---|---|---|---|---|---|---|---|
| O-6 | 315 | 320 | 320 | 335 | 360 | 370 | 395 |
| O-5 | 315 | 315 | 315 | 315 | 320 | 345 | 350 |
| O-4 | 260 | 265 | 280 | 285 | 300 | 310 | 310 |
| O-3 | 210 | 225 | 260 | 265 | 275 | 285 | 300 |
| O-2 | 210 | 225 | 260 | 265 | 275 | 285 | 300 |
| O-1 | 210 | 225 | 260 | 265 | 275 | 285 | 300 |

**Pay Grade**

| | OVER 10 | OVER 11 | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 |
|---|---|---|---|---|---|---|---|
| O-6 | 405 | 420 | 435 | 455 | 475 | 500 | 535 |
| O-5 | 365 | 370 | 370 | 400 | 420 | 440 | 475 |
| O-4 | 315 | 315 | 335 | 380 | 395 | 405 | 420 |
| O-3 | 315 | 315 | 335 | 365 | 380 | 395 | 405 |
| O-2 | 315 | 335 | 335 | 350 | 365 | 380 | 395 |
| O-1 | 315 | 335 | 335 | 350 | 365 | 380 | 395 |

## WARRANT OFFICERS

**Pay Grade** **Years of Sea Duty**

| | LESS THAN 1 | OVER 1 | OVER 2 | OVER 3 | OVER 4 | OVER 5 |
|---|---|---|---|---|---|---|
| W-5 | 210 | 210 | 210 | 210 | 240 | 240 |
| W-4 | 210 | 210 | 210 | 210 | 240 | 240 |
| W-3 | 210 | 210 | 210 | 210 | 240 | 380 |
| W-2 | 210 | 210 | 210 | 210 | 240 | 365 |
| W-1 | 180 | 190 | 195 | 210 | 240 | 245 |

**Pay Grade**

| | OVER 6 | OVER 7 | OVER 8 | OVER 9 | OVER 10 | OVER 11 |
|---|---|---|---|---|---|---|
| W-5 | 435 | 435 | 435 | 435 | 490 | 525 |
| W-4 | 435 | 435 | 435 | 435 | 490 | 525 |
| W-3 | 395 | 400 | 405 | 435 | 490 | 525 |
| W-2 | 370 | 370 | 380 | 435 | 475 | 475 |
| W-1 | 280 | 350 | 380 | 420 | 455 | 455 |

**Pay Grade**

| | OVER 12 | OVER 14 | OVER 16 | OVER 18 | OVER 20 |
|---|---|---|---|---|---|
| W-5 | 560 | 630 | 630 | 700 | 700 |
| W-4 | 560 | 630 | 630 | 700 | 700 |
| W-3 | 560 | 595 | 595 | 630 | 630 |

| | | | | | |
|---|---|---|---|---|---|
| W-2 | 525 | 560 | 560 | 560 | 560 |
| W-1 | 475 | 505 | 525 | 525 | 525 |

## ENLISTED MEMBERS

**Pay Grade** **Years of Sea Duty**

| | LESS THAN 1 | OVER 1 | OVER 2 | OVER 3 | OVER 4 | OVER 5 |
|---|---|---|---|---|---|---|
| E-9 | 135 | 135 | 160 | 305 | 320 | 350 |
| E-8 | 135 | 135 | 160 | 305 | 320 | 350 |
| E-7 | 135 | 135 | 160 | 305 | 320 | 350 |
| E-6 | 135 | 135 | 160 | 280 | 300 | 315 |
| E-5 | 70 | 80 | 160 | 280 | 300 | 315 |
| E-4 | 70 | 80 | 160 | 280 | 290 | 290 |
| E-3 | 50 | 60 | 100 | 100 | 100 | 100 |
| E-2 | 50 | 60 | 75 | 75 | 75 | 75 |

**Pay Grade**

| | OVER 6 | OVER 7 | OVER 8 | OVER 9 | OVER 10 | OVER 11 | OVER 12 |
|---|---|---|---|---|---|---|---|
| E-9 | 350 | 375 | 490 | 500 | 500 | 510 | 520 |
| E-8 | 350 | 375 | 490 | 500 | 500 | 510 | 520 |
| E-7 | 350 | 375 | 490 | 500 | 500 | 510 | 520 |
| E-6 | 325 | 350 | 450 | 460 | 465 | 465 | 480 |
| E-5 | 325 | 350 | 450 | 450 | 450 | 450 | 450 |
| E-4 | 290 | 290 | 390 | 390 | 390 | 390 | 390 |
| E-3 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| E-2 | 75 | 75 | 75 | 75 | 75 | 75 | 75 |

**Pay Grade**

| | OVER 13 | OVER 14 | OVER 15 | OVER 16 | OVER 17 | OVER 18 |
|---|---|---|---|---|---|---|
| E-9 | 550 | 575 | 575 | 620 | 620 | 620 |
| E-8 | 550 | 575 | 575 | 600 | 600 | 620 |
| E-7 | 550 | 575 | 575 | 600 | 600 | 600 |
| E-6 | 495 | 510 | 510 | 525 | 525 | 550 |
| E-5 | 450 | 450 | 450 | 450 | 450 | 450 |
| E-4 | 390 | 390 | 390 | 390 | 390 | 390 |
| E-3 | 100 | 100 | 100 | 100 | 100 | 100 |
| E-2 | 75 | 75 | 75 | 75 | 75 | 75 |

**Cost**: For the cost of career sea duty pay from 1972 to 2004, see Tables II-20 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.D.3.e.**

## Special Continuation, Accession, and Annual Incentive Pays for Nuclear-Qualified Officers

**Legislative Authority**: 37 U.S.C. §§312, 312b, and 312c. *Cf.* 37 U.S.C. §312a for nuclear-trained and -qualified enlisted members.[1]

**Purpose**: To encourage voluntary accessions into the nuclear power officer community and to provide an inducement for nuclear-trained and nuclear-qualified Navy officers to continue on active duty upon completion of obligated service.

**Background**: The Act of June 3, 1969, Public Law 91-20, §1(1), 83 Stat. 12, 13 (1969), authorized a special continuation pay of $15,000 for nuclear-qualified submarine officers with less than 10 years of commissioned service who agreed to remain in active submarine service for a period of four years after their initial service obligations. The House Armed Services Committee described the need for the special pay in these terms:

> The purpose of the bill is twofold:
>
> First, to arrest and reverse a rapidly increasing rate of resignation by qualified nuclear submarine officers, thereby retaining sufficient qualified officer personnel to meet present and future manning requirements of the nuclear submarine force; and
>
> Second, to maintain a sufficient officer force of qualified nuclear submarine officers to make possible a viable sea-shore rotation, including appropriate and meaningful utilization of the postgraduate education program.
>
> The purpose of the legislation would be effected by authorizing ... a substantial monetary bonus to certain nuclear-trained submarine officers who voluntarily extend their period of active service.[2]

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[1] Special pay for nuclear-trained and nuclear-qualified enlisted members, codified at 37 U.S.C. §312a, is covered in Chapter II.E.2.c. hereof, "Selective Reenlistment Bonus," below. See in particular footnotes 30 and 31 to Chapter II.E.2.c. together with accompanying text.

[2] House Report No. 91-141 (Committee on Armed Services), p. 1, accompanying H.R. 9328, 91st Congress, 1st Session (1969). See Senate Report No. 91-182 (Committee on Armed Services), p. 2, accompanying H.R. 9328, 91st Congress, 1st Session (1969).

Under the act, the continuation pay program provided for payments to be made for an agreement to remain on active duty in nuclear-related operations for a four-year period.

The Act of June 3, 1969, Public Law 91-20, *id*., had an expiration date of June 30, 1973. The Act of October 27, 1972, Public Law 92-581, §1, 86 Stat. 1277 (1972), broadened the continuation pay authority to include nuclear-qualified surface officers as well as submarine officers and extended the expiration date to June 30, 1975.[3] Under the original law, continuation pay was payable on an installment basis--as a general rule, four yearly installments of $3,750 each, starting at the end of the officer's period of initial obligated service, or, alternatively, five yearly installments of $3,000 each, starting on the date, up to one year in advance of the end of an officer's period of initial obligated service, an extension agreement was accepted. Authority to make special continuation payments expired June 30, 1975, Congress not having extended the cut-off date.

The Nuclear Career Incentive Act of 1975, Public Law 94-356, §2, 90 Stat. 901 (1976), reinstated nuclear continuation pay authority effective August 1, 1976,[4] and raised the amount of such pay to $20,000--*i.e*., five installments of $4,000 or four installments of $5,000--with a new expiration date of September 30, 1981. In addition to extending the continuation pay authority and increasing the rates payable, the Nuclear Career Incentive Act of 1975, Public Law 94-356, *id*., also created a "nuclear career annual incentive bonus" and a "nuclear career accession bonus."[5]

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[3] In commenting on the proposal to broaden and extend the special continuation pay authority for nuclear-trained-and-qualified officers, the Senate Committee on Armed Services characterized the special pay program as already having been "highly successful." Senate Report No. 92-1307 (Committee on Armed Services), p. 4, accompanying H.R. 16925, 92d Congress, 2d Session (1972). Indeed, the special pay program was deemed so "successful" that a similar special pay program, codified at 37 U.S.C. §312a, was adopted for nuclear-trained-and-qualified enlisted personnel. See, *e.g*., footnotes 30 and 31 to Chapter II.E.2.c., "Selective Reenlistment Bonus," below, together with accompanying text.

[4] Because of the earlier expiration, there was a hiatus in continuation pay authority from July 1, 1975, to August 1, 1976. See Nuclear Career Incentive Act of 1975, Public Law 94-356, §5, 90 Stat. 901, 904 (1976).

[5] See Senate Report No. 94-1008 (Committee on Armed Services), pp. 1-3, 94th Congress, 2d Session (1976), generally.

The annual incentive bonus established under the Nuclear Career Incentive Act of 1975, Public Law 94-356, *id.*, §3, 90 Stat. at 901-903, and codified at 37 U.S.C. §312c, provided a special pay for nuclear-trained and nuclear-qualified officers on active duty at the end of each "nuclear service year"--starting October 1, 1975--at an annual rate of $4,000 for officers who had completed training while in officer status and $2,400 for officers who were nuclear trained as enlisted members. Under the act, continuation pay was authorized for a nuclear officer who had finished his initial service obligation, who had less than ten years of commissioned service, and who agreed to extend his active duty obligation for four years; a qualified electing officer could receive continuation pay of $5,000 for each of the four years. The "incentive bonus," on the other hand, was intended as an alternative option to continuation pay: if an affected officer chose not to commit himself for four years, thus not becoming eligible for continuation pay of $5,000 per year, he could nevertheless remain on active duty without any specific commitment and earn the annual incentive bonus of $4,000 for each nuclear service year completed. As a follow-on incentive, between the 10th and 18th year of commissioned service, a nuclear officer became eligible for the $4,000 annual incentive bonus even when not assigned to nuclear duty--except when away from such an assignment for three or more consecutive years. Between the 18th and 26th year of commissioned service, on the other hand, such an officer remained eligible for the annual incentive bonus, but only when actually assigned to a nuclear billet. All entitlement to the annual incentive bonus stopped at the 26th year of commissioned service. Regardless of any other factor, no bonus entitlement existed for an officer receiving aviation career incentive pay or for an officer in pay grade O-7 or higher. The incentive bonus was authorized through the nuclear service year ending September 30, 1981.

The "nuclear career accession bonus" established under the Nuclear Career Incentive Act of 1975, Public Law 94-356, *id.*, §3, 90 Stat. at 901, and codified at 37 U.S.C. §312b, on the other hand, was set up as a single payment, not to exceed $3,000, payable to an officer with less than five years of commissioned service upon successful completion of nuclear training. The primary purpose of the bonus was to induce newly-

commissioned officers to volunteer for nuclear training and duty.[6] The Navy indicated during hearings on the authorizing bill that the accession bonus would not be used at least through fiscal year 1977, pending an evaluation of the effectiveness of the other programs--the annual incentive bonus and the increased rates of continuation pay--adopted to deal with retention and accession.[7] Under the act, the accession bonus was authorized for officers accepted for nuclear training before October 1, 1981.

The Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §2, 95 Stat. 3359, 3359-3360 (1980), generally increased the various rates of pay for nuclear-qualified officers and extended the termination dates in recognition of the "serious difficulties" encountered by the Navy "in attracting and retaining nuclear officers."[8] In particular, the maximum amount of special continuation pay was increased from $5,000 for each year of an active duty continuation agreement to $7,000, or $28,000 *in toto* for the single four-year agreement contemplated under the continuation pay program, to be paid either in four installments of $7,000 each or, in the case of an active duty agreement entered one year in advance of the expiration of the initial term of obligated service, in five installments of $5,600 each. In addition, authority to accept active duty continuation agreements was extended from September 30, 1981, to September 30, 1987. Similarly, the maximum amount of annual nuclear career incentive bonus was increased from $4,000 to $6,000 (from $2,400 to $3,500 for officers nuclear-trained while enlisted), and authority to make such payments was extended to "nuclear service years" ending before October 1, 1987. Finally, new provisions were adopted under which a nuclear career

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[6] *e.g.*, Senate Report No. 94-1008 (Committee on Armed Services), pp. 2-3, 94th Congress, 2d Session (1976).

[7] As the Senate Committee on Armed Services noted:

> . . . The Committee emphasizes that this new authority should be used by the Navy only if demonstrably needed and then only to the extent and at the minimum financial level necessary to meet accession requirements.
>
> Senate Report No. 94-1008 (Committee on Armed Services), p. 2, 94th Congress, 2d Session (1976).

[8] Senate Report No. 96-105 (Committee on Armed Services), p. 5, accompanying H.R. 7626, 96th Congress, 2d Session.

accession bonus of $3,000 could be paid to an officer who had applied and been accepted for submarine nuclear power training. Under the preexisting law, such bonuses could be paid only after successful completion of training; under the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id*., bonuses could be paid both upon acceptance for, and completion of, training. In addition, authority to make such bonus payments was extended to personnel accepted for training on or before September 30, 1987. The effective date of the various amendments was January 1, 1981.

The Uniformed Services Pay Act of 1981, Public Law 97-60, §119, 95 Stat. 989, 997 (1981), extended the nuclear career accession bonus program to personnel applying for surface nuclear power training so that, in addition to being entitled to a bonus upon completion of training, they, like their submarine counterparts, became entitled to an accession bonus upon acceptance for training. As explained by Senator Tower of Texas, who offered the extension as a Senate floor amendment, the payment of an acceptance bonus for submarine nuclear power training, as had been authorized by the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id*., had had the effect of shifting personnel from surface nuclear training to submarine nuclear training, and it was necessary to redress the balance.[9] In addition, the Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., permitted nuclear qualified officers who had, before January 1, 1981, entered a continuation agreement for a $20,000 bonus to cancel that agreement in exchange for a new agreement, covering the four year period commencing on such date, at the $28,000 rate that had become effective January 1, 1981.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §632, 99 Stat. 583, 643-646 (1985), effected further changes to the special pay program applicable to nuclear-qualified officers. First, the 1986 authorization act generally increased the various rates of special pay for such officers. The maximum amount of special continuation pay was increased from $7,000 to $12,000 for each year of an active

[9] 127 *Cong. Rec*. 20169-20170 (1981) (daily ed., 127 *Cong. Rec*. S9391-S9392 (September 10, 1981)) (statement of Senator Tower).

duty continuation agreement; the maximum annual nuclear career incentive bonus was increased from $6,000 to $10,000 for officers who completed nuclear training while they were officers and from $3,500 to $4,500 for officers who had been nuclear-trained while enlisted. The nuclear career accession bonus was increased from $3,000 to a maximum of $8,000.[10] Second, the act removed the proviso that limited nuclear-qualified officers to one four-year period for which special continuation pay was authorized: under the amendment to the continuation pay program effected by the act, nuclear-qualified officers may receive multiple continuation bonus payments. In the same vein, the act removed the proviso that limited continuation bonus payments to nuclear-qualified officers who had completed less than ten years of commissioned service: under the continuation pay program as amended by the act, nuclear-qualified officers are entitled to such pay, upon execution and acceptance of qualifying continuation agreements, through 26 years of commissioned service. The act also permitted nuclear-qualified officers to choose periods of three, four, or five years of extended service commitment instead of the single four year period specified under the preceding continuation pay program.[11] Finally, the act extended the period for which the special continuation, annual incentive, and accession pays were authorized from October 1, 1987, to October 1, 1990.[12]

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[10] In presentations to the House Armed Services Committee, the Navy indicated that it "intend[ed] to use no more than $9,000 per year" per officer of the continuation pay authority; that it "does not intend at the present time to implement more than $7,200" per year per officer of the annual incentive bonus authority (not more than $3,600 per year per officer for officers who received nuclear training while enlisted); and that it "does not intend to implement more than the current $6,000 ceiling" of the accession bonus authority (although it did indicate it expected to pay more of the amount at the time of entry into the program and less upon completion of training). House Report No. 99-81 (Committee on Armed Services), pp. 230-231, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

[11] The act also incorporated a provision similar to that of the preceding continuation pay program whereby the Secretary of the Navy--as the officer designated to administer the program--could accept an extension agreement as much as one year before the end of an affected officer's existing period of obligated service. As was true of the preceding program, the special continuation bonus was to be paid in equal annual installments over the period covered by the extension agreement. (In the case of officers who tendered extension agreements before the end of their existing period of obligated service, a special provision dealt with the number of installments to be paid.) See 37 U.S.C. §312(a), as amended by Section 632(a)(1)(D)(iii) of the Department of Defense Authorization Act, 1986, Public Law 99-145, §632(a)(1)(D)(iii), 99 Stat. 583, 644 (1985).

[12] The amendments to the nuclear-trained-and-qualified-officer special pay programs became effective October 1, 1985. Department of Defense Authorization Act, 1986, Public Law 99-145, §632(d), 99 Stat. 583, 646 (1985). See 37 U.S.C. §§312 note, 312b note, and 312c note.

As explained by the House Armed Services Committee, the summarized enhancements to the nuclear officer special pays were recommended "to eliminate the inventory shortage of experienced nuclear qualified officers."[13] In support of this overall conclusion, the committee went on to note:

A severe shortage of experienced (pay grades O-4 to O-6) nuclear trained officers persists. Officers in these pay grades are required for department head, executive officer, commanding officer, and key post command billets. By the end of fiscal year 1984, this shortage was 19 percent and is projected to grow to 22 percent by 1987 unless corrective action is taken. The shortage is having significant impact on the career opportunities of the nuclear qualified officer force. For example, over 33 percent of submarine officers completing a 36-month sea tour as submarine department heads immediately serve a follow-on 36-month sea tour as submarine executive officers. Over 60 percent of submarine officers completing the 36 month executive officer tour immediately serve a follow-on 42 month submarine commanding officer tour. Such back-to-back sea tours, required to man key sea billets, deny officers who remain in the Navy the opportunity for professional development short tours and influence additional officers to leave the Navy.[14]

In short, the benefits available under the nuclear officer continuation, annual incentive, and accession pays were liberalized to further increase incentives for affected officers to remain in the Navy in nuclear officer billets.

The National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §614, 103 Stat. 1352, 1446 (1989), further extended the termination dates for the special continuation, annual incentive, and accession pay programs, this time to September 30, 1995. The extensions were effected with almost no discussion of the overall aims of the programs or the specific conditions and needs underlying the extensions.[15] The National Defense Authorization Act for Fiscal Year 1996, Public Law

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[13] House Report No. 99-81 (Committee on Armed Services), p. 230, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

[14] House Report No. 99-81 (Committee on Armed Services), p. 230, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

[15] See, *e.g.*, House Report No. 101-121 (Committee on Armed Services), p. 276, and House Report No. 101-331 (Committee of Conference), p. 586, both accompanying H.R. 2461, 101st Congress, 1st Session (1989). For example, the complete text of the House Armed Services Committee Report dealing with the proposed extension reads as follows:

104-106, §613(e), (f), and (g), 110 Stat. 186, 360 (1996), again extended the termination dates for the special continuation, accession, and annual incentive pay programs, respectively, to September 30, 1997.[16] One-year extensions were prescribed in the respective national defense authorization acts for fiscal years 1997 through 2004; the only exception, the act for fiscal year 1999 (Public Law 105-261, 112 Stat. 2035), provided for a three-month extension from October 1, 1999 to January 1, 2000 in the process of adjusting funding end-points from a fiscal-year to the calendar-year cycle. As the program was extended from year to year, two increases occurred in all special pays for nuclear-qualified officers. The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1770, increased the nuclear career accession bonus from $8,000 to $10,000 and the continuation bonus from $12,000 to $15,000. At that time the career annual incentive bonuses were increased from $4,500 to $5,500 for nuclear-qualified officers who trained as enlisted members and from $10,000 to $12,000 for those who trained as officers. The National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, 113 Stat. 644, made more significant increases in all the special pays

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Current law authorizes until September 30, 1990, the payment of (1) special pay to certain nuclear qualified officers who agree to remain on active duty for a specified period of time; (2) a nuclear career accession bonus for individuals that [sic] agree to serve as officers in connection with the supervision, operation and maintenance of naval nuclear power plants; and (3) a nuclear career annual incentive bonus for personnel serving in select grades and specialties. [The House proposal] would extend these authorities until September 30, 1995.

House Report No. 101-121, *id*., p. 276. The Conference Report merely summarized the proposals in the House and Senate bills. House Report No. 101-331, *id*., p. 586. (Although the Conference Report, cited above, indicated that the Senate bill, S. 1352, 101st Congress, 1st Session (1989), had proposed extending the special continuation, annual incentive, and accession pay programs to September 30, 1992, the Senate Report on S. 1352 made no mention of the proposed extensions. See Senate Report No. 101-81 (Committee on Armed Services), accompanying S. 1352, 101st Congress, 1st Session (1989); see especially pp. 176-182 of Senate Report No. 101-81.)

[16] The House of Representatives proposed a two-year extension of these termination dates to September 30, 1998, House Report No. 104-131 (Committee on National Security), p. 231, accompanying H.R. 1530, 104th Congress, 1st Session (1995), but the Senate proposed only a one-year extension to September 30, 1997, expressing a concern that the Navy may not have given careful enough consideration to the effect of downsizing the nation's nuclear submarine force on the need for the nuclear-qualified-officer special pays, Senate Report No. 104-112 (Committee on Armed Services), p. 255, accompanying S. 1026, 104th Congress, 1st Session (1995). The one-year extension recommended by the Senate was approved in conference. House Report No. 104-406 (Committee of Conference), pp. 815-816, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), pp. 805-806, accompanying S. 1124, 104th Congress, 2d Session (1996).

for nuclear-qualified officers. Following the authorization bill for 2000, the nuclear career accession bonus increased from $10,000 to $20,000 and nuclear officer continuation pay increased from $15,000 to $25,000. The nuclear career annual incentive bonuses increased from $5,500 to $10,000 for officers who trained as enlisted members and from $12,000 to $22,000 for officers who trained while in officer status. Congress engaged in no significant discussion of the rationale for the increases in the 1998 or the 2000 legislation.

> The provisions governing continuation pay for nuclear-qualified officers are codified at 37 U.S.C. §312; those governing the career accession bonus, at 37 U.S.C. §312b; and those governing the annual incentive bonus, at 37 U.S.C. §312c.[17] [18]

**Current rates of pay**: The rates of special pay for nuclear-qualified officers are as follows:

| Type of pay | Amount |
|---|---|
| Nuclear career accession bonus | May not exceed $20,000 per year[19] |
| Nuclear officer continuation pay | May not exceed $25,000 per year[20] |
| Nuclear career annual incentive bonus, training as enlisted member | May not exceed $10,000 per year |
| Nuclear career annual incentive bonus, training as officer | May not exceed $22,000 per year[21] |

[17] Special pay for nuclear-trained-and-qualified enlisted personnel, codified at 37 U.S.C. §312a, is covered in Chapter II.E.2.c., below, which deals with selective reenlistment bonuses. See in particular footnotes 30 and 31 to Chapter II.E.2.c., "Selective Reenlistment Bonus," below, together with accompanying text. Under the provisions of 37 U.S.C. §312a(e), authority for special pay for nuclear-trained-and-qualified enlisted personnel expired on June 30, 1975.

[18] For regulations governing the payment of special pays and bonuses for nuclear-qualified officers, see *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶11201-11234.

[19] For rates of pay under the nuclear career accession bonus authority of 37 U.S.C. §312b currently authorized by regulation, see *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶11201-11204 and 11231-11234.

[20] For rates of pay under the nuclear officer continuation pay authority of 37 U.S.C. §312 currently authorized by regulation, see *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶11211-11215.

**Cost**: For the cost of pays for nuclear-qualified officers from 1972 to 2004, see Table II-21 of *Military Compensation Statistics Tables*, volume II of this edition.

[21] For rates of pay under the nuclear career annual incentive bonus authority of 37 U.S.C. §312c currently authorized by regulation, see *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶11221-11224.

**Chapter II.D.4.a.**

**Experimental Stress Duty Pays**

**Legislative Authority**: 37 U.S.C. §301(a)(5), (6), and (7), and (c)(1).

**Purpose**: To provide additional pay to increase the ability of the uniformed services to induce personnel to enter into and remain in duties involving an unusually high level of physiological or other stress.

**Background**: The Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(4), 69 Stat. 18, 19-20 (1955), added duty "as a low-pressure chamber inside observer" and duty "as a human acceleration or deceleration experimental subject" to the categories of duty for which hazardous duty incentive pay was authorized. The Act of August 28, 1957, Public Law 85-208, 71 Stat. 484 (1957), added a further duty category to the list for which such pay was authorized--namely, duty "as a human test subject in thermal stress experiments."[1] The Uniformed Services Pay Act of 1963, Public Law 88-132, §7, 77 Stat. 210, 215 (1963), amended the pressure chamber incentive pay provision by expanding eligibility to include "duty inside a high- or low-pressure chamber." The three categories of duty set out above are collectively known as experimental stress duties.

Hazardous duty incentive pay rates for experimental stress duties were initially fixed at $110 per month for officers and $55 per month for enlisted personnel and remained at those levels until 1981, when the enlisted pay was increased.[2] The officer-

[1] The hazardous duty incentive pay provisions adopted in the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(4), 69 Stat. 18, 19-20 (1955), and the Act of August 28, 1957, Public Law 85-208, 71 Stat. 484 (1947), including the experimental stress duty pays here in issue, were in the main classified to 37 U.S.C. §235. See 37 U.S.C. §235(a) and (c) (1958). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the hazardous duty pay provisions, including the experimental stress duty pays, were codified at 37 U.S.C. §301.

[2] Under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), officers received $100 per month and enlisted personnel received $50 per month for the hazardous duty incentive pays--other than flight and submarine duty pay--ultimately codified at 37 U.S.C. §301. Hazardous duty incentive pay rates were increased by 10 percent for both officers and enlisted personnel by the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(6), 69

enlisted rate differential in the pays was a product of the hazardous duty incentive pay structure adopted in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), which was in turn based on recommendations of the Advisory Commission on Service Pay, frequently referred to as the Hook Commission. The Hook Commission's rationale for an officer-enlisted differential was that:

> A higher rate of hazard pay for officers as compared with enlisted personnel is justifiable on several grounds:
>
> (1) Any special pay must be in proportion to the basic pay, so that at all times the compensation for the primary responsibility will be considerably greater than that for any additional duty.
>
> (2) The rates proposed for hazard pay serve as an inducement to undertake and continue special duties; and such an inducement need not be as great in monetary terms for lower paid and less advanced personnel as for higher paid and more highly trained personnel.
>
> (3) Officers are usually given greater responsibilities, aside from normal administrative control, than enlisted personnel on hazardous assignments. [3] [4]

Effective October 1, 1981, rates of incentive pay for enlisted personnel involved in experimental stress duty were increased 50 percent to $83 per month by the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(c), 95 Stat. 989, 993 (1981). As explained in the Senate Report, these increases were made in recognition of the fact that

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Stat. 18, 21 (1955)--to $110 for officers and to $55 for enlisted personnel. Thus, when members of the uniformed services first became entitled to hazardous duty incentive pay for experimental stress duty under amendments to 37 U.S.C. §301 made by the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(4), 69 Stat. 18, 19-20 (1955), the rates of pay were $110 a month for officers and $55 a month for enlisted personnel.

[3] *"Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay, p. 27, December 1948.

[4] For a short discussion of the treatment accorded hazardous duty incentive pays under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), see House Report No. 81-779 (Committee on Armed Services), p. 15, and Senate Report No. 81-733 (Committee on Armed Services), p. 18, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

hazardous duty incentive pay rates had "not been adjusted in more than 20 years, and this increase is needed to enhance the incentive value of this pay."[5]

Experimental stress duty pay rates for enlisted personnel were further increased to $110 per month in 1985 by the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(3), 99 Stat. 583, 648 (1985). This increase was effected by an amendment to 37 U.S.C. §301(c)(1) that did away with any distinction between officers and enlisted personnel for the vast majority of duties qualifying for hazardous duty incentive pay, specifically including the various experimental stress duties. Prior to amendment by the 1986 Authorization Act, 37 U.S.C. §301(c)(1) read as follows:

> For the performance of the hazardous duty described in [various clauses of subsection (a) of 37 U.S.C. §301, including all the experimental stress duties], an officer is entitled to $110 a month and an enlisted member is entitled to $83 a month.

After amendment by the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., 37 U.S.C. §301(c)(1) reads as follows:

> For the performance of hazardous duty described in [the same clauses set out above, including experimental stress duties], a member is entitled to $110 a month.[6]

Thus, under current 37 U.S.C. §301, all members, both officers and enlisted personnel,[7] are entitled to $110 per month for the performance of experimental stress duties under qualifying orders.

The legislative history of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., does not per se indicate the reason for doing away with the

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[5] Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981).

[6] The increase in hazardous duty incentive pay rates for enlisted personnel engaged in experimental stress duties became effective October 1, 1985. Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a), 99 Stat. 583, 648 (1985).

[7] The term "member" is defined in 37 U.S.C. §101(23) to mean "a person appointed or enlisted in, or conscripted into, a uniformed service." As such, "member" includes both officers and enlisted personnel.

distinction between officers and enlisted personnel with respect to the rates of pay authorized for experimental stress duties, primarily because no report was ever submitted on the Senate bill, S. 1160, 99th Congress, 1st Session (1985), in which the proposal to equalize the rates of experimental stress duty pay for officers and enlisted personnel was made.[8] In fact, however, the proposal to equalize officer and enlisted rates of pay for various hazardous duties, including experimental stress duties, had been made the preceding year in connection with the consideration of the Department of Defense Authorization Act, 1985, Public Law 98-525, 98 Stat. 2492 (1984). At that time, the

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[8] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41 (Committee on Armed Services), 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Armed Services Committee reported out a clean bill, S. 1160, but did not issue a report on it. As explained by Senator Goldwater, Chairman of the Armed Services Committee, when S. 1160 came before the Senate for consideration:

> ... The Armed Services Committee reported S. 1029 to the Senate on April 29 of this year. The bill was accompanied by Senate Report No. 99-41.
>
> When the Armed Services Committee learned that the Senate would approve no real growth in the defense budget, it reconvened on Wednesday of this week [May 15, 1985] to make further program reductions to conform to the ceiling in the budget resolution. The Committee has reported a clean bill, S. 1160, reflecting these new budget levels....
>
> Most of Senate Report 99-41 continues to be applicable to this bill.

131 *Cong Rec*. 12438, 12500 (1985) (daily ed., 131 *Cong. Rec*. S6415, S6475 (May 17, 1985)) (statement of Senator Goldwater). In "explanatory background information" on some of the differences between S. 1029 and S. 1160, the following appears:

> The compensation and benefits provisions of the bill contain significant differences from those contained in S. 1029....
>
> ... In addition, the Committee recommended increases or enhancements to a number of special and incentive pays....
>
> The special and incentive pays ... involved in these recommendations include:
>
> g. Hazardous duty pays.
>
> Each of these benefit increases or enhancements are in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec*. 12474 (1985) (daily ed., 131 CONG. REC. S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "explanatory background information" provided by Senator Goldwater specifically dealt with the "enhancements" to the hazardous duty incentive pay program in general, or to the experimental stress duty pay program in particular, that were contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985).

Senate Committee on Armed Services, reporting out S. 2723, 98th Congress, 2d Session (1984), had included a provision that would, among other things, have equalized officer and enlisted rates of hazardous duty incentive pay for experimental stress duties.[9] In support of its recommendation, the Committee stated:

> The committee proposes that the enlisted and officer rates for several hazardous duty incentive pays be equalized....
>
> > The *Fifth Quadrennial Review of Military Compensation* (QRMC) examined special and incentive pays in great detail. One of its conclusions was that the differential between enlisted and officer rates for seven hazardous duty incentive pays [including the experimental stress duty pays] should be eliminated....
> >
> > The committee agrees that enlisted and officer personnel should be paid the same incentive for exposing themselves to similar hazards. Therefore, it recommends that the rates for these seven hazardous duty pays be changed to entitle both enlisted and officer personnel to $110 per month.[10]
>
> The Senate proposal was eliminated in conference.[11]

As indicated immediately above, the experimental stress duty pay "enhancements" adopted as part of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., closely parallel recommendations advanced by the *Fifth Quadrennial Review of Military Compensation* in 1984.[12] In support of its

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[9] See Section 148 of S. 2723, 98th Congress, 2d Session (1984).

[10] Senate Report No. 98-500 (Committee on Armed Services), p. 210 (discussing Section 148 of the Senate bill), accompanying S. 2723, 98th Congress, 2d Session (1984).

[11] House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[12] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ...proposing changes" to the compensation system of the uniformed services. The Ninth Quadrennial Review of Military Compensation was convened in 1999, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in late 2001.

recommendation to "increase the enlisted rate to $110 per month, eliminating the officer/enlisted pay differential,"[13] the *Fifth Quadrennial Review* concluded:

> Current rates of payment [for experimental stress duties] are generally adequate to recognize the hazards [implicit in such duties] and to provide a degree of incentive.
>
> 1. Officer and enlisted personnel should receive equal compensation for exposure to experimental-type duties.
>
> 2. An appropriate rate for both officer and enlisted personnel receiving Experimental Stress Duty Pay is $110 per month.[14]

In reaching this conclusion, the *Fifth Quadrennial Review* also noted:

> There is a need to provide special compensation to personnel performing duties involving acceleration/deceleration testing, thermal stress experiments, and high or low pressure chamber duty.
>
> 1. The Services are obtaining sufficient volunteers for acceleration/ deceleration and thermal stress duties, both of which are limited in duration.
>
> 2. Low attraction to pressure chamber duties contributes to undermining in the Navy.
>
> 3. Retention rates of pressure chamber personnel in the Air Force and Navy for both officers and enlisted personnel are below desired levels.[15]

In further comment on officer-enlisted differentials for various hazardous duty incentive pays, including experimental stress duties, the *Fifth Quadrennial Review* stated:

> During the process of reviewing the various Hazardous Duty Incentive Pays, it became increasingly clear that, although there is some incentive associated with certain pays, the primary purpose is recognition for the hazards or

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[13] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 101, November 1983. Also see *id*., p. 4, and Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-4, January 1984.

[14] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 100-101, November 1983. Also see *id*., p. 4, and Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, pp. VI-4, January 1984.

[15] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 100, November 1983. Also see *id*., p. 4. Cf. Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-4, January 1984.

> risks involved. It was, therefore, believed that officer/enlisted personnel should receive the same level of payment for seven of the Hazardous Duty Incentive Pays: [including] ... experimental stress [duty pays]....[16]

In arriving at this conclusion, the *Fifth Quadrennial Review* implicitly rejected the conclusions reached by the Hook Commission in 1948.[17] In commenting on various arguments that had been advanced in favor of and against continuation of officer-enlisted differentials for hazardous duty incentive pays in general, the *Fifth Quadrennial Review* summarized the argument against the Hook Commission's position in the following terms:

> The Hook Commission rationale was based primarily on an examination of the needs of the aviation and submarine communities. Times have changed and those communities now have their own separate career incentive pays and bonuses.[18]
>
> Other arguments in favor of eliminating the differential were summarized as follows:
>
> * All personnel, officer and enlisted, experience the same hazards.
>
> * One can never really compensate for loss of life, no matter the level.
>
> * Basic pay and bonuses are adequate to cover the differential.
>
> * Most hazard-related pays now cover skills that are not necessarily career oriented (across all Services); hence, a differential is not necessary for purposes of retention. However, exceptions may occur and should be individually addressed, as required.

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[16] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 100, November 1983. Also see *id.*, p. 4. *cf.* Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-4, January 1984.

[17] See discussion of Hook Commission recommendations concerning officer-enlisted differentials at text accompanying footnotes 3 and 4 to this chapter, above.

[18] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 920, November 1983. *cf. id*., p. 37.

> * [F]ield interviews [conducted by the Fifth Quadrennial Review of Military Compensation] with both officer and enlisted personnel indicate "same rate for same risk" is perceived as equitable in the hazardous duty areas.[19]

Whether for these or some other reasons, Congress did in fact eliminate officer-enlisted pay differentials for experimental stress duties in the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*. Based on that legislation, both enlisted and officer members received $110 per month for experimental stress duty pay. The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1786, raised the monthly rate for experimental stress duty pay and a number of other hazardous duty pays to $150.

> As administered, a member is entitled to experimental stress duty pay for any month during which he performs under competent orders (1) duty as a human acceleration or deceleration experimental subject utilizing experimental acceleration or deceleration devices; (2) duty as a human thermal experimental subject in a thermal stress experiment; or (3) duty within a high-pressure (hyperbaric) or low-pressure (altitude) chamber at physiological facilities as a human test subject, research technician, or inside instructor-observer. *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶20341.

Reserve forces personnel[20] entitled to compensation for inactive-duty training are technically entitled to experimental stress duty pays, when they perform qualifying duties under competent orders, provided Congress has appropriated sufficient funds for that purpose.[21] Under 37 U.S.C. §301(f), members of the reserve forces who perform

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[19] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 919-920, November 1983.

[20] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[21] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, crew member

qualifying experimental stress duties while entitled to compensation under 37 U.S.C. §206 are also entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties.[22] That is, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, the member is, if performing qualifying experimental stress duties under 37 U.S.C. §301(f), also entitled to 1/30th of the experimental stress duty pay that would be payable to a member of the active duty force who was performing such duty. Under regulations prescribed by the President, a member of a reserve force who performs experimental stress duties under 37 U.S.C. §301(f) while engaged in inactive-duty training is entitled, at least technically, to experimental stress duty pay.[23]

> Legislative authority to make experimental stress duty payments to reserve forces personnel engaged in inactive-duty training can, in one sense, be traced to the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926), which was the first legislative enactment that provided for special compensation for inactive duty reserve forces personnel engaged in hazardous duties of one kind or another.[24] In fact, however, experimental stress duties were not covered by the Army Air Corps Act. Rather,

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flight duty, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for crew member flight duty are explicitly made contingent on Congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

[22] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

[23] See *Department of Defense Financial Management Regulation Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶80316.

[24] For a more complete discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training generally, see Chapter II.D.1.b.(1) hereof, "Flight Pay (Crew Member)."

that Act merely gave "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled.[25] Technically, the first special provision for experimental stress duty pay for reserve forces personnel engaged in inactive-duty training came in the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(4), 69 Stat. 18, 19-21 (1955), which, as above noted, covered duty "as a low-pressure chamber inside observer" and duty "as a human acceleration or deceleration experimental subject." The Act of August 28, 1957, Public Law 85-208, 71 Stat. 484 (1957), added duty "as a human test subject in thermal stress experiments" to the category of duties for which experimental stress duty pays were technically authorized for reserve forces personnel performing inactive-duty training.

As a practical matter, the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], *id*., and the Act of August 28, 1957, Public Law 85-208, *id*., had been intended to extend experimental stress duty pay entitlements to active duty personnel performing qualifying duties. The entitlements technically covered reserve forces personnel also because of the way Title 37 of the United States Code was organized. At the time, 37 U.S.C. §301(d) provided that reserve forces personnel on inactive-duty training were entitled to additional pay for hazardous duty "when required by competent orders to perform any hazardous duty prescribed by or pursuant to section 235 [of Title 37]." Section 235, in turn, covered hazardous duty incentive pay entitlements of active duty personnel, and it was to that section that the experimental stress duties were added. The Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], *id*., and the Act of August 28, 1957, Public Law 85-208, *id*., had simply added three new categories of duty for which hazardous duty incentive pay was authorized for active duty personnel, but the pay was technically available to reserve forces personnel as well under then 37 U.S.C. §301(d).[26] Thus, reserve forces personnel on inactive-duty training had in effect "piggybacked" on active duty personnel insofar as technical entitlement to experimental stress duty pays was concerned. Later, when Title 37 of the United States Code was

[25] Subsequent enactments extended both the categories of duties for which, and the categories of personnel to whom, hazardous duty incentive pay was available for inactive-duty training. See Chapter II.D.1.b.(1) hereof, "Flight Duty (Crew Member)," above, for a more complete discussion of the history of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training.

[26] See 37 U.S.C. §301(d) (1952).

enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the inactive-duty training pay provisions relating to hazardous duty incentive pay entitlements of reserve forces personnel, which had formerly been classified to 37 U.S.C. §301(d), were codified at 37 U.S.C. §301(f), whereas the hazardous duty incentive pay provisions relating to active duty personnel, which had been formerly classified to 37 U.S.C. §235, were codified at 37 U.S.C. §301(a)-(e). In essence, the same entitlement rules were carried over into the newly codified Title 37, and reserve forces personnel performing inactive-duty training became entitled to hazardous duty incentive pay for performing any of the duties set out in 37 U.S.C. §301(a), including experimental stress duties. The current structure of hazardous duty pay entitlements for reserve forces personnel performing inactive-duty training thus derives from the organization imposed on Title 37 by the Act of September 7, 1962.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §647, 99 Stat. 583, 655 (1985), amended 37 U.S.C. §301(f) by adding certain housekeeping provisions concerning how hazardous duty incentive pay for inactive-duty training was to be computed. As explained by the House Committee on Armed Services:

> Presently, members of the reserve and guard receive hazardous duty incentive pay (HDIP) for frequent and regular flying during active and inactive duty for training periods. To receive active duty HDIP, the reservist must fly four hours each month or a pro rata share of days on duty. For inactive duty, the requirement is two hours each month or a pro rata share of days on duty. The excess hours flown on inactive duty may be credited toward active duty flight requirements, but the reverse is not permitted. This situation is inconsistent and results in less than optimum use of flying hour resources.

To ensure equity for reserve members in the computation of hazardous duty incentive pay, the committee recommends that reserve members who are entitled to HDIP for flying be permitted to credit active duty or inactive duty training flight time to fulfill active or inactive duty flight time requirements.[27]

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[27] House Report No. 99-81 (Committee on Armed Services), p. 236, accompanying H.R. 1872, 99th Congress, 1st Session (1985). See House Report No. 99-235 (Committee of Conference), p. 434, and Senate Report No. 99-118 (Committee of Conference), p. 434, accompanying S. 1160, 99th Congress, 1st Session (1985).

> While the concern that led to the amendment in issue was the appropriate use and apportionment of flying time, the amendment to 37 U.S.C. §301(f) was stated in broader terms, so that it applies to any of the hazardous duties set out in 37 U.S.C. §301(a), including experimental stress duties, and not just flight duty. Thus, for any month in which a member of a reserve force is involved both in active duty and inactive-duty training for which he is entitled to hazardous duty incentive pay under 37 U.S.C. §301, the total amount of hazardous duty incentive pay the member may receive is based on his combined entitlement for both active duty and inactive-duty training.

So far as can be determined, no reserve forces personnel on inactive training have ever received experimental stress duty pay. As a practical matter, it would appear that reserve forces personnel simply are not assigned to qualifying duty while performing inactive-duty training.

Until 2003, the conditions of entitlement to experimental stress pay for both active duty and reserve forces personnel were set out in Sections 109(c), (d), and (e) of Executive Order 11157, as amended and in various supplementary regulations adopted by the service Secretaries pursuant to Section 113 of Executive Order 11157; and in the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶20341-20343 (active duty forces) and ¶80316 (reserve forces personnel engaged in inactive-duty training). Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301, relevant to hazardous duty incentive pay, with the Secretaries of Commerce, Defense, Health and Human Services, and Homeland Security, as those entitlements affect military personnel under the respective jurisdictions of those departments.

**Current rates of pay**: The current rate of pay authorized for persons participating in the three types of experimental stress duties outlined above is $150 per month.

**Cost**: For the cost of experimental stress duty pay from 1972 to 1986, see Table II-22 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.D.4.b.**

## Personal Exposure Pay (Toxic Pesticides and Dangerous Organisms)

**Legal Authority**: 37 U.S.C. §301(a)(9) and (c)(1).

**Purpose**: To provide an additional incentive for uniformed services personnel to engage in various activities in which they may be exposed to toxic pesticides or to live dangerous viruses and bacteria, and to compensate such personnel for the more than normally dangerous character of such duty.

**Background**: The Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-993 (1981), authorized the payment of hazardous duty incentive pay to uniformed services personnel assigned to duty "involving frequent and regular exposure to highly toxic pesticides or involving laboratory work that utilizes live dangerous viruses or bacteria." As explained in the relevant Congressional reports, military personnel exposed to "highly toxic pesticides" and "laboratory workers exposed to live hazardous viruses and bacteria" were added to the "categories of personnel whose duties have been determined to be hazardous" for the purposes of 37 U.S.C. §301 in recognition of the "extensive personal sacrifices made by military members whose daily duties place them in imminent danger from hazards such as toxic, lethal, or carcinogenic substances or whose routine duties involve hazardous working conditions."[1]

When duties involving personal exposure to toxic pesticides and dangerous viruses and bacteria were initially added to the "categories of personnel whose duties [were] determined to be hazardous" for the purpose of 37 U.S.C. §301, the rates of pay for the hazardous duties covered by that provision were $110 per month for officers and $83 per month for enlisted personnel, and these rates applied, *pari passu*, to personnel entitled to hazardous duty incentive pay on account of exposure to toxic pesticides and

[1] Senate Report No. 97-146 (Committee on Armed Services), pp. 7-8, accompanying S. 1181, 97th Congress, 1st Session (1981). See House Report No. 97-265 (Committee of Conference), p. 22, accompanying S. 1181, 97th Congress, 1st Session (1981).

dangerous viruses and bacteria. The officer-enlisted rate differential was a product of the hazardous duty incentive pay structure adopted in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949),[2] which had in turn been based on the recommendations of the Advisory Commission on Service Pay, sometimes referred to as the Hook Commission. The Hook Commission's rationale for an officer-enlisted pay differential was that:

A higher rate of hazard pay for officers as compared with enlisted personnel is justifiable on several grounds:

> (1) Any special pay must be in proportion to the basic pay, so that at all times the compensation for the primary responsibility will be considerably greater than that for any additional duty.
>
> (2) The rates proposed for hazard pay serve as an inducement to undertake and continue special duties; and such an inducement need not be as great in monetary terms for lower paid and less advanced personnel as for higher paid and more highly trained personnel.
>
> (3) Officers are usually given greater special responsibilities, aside from normal administrative control, than enlisted personnel on hazardous assignments.[3] [4]

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[2] Under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), officers received $100 per month and enlisted personnel received $50 per month for the hazardous duty incentive pays--other than flight and submarine duty pay--ultimately codified at 37 U.S.C. §301. Hazardous duty incentive pay rates were increased by 10 percent for both officers and enlisted personnel by the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], 69 Stat. 18 (1955)--to $110 for officers and to $55 for enlisted personnel. Enlisted personnel received a further increase to $83 per month--a 50 percent raise--by the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(c), 95 Stat. 989, 993 (1981), the same Act that extended hazardous duty incentive pay entitlements to personnel exposed to toxic pesticides and live dangerous viruses and bacteria. See Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., §111(a), 95 Stat. at 992-993. As indicated by Congress, the reason for the 1981 increase in hazardous duty incentive pay rates for enlisted personnel was that such rates had "not been adjusted in more than 20 years, and this increase is needed to enhance the incentive value of this pay." Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981). Thus, when members of the uniformed services first became entitled to hazardous duty incentive pay for exposure to toxic pesticides or dangerous organisms under amendments to 37 U.S.C. §301 made by the Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., §111(a), 95 Stat. at 992-993, the rates of pay were $110 a month for officers and $83 a month for enlisted personnel.

[3] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 27, December 1948.

[4] For a short discussion of the treatment accorded hazardous duty incentive pays under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204, 63 Stat. 802, 809-810 (1949), see House Report No. 81-779 (Committee on Armed Services), p. 15, and Senate Report No. 81-733 (Committee on Armed Services), p. 18, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

In 1985, the rates of hazardous duty incentive pay generally, and for personal exposure to toxic pesticides and dangerous viruses and bacteria in particular, were increased to $110 per month for enlisted personnel by the Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a)(3), 99 Stat. 583, 648 (1985). This increase was effected by an amendment to 37 U.S.C. §301(c)(1) that did away with any distinction between officers and enlisted personnel for the vast majority of duties qualifying for hazardous duty incentive pay, specifically including personal exposure duties. Prior to amendment by the 1986 Authorization Act, 37 U.S.C. §301(c)(1) read as follows:

> For the performance of the hazardous duty described in [various clauses of subsection (a) of 37 U.S.C. §301, including personal exposure duties], an officer is entitled to $110 a month and an enlisted member is entitled to $83 a month.

After amendment by the 1986 Authorization Act, 37 U.S.C. §301(c)(1) reads as follows:

> For the performance of hazardous duty described in [the same clauses set out above, including personal exposure duties], a member is entitled to $110 a month.[5]

Thus, under 37 U.S.C. §301 as amended in 1986, all members, both officers and enlisted personnel,[6] were entitled to $110 per month for the performance of personal exposure duties under qualifying orders.

The legislative history of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., does not, *per se*, indicate the reason for doing away with the distinction between officers and enlisted personnel with respect to the rates of pay authorized for personal exposure duties, primarily because no report was ever submitted on the Senate bill, S. 1160, 99th Congress, 1st Session (1985), in which the proposal to equalize the rates of personal exposure duty pay for officers and enlisted personnel was

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[5] The increase in hazardous duty incentive pay rates for enlisted personnel engaged in personal exposure duties became effective October 1, 1985. Department of Defense Authorization Act, 1986, Public Law 99-145, §635(a), 99 Stat. 583, 648 (1985).

[6] The term "member" is defined in 37 U.S.C. §101(23) to mean "a person appointed or enlisted in, or conscripted into, a uniformed service." As such, "member" includes both officers and enlisted personnel.

made.[7] In fact, however, the proposal to equalize officer and enlisted rates of pay for various hazardous duties, including personal exposure duties, had been made the preceding year in connection with the consideration of the Department of Defense Authorization Act, 1985, Public Law 98-525, 98 Stat. 2492 (1984). At that time, the Senate Committee on Armed Services, reporting out S. 2723, 98th Congress, 2d Session (1984), had included a provision that would, among other things, have equalized officer

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[7] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41 (Committee on Armed Services), 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Armed Services Committee reported out a clean bill, S. 1160, but did not issue a report on it. As explained by Senator Goldwater, Chairman of the Armed Services Committee, when S. 1160 came before the Senate for consideration:

... The Armed Services Committee reported S. 1029 to the Senate on April 29 of this year. The bill was accompanied by Senate Report No. 99-41.

When the Armed Services Committee learned that the Senate would approve no real growth in the defense budget, it reconvened on Wednesday of this week [May 15, 1985] to make further program reductions to conform to the ceiling in the budget resolution. The Committee has reported a clean bill, S. 1160, reflecting these new budget levels....

Most of Senate Report 99-41 continues to be applicable to this bill.

131 *Cong. Rec*. 12438, 12500 (1985) (daily ed., 131 *Cong. Rec*. S6415, S6475 (May 17, 1985)) (statement of Senator Goldwater). In "explanatory background information" on some of the differences between S. 1029 and S. 1160, the following appears:

The compensation and benefits provisions of the bill contain significant differences from those contained in S. 1029....

... In addition, the Committee recommended increases or enhancements to a number of special and incentive pays....

The special and incentive pays ... involved in these recommendations include:

g. Hazardous duty pays.

Each of these benefit increases or enhancements are in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec*. 12474 (1985) (daily ed., 131 *Cong. Rec*. S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "Explanatory Background Information" provided by Senator Goldwater specifically dealt with the "enhancements" to the hazardous duty incentive pay program in general, or to the personal exposure duty pay program in particular, that were contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985).

and enlisted rates of hazardous duty incentive pay for personal exposure duties.[8] In support of its recommendation, the committee stated:

> The committee proposes that the enlisted and officer rates for several hazardous duty incentive pays be equalized....
>
> > The *Fifth Quadrennial Review of Military Compensation* (QRMC) examined special and incentive pays in great detail. One of its conclusions was that the differential between enlisted and officer rates for seven hazardous duty incentive pays [including personal exposure duty pay] should be eliminated....
> >
> > The committee agrees that enlisted and officer personnel should be paid the same incentive for exposing themselves to similar hazards. Therefore, it recommends that the rates for these seven hazardous duty pays be changed to entitle both enlisted and officer personnel to $110 per month.[9]
>
> The Senate proposal was eliminated in conference.[10]
>
> > As indicated immediately above, the personal exposure duty pay "enhancements" adopted as part of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., closely parallel recommendations advanced by the *Fifth Quadrennial Review of Military Compensation* in 1984.[11] In support of its recommendation that "[t]he rate of TP&DO [toxic pesticides and dangerous organisms] Pay should be consistent with the rates for other Hazardous Duty Incentive Pays,"[12] the *Fifth Quadrennial Review* stated:
> >
> > No basis yet exists to evaluate the adequacy of the rates [of hazardous duty incentive pay for personal exposure duties] for these areas; however, the rate

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[8] See Section 148 of S. 2723, 98th Congress, 2d Session (1984).

[9] Senate Report No. 98-500 (Committee on Armed Services), p. 210 (discussing Section 148 of the Senate bill), accompanying S. 2723, 98th Congress, 2d Session (1984).

[10] House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[11] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system of the uniformed services. The Ninth Quadrennial Review of Military Compensation was convened in 1999, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in late 2001.

[12] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 11, 211, November 1983. Also see Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-6, January 1984.

should be consistent with other payments made for incentive purposes to those personnel required to continually expose themselves to uniquely hazardous conditions.[13]

In reaching this conclusion, the *Fifth Quadrennial Review* also noted:

> There is a need to provide special compensation to personnel performing duty involving highly toxic pesticides....
>
> There is currently no demonstrated need to provide special compensation to personnel working with dangerous organisms; however, future applications for this pay may evolve.[14]

In further comment on officer-enlisted differentials for various hazardous duty incentive pays, including personal exposure duties, the *Fifth Quadrennial Review* stated:

> During the process of reviewing the various Hazardous Duty Incentive Pays, it became increasingly clear that, although there is some incentive associated with certain pays, the primary purpose is recognition for the hazards or risks involved. It was, therefore, believed that officer/enlisted personnel should receive the same level of payment for seven of the Hazardous Duty Incentive Pays: [including] ... toxic pesticides [exposure pays]....[15]

In arriving at this conclusion, the *Fifth Quadrennial Review* implicitly rejected the conclusions reached by the Hook Commission in 1948.[16] In commenting on various arguments that had been advanced in favor of and against continuation of officer-enlisted differentials for hazardous duty incentive pays in general, the *Fifth Quadrennial Review* summarized the argument against the Hook Commission's position in the following terms:

> The Hook Commission rationale was based primarily on an examination of the needs of the aviation and submarine communities. Times have changed and

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[13] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 211, November 1983. Also see *id*., p. 11, and "*Executive Summary*, "Report of the Fifth Quadrennial Review of Military Compensation," p. VI-6, January 1984.

[14] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 210-211, November 1983. Also see *id*., p. 11. *cf*. Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-6, January 1984.

[15] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 919, November 1983. See *id*., pp. 36-37.

[16] See discussion of Hook Commission recommendations concerning officer-enlisted differentials at text accompanying footnotes 3 and 4 to this chapter, above.

those communities now have their own separate career incentive pays and bonuses.[17]

Other arguments in favor of eliminating the differential were summarized as follows:

* All personnel, officer and enlisted, experience the same hazards.

* One can never really compensate for risk of life, no matter the level.

* Basic pay and bonuses are adequate to cover any differential.

* Most hazard-related pays now cover skills that are not necessarily career oriented (across all Services); hence, a differential is not necessary for purposes of retention. However, exceptions may occur and should be individually addressed, as required.

* [F]ield interviews [conducted by the Fifth Quadrennial Review of Military Compensation] with both officer and enlisted personnel indicate "same rate for same risk" is perceived as equitable in the hazardous duty areas.[18]

Whether for these or some other reasons, Congress, in the Department of Defense Authorization Act, 1986, Public Law 99-145, *id.*, did in fact eliminate officer-enlisted pay differentials for duties involving personal exposure to toxic pesticides and dangerous viruses and bacteria. The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, increased the minimum monthly rate for personal exposure pay, which was among several types of hazardous duty pay raised under that legislation, from $110 per month to $150 per month.

Reserve forces personnel[19] entitled to compensation for inactive-duty training are technically entitled to personal exposure pay when they perform duties "involving

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[17] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*," Volume III, p. 920, November 1983; cf. *id*., p. 37.

[18] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*," Volume III, pp. 919-920, November 1983

[19] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public

frequent and regular exposure to highly toxic pesticides or involving laboratory work that utilizes live dangerous viruses or bacteria" under competent orders, provided Congress has appropriated sufficient funds for that purpose.[20] Under 37 U.S.C. §301(f), members of the reserve forces who perform qualifying personal exposure duties while entitled to compensation under 37 U.S.C. §206 are also technically entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties.[21] That is, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces is entitled to compensation under 37 U.S.C. §206, the member is, if performing qualifying duty under 37 U.S.C. §301(f), also entitled to 1/30th of the personal exposure duty pay that would be payable to a member of the active duty force who was performing such duty. Under regulations prescribed by the President, the only personnel entitled to personal exposure pay for duties involving exposure to toxic pesticides or live dangerous viruses or bacteria are personnel exposed to such hazards for "30 consecutive days or more," and this would appear to rule out entitlements for reserve forces personnel performing inactive-duty training. Similarly, the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty*

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Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[20] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, crew member flight duty, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for crew member flight duty are explicitly made contingent on Congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

[21] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

*and Reserve Pay* [22] makes no provision for entitlement of reserve forces personnel to personal exposure pay.[23] Thus, while technically entitled to hazardous duty incentive pay for personal exposure to toxic pesticides and live dangerous viruses and bacteria under 37 U.S.C. §301, reserve forces personnel would appear to be excluded from such entitlement by regulations prescribed by the President.[24] It is always possible, however, for the President to prescribe regulations extending personal exposure pay to reserve forces personnel on inactive-duty training.

Legislative authority to make toxic pesticides and dangerous organisms exposure pay available to reserve forces personnel engaged in inactive-duty training can, in one sense, be traced to the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926), which was the first legislative enactment that provided for special compensation for inactive duty reserve forces personnel engaged in hazardous duties of one kind or another.[25] In fact, however, personal exposure duty was not covered by the Army Air Corps Act. Rather, that act merely gave "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled.[26] The first special provision for personal exposure duty pay for

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[22] *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R.

[23] See *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶80311-80316, generally.

[24] It is in any event questionable whether reserve forces personnel are ever assigned to duty involving qualifying exposure during inactive-duty training.

[25] For a more complete discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training generally, see Chapter II.D.1.b.(1) hereof, "Flight Pay (Crew Member)."

[26] Subsequent enactments extended both the categories of duties for which, and the categories of personnel to whom, hazardous duty incentive pay was available for inactive-duty training. See Chapter II.D.1.b.(1) hereof, "Flight Duty (Crew Member)," for a more complete discussion of the history of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training.

reserve forces personnel engaged in inactive-duty training came in the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), 95 Stat. 989, 992-993 (1981), which, as above noted,[27] brought duty "involving frequent and regular exposure to highly toxic pesticides or involving laboratory work that utilizes live dangerous viruses or bacteria" within the category of duties for which hazardous duty incentive pay was technically authorized for reserve forces personnel performing inactive-duty training.

As a practical matter, the Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., had been intended to extend personal exposure pay entitlement to active duty personnel performing qualifying duties. The entitlements technically covered reserve forces personnel also because of the way Title 37 of the United States Code was organized. At the time, 37 U.S.C. §301(f) provided that a member of the reserve forces on inactive-duty training was entitled to additional pay for hazardous duty when he "performs, under orders, any duty described in subsection (a) of this section." Subsection (a), in turn, covered hazardous duty incentive pay entitlements of active duty personnel, and it was to that subsection that the personal exposure entitlement was added. The Uniformed Services Pay Act of 1981, Public Law 97-60, §111(a), *id*., 95 Stat. at 992-993, had simply added a new category of duty for which hazardous duty incentive pay was authorized for active duty personnel, but the pay was technically available to reserve forces personnel as well under 37 U.S.C. §301(f). Thus, reserve forces personnel on inactive-duty training had in effect "piggybacked" on active duty personnel insofar as technical entitlement to personal exposure pay was concerned.[28]

> The Department of Defense Authorization Act, 1986, Public Law 99-145, §647, 99 Stat. 583, 655 (1985), amended 37 U.S.C. §301(f) by adding certain housekeeping provisions concerning how hazardous duty incentive pay for inactive-duty training was to be computed. As explained by the House Committee on Armed Services:

[27] See text accompanying footnote 1 to this chapter, above.

[28] See discussion of the Uniformed Services Pay Act of 1981, Public Law 97-60, *id*., at text associated with footnote 1 to this chapter, above.

> Presently, members of the reserve and guard receive hazardous duty incentive pay (HDIP) for frequent and regular flying during active and inactive duty for training periods. To receive active duty HDIP, the reservist must fly four hours each month or a pro rata share of days on duty. For inactive duty, the requirement is two hours each month or a pro rata share of days on duty. The excess hours flown on inactive duty may be credited toward active duty flight requirements, but the reverse is not permitted. This situation is inconsistent and results in less than optimum use of flying hour resources.
>
> To ensure equity for reserve members in the computation of hazardous duty incentive pay, the committee recommends that reserve members who are entitled to HDIP for flying be permitted to credit active duty or inactive duty training flight time to fulfill active or inactive duty flight time requirements.[29]
>
> While the concern that led to the amendment in issue was the appropriate use and apportionment of flying time, the amendment to 37 U.S.C. §301(f) was stated in broader terms, so that it applies to any of the hazardous duties set out in 37 U.S.C. §301(a), and not just flight duty. Thus, for any month in which a member of a reserve force is involved both in active duty and inactive-duty training for which he is entitled to hazardous duty incentive pay under 37 U.S.C. §301, the total amount of hazardous duty incentive pay the member may receive is based on his combined entitlement for both active duty and inactive-duty training.

Until 2003, the conditions of entitlement to personal exposure pay for active duty personnel were set out in Sections 109(h) and (i) of Executive Order 11157, as amended; in various supplementary regulations adopted by the service Secretaries pursuant to Section 113 of Executive Order 11157; and in the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶¶20361-20362 (toxic pesticides exposure) and ¶¶20371-20373 (dangerous viruses or bacteria exposure). Executive Order 13294, issued March 28, 2003, revoked Executive Order 11157. Executive Order 13294 placed responsibility for carrying out the authority delegated to the President by 37 U.S.C. §301, relevant to hazardous duty incentive pay including personal exposure pay, with the Secretaries of Commerce, Defense, Health and Human Services, and Homeland Security,

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[29] House Report No. 99-81 (Committee on Armed Services), p. 236, accompanying H.R. 1872, 99th Congress, 1st Session (1985). See House Report No. 99-235 (Committee of Conference), p. 434, and Senate Report No. 99-118 (Committee of Conference), p. 434, accompanying S. 1160, 99th Congress, 1st Session (1985).

as those entitlements affect military personnel under the respective jurisdictions of those departments.

**Current rate of pay**: The current rate of pay for duty involving exposure to toxic pesticides or live dangerous viruses or bacteria is $150 per month.

**Cost**: For the cost of personal exposure pay from 1982 to 2004, see Table II-23 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.D.4.c.**

## Leprosy Duty Pay

**Legislative Authority**: Formerly, 37 U.S.C. §301(a)(5) and (c)(1). The legislative authority for this hazardous duty incentive pay was repealed by the Department of Defense Authorization Act, 1985, Public Law 98-525, §624(a)(1), 98 Stat. 2492, 2542 (1984).

**Purpose**: To provide an additional pay to induce uniformed services personnel to volunteer for duty involving contact with persons having leprosy.

**Background**: Before enactment of the Department of Defense Authorization Act, 1985, Public Law 98-525, 98 Stat. 2492 (1984), extra pay for leprosy duty had been authorized for Public Health Service personnel since the turn of the century and for Armed Forces personnel since 1949. At that time, the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §204(a)(6) and (c), 63 Stat. 802, 809-810 (1949), extended the entitlement to members of the Armed Forces on the recommendation of the Advisory Commission on Service Pay, also known as the Hook Commission. Although the commission had concluded that, like diving duties, "leprosy duties offered potential death and disease to a great degree, but admittedly are primarily not dangerous but, rather, disagreeable and generally unsought occupations,"[1] it recommended that Armed Forces personnel involved in the "handling of lepers" be entitled to extra pay as an "incentive to engage and remain in hazardous occupations."[2] The commission's overall rationale was that "some additional pay should be awarded to individuals who, on a voluntary basis, carry out peacetime functions involving more than the ordinary military risk and danger."[3] The commission went on to note, however, that

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[1] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 25, December 1948.

[2] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 24, December 1948 (italicized in original).

[3] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 24, December 1948.

"[s]uch pay should be granted only when qualified personnel are actually in hazard duty status under orders and perform in accordance with appropriate departmental regulations rigorously observed."[4]

In response to the Hook Commission's recommendations, Congress authorized leprosy duty pay for all members of the uniformed services in the Career Compensation Act of 149, ch. 681 [Public Law 351, 81st Congress], *id*., classified that pay as a hazardous duty incentive pay, and fixed the rates for the pay at $100 a month for officers and $50 a month for enlisted personnel. In so doing, Congress apparently accepted the Hook Commission's conclusion that the extra pay was justified not because leprosy duty was hazardous per se but rather because it was a "disagreeable and generally unsought occupation" for which an "incentive to engage and remain in" was appropriate.

The Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(6), 69 Stat. 18, 21 (1955), increased the statutory rates of pay for the various duties that had been classified as "hazardous" by the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], *id*., including, *pari passu,* leprosy duty pay. The rates of pay were increased to $110 for officers and to $55 for enlisted personnel, a 10 percent increase, and remained at those levels until October 1, 1981.

At that time, the Uniformed Services Pay Act of 1981, Public Law 97-60, §111(c), 95 Stat. 989, 993 (1981), increased the rates of pay for enlisted personnel for the various hazardous duty classifications then set out in 37 U.S.C. §301(a)[5] by 50 percent, to $83 per month. As a hazardous duty incentive pay, leprosy duty pay was increased accordingly. As explained in the Senate Report, increases in hazardous duty incentive pay rates for enlisted personnel were made in recognition of the fact that such rates had "not been adjusted in more than 20 years, and this increase is needed to enhance the incentive

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[4] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 24, December 1948.

[5] Upon enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), the hazardous duty incentive pay provisions of that Act, found at Section 204 thereof, 63 Stat. at 809-810, were, in the main, classified to 37 U.S.C. §235. See 37 U.S.C. §235(a) and (c) (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the hazardous duty incentive pay provisions were codified at 37 U.S.C. §301, and the various classifications of hazardous duty for which the special pay was authorized, including leprosy duty, were set out in subsection (a) thereof.

value of this pay."[6] The 1981 increase presumably had little effect on "incentives" for enlisted personnel, however, since in practice such personnel were not assigned to leprosy duty.

In 1984, the authorization for hazardous duty incentive pay for leprosy duty was repealed by Section 624(a)(1) of the Department of Defense Authorization Act, 1985, Public Law 98-525, §624(a), 98 Stat. 2492, 2542 (1984), on the grounds that extra pay for such duty was "no longer necessary."[7] As explained in the relevant Congressional reports, Congress eliminated the authorization for leprosy duty pay on the recommendation of the *Fifth Quadrennial Review of Military Compensation*.[8] [9] The *Fifth Quadrennial Review* had, in turn, recommended eliminating the authorization on the grounds that there was "no valid need [for leprosy duty pay]; recipients are not exposed to sufficient hazard to warrent [sic] special pay; no problem manning Federal Leprosaria."[10]

While the permanent authority for leprosy duty pay was thus repealed, the entitlement to leprosy duty pay was continued for members of the uniformed services who were actually receiving the pay on the day before enactment of the Department of

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[6] Senate Report No. 97-146 (Committee on Armed Services), p. 8, accompanying S. 1181, 97th Congress, 1st Session (1981).

[7] Senate Report No. 98-500 (Committee on Armed Services), p. 211, accompanying S. 2723, and House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[8] Senate Report No. 98-500 (Committee on Armed Services), p. 211, accompanying S. 2723, and House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[9] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system of the uniformed services. The Ninth Quadrennial Review of Military Compensation was convened in 1999, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in late 2001.

[10] Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-5, January 1984 (emphasis in original). Also see Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 8, 161-170, November 1983.

Defense Authorization Act, 1985, Public Law 98-525, *id*.[11] Under transitional provisions, which were in effect "saved pay" provisions, members who were entitled to leprosy duty pay on October 18, 1984, continue to be entitled to such pay for so long as they remain assigned, without any intervening break, to qualifying duties.[12] No explicit reason was given by Congress for adopting these "saved pay" provisions, although it was generally stated that Congress "accepts this ... recommendation" of the *Fifth Quadrennial Review of Military Compensation* concerning leprosy duty pay,[13] and the *Fifth Quadrennial Review* had recommended inclusion of "a provision to allow those individuals receiving [leprosy duty pay] at time of enactment to continue to receive that pay for the duration of their qualifying assignments."[14]

Records indicate that the only military personnel who have been assigned to leprosy duty, at least within the ten-year period preceding repeal of the leprosy duty pay authorization, were officers. So far as can be ascertained from available records, fewer than ten Armed Forces personnel--all of whom volunteered for leprosy duty--were eligible for leprosy duty pay in any year since 1970. The primary recipients of leprosy duty pay over the last 20 years have been officers of the Public Health Service.

Before repeal of leprosy duty pay authority, reserve forces personnel[15] entitled to compensation for inactive-duty training were technically entitled to leprosy duty pay

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[11] The Department of Defense Authorization Act, 1985, Public Law 98-525, 98 Stat. 2492 (1984), was enacted on October 19, 1984.

[12] Department of Defense Authorization Act, 1985, Public Law 98-525, §624(b), 98 Stat. 2492, 2542 (1984). See 37 U.S.C. §301 note.

[13] Senate Report No. 98-500 (Committee on Armed Services), p. 211, accompanying S. 2723, 98th Congress, 2d Session (1984).

[14] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 167. Also see Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-5, January 1984.

[15] For present purposes, the term "reserve forces personnel" refers to persons who are members either of the reserve components of the uniformed services or of the National Guard, and the term "reserve forces" refers to the reserve components of the uniformed services and the National Guard. Under 37 U.S.C. §101(24), the reserve components of the uniformed services consist of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, and the Reserve Corps of the Public

when they performed qualifying duties under competent orders, provided Congress had appropriated sufficient funds for that purpose.[16] Under 37 U.S.C. §301(f), members of the reserve forces who perform qualifying leprosy duties while entitled to compensation under 37 U.S.C. §206 are also entitled, subject to such regulations as may be prescribed by the President, to "an increase in compensation equal to 1/30 of the monthly incentive pay" payable to active duty personnel performing such duties.[17] That is, for every "period of instruction ... or ... appropriate duty" for which a member of the reserve forces was entitled to compensation under 37 U.S.C. §206, the member was, if performing qualifying leprosy duty under 37 U.S.C. §301(f), also entitled to 1/30th of the leprosy duty pay that would be payable to a member of the active duty force who was performing such duty. Thus, until the authority for leprosy duty pay was repealed, as set out above, leprosy duty was one of the duties for which hazardous duty incentive pay was available, at least as a technical matter, to reserve forces personnel performing inactive-duty training; under regulations prescribed by the President, a member of a reserve force who performed leprosy duties under 37 U.S.C. §301(f) while engaged in inactive-duty training was entitled to leprosy duty pay.[18]

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Health Service; under 37 U.S.C. §101(6), the "National Guard" consists of the Army National Guard and the Air National Guard. See 37 U.S.C. §101(7) and (9) concerning the Army National Guard and the Air National Guard, respectively.

[16] Unlike the provisions of Section 301 of Title 37, United States Code, dealing with the entitlement of members of the active duty forces to hazardous duty incentive pay for, among other things, crew member flight duty, the corresponding provisions of Section 301 dealing with the entitlement of members of the reserve forces participating in inactive-duty training to hazardous duty incentive pay for crew member flight duty are explicitly made contingent on Congressional appropriations, *i.e.*, members of the reserve forces participating in inactive-duty training are entitled to such pay only "to the extent provided for by appropriations." 37 U.S.C. §301(f)(1).

[17] 37 U.S.C. §206 provides, in pertinent part, that a member of the reserve forces who is not entitled to basic pay--essentially, a member of the reserve forces who is not on active duty--"is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours ... or for the performance of such other equivalent training, instruction, duty, or appropriate duties" as may be prescribed. The term "inactive-duty training" is commonly used to refer to the "period of instruction ... or ... appropriate duty" for which Section 206 "compensation" is authorized.

[18] As above indicated, the repeal of leprosy duty pay authority was accompanied by a "saved pay" provision, but under the terms of that provision, found at Section 624(b) of the Department of Defense Authorization Act, 1985, Public Law 98-525, *id.*, 98 Stat. at 2542, see 37 U.S.C. §301 note, reserve forces

Leprosy duty pay authority for reserve forces personnel engaged in inactive-duty training can, in one sense, be traced to the Act of July 2, 1926 (Army Air Corps Act), ch. 721 [Public Law 446, 69th Congress], §6, 44 Stat. 780, 782-783 (1926), which was the first legislative enactment that provided for special compensation for inactive duty reserve forces personnel engaged in hazardous duties of one kind or another.[19] In fact, however, leprosy duties were not covered by the Army Air Corps Act. Rather, that act merely gave "officers, warrant officers, and enlisted men of the National Guard" who were, by competent orders, required to "participate regularly and frequently in aerial flights" a 50 percent increase in the "armory drill pay" to which they would otherwise have been entitled.[20] The first special provision for leprosy duty pay for reserve forces personnel engaged in inactive-duty training came in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1942).

Among other things, the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81stCongress], *id*., restated the provisions of the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], 56 Stat. 359 (1942), as amended by the Act of March 25, 1948, ch. 157 [Public Law 460, 80th Congress], 62 Stat. 87 (1948), insofar as the entitlement of reserve forces personnel to special pay for the performance of hazardous duties while engaged in inactive-duty training was concerned. Section 501 of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], *id*., §501, 63 Stat. at 825-827, dealt generally with the entitlement of reserve forces personnel to compensation for inactive-duty training. Subsection (d) of Section 501, 63 Stat. at 826, generalized the hazardous duty incentive pay entitlements of reserve forces personnel performing inactive-duty training by providing that hazardous duty incentive pay was

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personnel would not be entitled to leprosy duty pay as a result of any inactive-duty training they might perform.)

[19] For a more complete discussion of the origin of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training, generally, see Chapter II.D.1.b.(1) hereof, "Flight Pay (Crew Member)."

[20] Subsequent enactments extended both the categories of duties for which, and the categories of personnel to whom, hazardous duty incentive pay was available for inactive-duty training. See Chapter II.D.1.b.(1) hereof, "Flight Duty (Crew Member)," for a more complete discussion of the history of hazardous duty incentive pay for reserve forces personnel engaged in inactive-duty training.

available to such personnel whenever they were required by competent orders to perform any of the hazardous duties, set out at Section 204(a) of the Career Compensation Act of 1949, 63 Stat. at 809-810, for which active duty personnel were entitled to hazardous duty incentive pay. The duties set out in Section 204(a) as qualifying for such pay included crew member and non-crew member flight duty, submarine duty, glider duty, parachute jumping duty, explosives demolition duty, duty at a submarine escape training tank, and duty with certain diving units, as well as leprosy duties. See Section 204(a) of the Career Compensation Act, 63 Stat. at 809-810.[21] No special reason was given for this reorganization of the provisions of prior law dealing with inactive-duty training pays, including inactive-duty training incentive pays for hazardous duties. The extension of incentive pay for hazardous duty to new classes of reserve forces personnel--*e.g.*, to reserve forces personnel in an inactive-duty training status performing leprosy duties, explosives demolition duties, submarine escape training tank duties, etc.--appears to derive from the extension of such pays to active duty personnel, and not from any special concern about reserve forces personnel and whether they should be entitled to incentive pay for performance of various hazardous duties.[22]

The repeal of the basic authority for leprosy duty pay by the Department of Defense Authorization Act, 1985, Public Law 98-525, §624(a), 98 Stat. 2492, 2542

[21] The inactive-duty training pay provisions contained in section 501 of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §501, 63 Stat. 802, 825-827 (1949), were classified to 37 U.S.C. §301, whereas the hazardous duty incentive pay provisions set out in section 204 of the Act were classified to 37 U.S.C. §235. See 37 U.S.C. §235(a) and (c) (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the inactive-duty training pay provisions relating to hazardous duty incentive pay entitlements of reserve forces personnel were codified at 37 U.S.C. §301, together with the hazardous duty incentive pay provisions relating to active duty personnel. The current structure of hazardous duty incentive pay entitlements for reserve forces personnel performing inactive-duty training thus derives from the organization imposed on Title 37 by the Act of September 7, 1962, Public Law 87-649, *id*., although insofar as leprosy duty pay is concerned, the repeal of the basic authority for such pay effectively cut off reserve forces entitlements as well as active duty entitlements.

[22] The Hook Commission, whose report led to the adoption of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), did not concern itself with reserve forces compensation in any way. See *e.g.*," Terms of Reference," the charter given to the Hook Commission by the then Secretary of Defense, James Forrestal, in "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," at pp. vii-viii, December 1948.

(1984), effectively cut off reserve entitlements, inasmuch as the "saved pay" provisions of that enactment applied only to personnel who "continue[d] (without a break) to be assigned to perform such [leprosy] duties on and after [October 18, 1984]," the day before the date of enactment of the Department of Defense Authorization Act, 1985, Public Law 98-525, *id*. In any event, the question of the application of the "saved pay" provisions to reserve forces personnel would appear to be of academic interest only since, at least as far as can be determined, no reserve forces personnel have performed leprosy duty in connection with inactive-duty training at any time in the ten years preceding 1985.

**Chapter II.E.1.a.**

## Special Pay for Physicians (Medical Officers of the Armed Forces)

**Legislative Authority**: 37 U.S.C. §§301d, 302, 303a, and 303b. *cf.* 37 U.S.C. §302f.

**Purpose**: To provide an additional pay to enable the Armed Forces to attract and retain a sufficient number of medical officers/physicians to meet health care needs of the services.

**Background**: To the casual observer, the history of special pays for health professionals in the Armed Forces may appear relatively disjointed. Apart from an early, but short-lived, experiment with a special pay for "surgeons and surgeon's mates," as more fully detailed below, the United States had no special pay program for health professionals before 1947. At that time, a special pay program was instituted for physicians and dentists. Veterinarians were added to the list of health professionals eligible for special pay in 1953, as were optometrists in 1971. In 1967, physicians and dentists with critical skill specialties were made eligible for a special "continuation" pay--provided they agreed to remain on active duty for a certain minimum period of time. In 1974, physicians with critical skill specialties were made eligible for yet another special pay--this time called "variable incentive pay." In 1980, the entire special pay program for physicians was substantially changed, just as, in 1985, the special pay program for dentists was changed.

Despite the piecemeal additions of pays and different categories of personnel to the health professionals special pay program, there is, and has always been, a single unifying theme underlying the program--namely, the need to attract and retain a sufficient number of qualified health professionals to meet the health care demands of the Armed Forces. While all of the elements of the health professionals special pay program have

been, and continue to be, addressed to this need, Congress, at least prior to enactment of the Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, 94 Stat. 587 (1980), perceived a number of flaws in the program. First, special pay authority was scattered among a number of different provisions of Title 37, United States Code, resulting in great complexity of the system. This complexity, in turn, led to substantially different treatment of apparently similarly situated personnel, with consequent adverse effects on retention and morale.[1] Second, since each of the individual provisions of Title 37 that made up the system had a separate expiration date, affected personnel could not be certain whether a particular special pay would or would not survive the next Congressional review, and this uncertainty had–adverse effects on retention and morale.[2] To address these perceived flaws, Congress in 1980 adopted the Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, *id*., which, among other things, established a unified special pay program for physicians in the Armed Forces and made the entitlements for all health professionals permanent--subject, of course, to possible future Congressional withdrawal. In the Department of Defense Authorization Act, 1986, Public Law 99-145, §639(a), 99 Stat. 583, 649-651 (1985), Congress substantially changed the preexisting special pay program for dentists, bringing that program more into line with the special pay program applicable to physicians. Other changes have since been made to the medical special pays programs for members of the uniformed services, but the changes have in the main been marginal or perfecting in nature--changes in the rates of pay authorized or conditions of receipt, almost all keyed to special manning or retention problems--not the structural sea changes to the medical special pays programs effected by the Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, *id*.

[1] See, *e.g*., House Report No. 95-1118 (Committee on Armed Services), p. 113, accompanying H.R. 10929, 95th Congress, 2d Session (1978), and House Report No. 96-904 (Committee on Armed Services), p. 4, accompanying H.R. 6982, 96th Congress, 2d Session (1980).

[2] See, *e.g*., House Report No. 95-1118 (Committee on Armed Services), p. 113, accompanying H.R. 10929, 95th Congress, 2d Session (1978), and House Report No. 96-904 (Committee on Armed Services), p. 4, accompanying H.R. 6982, 96th Congress, 2d Session (1980).

To understand the present system of special pays for different categories of health professionals, which derives partially from the 1980 and 1986 acts referred to immediately above and partially from earlier enactments, however, it is most convenient to look at the gradual, accretionary process by which the system got to be what it was before the 1980 restructuring.

Although the existing special pay for health professionals is of comparatively recent origin, the need for such a pay was recognized as long ago as the Revolutionary War. In March of 1777, General George Washington wrote to John Hancock, a member of the Continental Congress, in terms that are still applicable:

> There is one more thing which claims in my opinion the earliest attention of Congress. I mean the pay of regimental surgeons, and that of their mates. These appointments are so essential, that they cannot be done without. Their pay in the first instance is so low, so inadequate to the services which should be performed, that no man sustaining the character of gentleman, and who has the least medical abilities, or skill in the profession, can think of accepting it.[3]

Despite General Washington's recommendation, it was not until 1814 that Congress, in the Act of March 30, 1814, ch. 37, §18, 3 Stat. 113, 115 (1814), adopted a special additional pay for medical officers--$15 a month for "regimental surgeons and surgeon's mates." This pay remained in effect only through June 30, 1815, and from that time until 1947 no additional pay was authorized for medical officers. However, from 1838 until 1908, when the same rate of pay was prescribed for all Army officers of the same grade, the medical department, along with the cavalry, was the highest paid branch of the Army.

**Special Pay for Physicians**

The Army-Navy-Public Health Service Medical Officer Procurement Act of 1947, ch. 494 [Public Law 365, 80th Congress], §101, 61 Stat. 776, 776-777 (1947), authorized a $100 special monthly pay for regular officers who were then commissioned in the

[3] Quoted from "*Differential Pays for the Armed Services of the United States*, Report of the Commission on Incentive-Hazardous Duty and Special Pays," Volume II, March 1953, p. 205.

Medical or Dental Corps and for those who would be so commissioned thereafter but before September 1, 1952. The special pay was also authorized for reserve officers of the Medical or Dental Corps who, during the same period, volunteered and were accepted for extended active duty of one year or longer. The act stipulated that no officer could be paid a career total of special pay for medical or dental service in excess of $36,000. The announced purpose of the act was to assist the armed services (and the Public Health Service) in attracting and retaining an adequate number of physicians and dentists by offering the $100 monthly special pay as an inducement to continued service. However, the Senate Armed Services Committee also stated that "[a]ctually, the $36,000 additional salary which will be paid the medical and dental officer if the bill is enacted, merely compensates him for the additional expense of his education, and for the five years of lost earning power which result from his longer period of academic training."[4] In addition to providing this special pay, the act authorized original appointments in the Army or Navy Medical or Dental Corps in any permanent commissioned grade up to colonel in the Army or captain in the Navy.

In 1948 the so-called Hook Commission made a comprehensive study[5] of the military pay system and recommended that the special pay programs for physicians and dentists be continued in essentially its existing form and amount, but that it not be paid to interns. In line with the commission's recommendations, the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §203, 63 Stat. 802, 809 (1949), restated the special pay authority and barred officers serving as medical or dental interns from entitlement. The Career Compensation Act of 1949, ch. 681, *id*., retained the September 1, 1952, cut-off date originally established in the Army-Navy-Public Health Service Medical Officer Procurement Act of 1947, ch. 494 [Public Law 365, 80th Congress], §101, 61 Stat. 776, 776-777 (1947), so that the only persons who would be entitled to

[4] Senate Report No. 608 (Committee on Armed Services), p. 4, accompanying S. 1661, 80th Congress, 1st Session (1947).

[5] "*Career Compensation for the Uniformed Services*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," December 1948.

special pay for medical or dental service after September 1, 1952, would be officers who had initially entered on active duty before that date.[6]

The Act of September 9, 1950, ch. 939 [Public Law 779, 81st Congress], §1, 64 Stat. 826, 826-827 (1950), established the so-called "doctor draft," which required males under age 50 qualified in medical, dental, or "allied specialist categories" to register under the Selective Service Act and made them subject to special induction calls.[7] It also extended the $100 special pay entitlement to reserve medical and dental officers involuntarily ordered to active duty, as well as to those volunteering for active duty. The main purpose of this provision was to encourage draft-liable doctors and dentists to accept reserve commissions and to perform their active duty in that status rather than actually being inducted as enlisted members.

The Act of June 25, 1952, ch. 459 [Public Law 410, 82d Congress], §1, 66 Stat. 156, 156-157 (1952), extended the special pay cut-off date from September 1, 1952, to July 1, 1953, and the Act of June 29, 1953, ch. 158 [Public Law 84, 83d Congress], §8, 67 Stat. 86, 89 (1953), further extended it to July 1, 1955. The Act of June 30, 1955, ch. 250 [Public Law 118, 84th Congress], §203, 69 Stat. 223, 225 (1955), extended the special pay cut-off date once again, this time to July 1, 1959.

> The Act of April 30, 1956, ch. 223 [Public Law 497, 84th Congress], §5, 70 Stat. 119, 122 (1956), changed the rate of special pay for physicians from a flat rate to a graduated scale based on length of active service--$100 a month during the first two years of active service; $150 during active service years two to six; $200 during years six to ten; and $250 thereafter. It also gave physicians a four-year constructive service credit for promotion and pay purposes, plus an additional one-year constructive credit for these purposes for physicians who had

[6] The "cut-off" date for the special pay was not an "expiration" date; it created a bar against any new entitlement but did not terminate the special pay of any officer whose entitlement had been acquired prior to that time.

[7] Veterinarians, optometrists, pharmacists, and osteopaths were specifically included in the "allied specialist categories" construct in the "Doctors Draft Act." Act of September 9, 1950, ch. 939 [Public Law 779, 81st Congress], §6, 64 Stat. 826, 828 (1950).

completed one year of internship.[8] Act of April 30, 1956, ch. 223, *id*., §2(2), 70 Stat. At 121. See 37 U.S.C. §205(a)(7) and (8) as in effect before enactment of the Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, §402, 94 Stat. 2835, 2904 (1980). These constructive service credits, in combination with the higher original-appointment grade authorized by the Army-Navy-Public Health Service Medical Officer Procurement Act of 1947, ch. 494 [Public Law 365, 80th Congress], §101, 61 Stat. 776, 776-777 (1947), were designed to bring about parity between officers who entered the service after a delay caused by additional medical education and training and those who entered after receiving a bachelor degree.[9] Thus, for example, a physician entering active duty immediately after medical school would be appointed to pay grade O-3 and entitled to the basic pay of that grade for over four years of service. In addition, such an officer would be eligible for promotion to pay grade O-4 about three years after entering upon active duty. In other words, the pay grade, basic pay, and promotion opportunity of an affected officer would at this point be the same as they would have been had the officer entered the service after completing four years of college. The purpose of the constructive service credit and increased special pay was to arrest and reverse the "staggering loss" of regular medical and dental officers by providing them "a much more favorable income than that which they have heretofore experienced" and by placing them "in a somewhat more favorable position when their present income is compared with that of their counterparts serving as physicians or dentists under the civil service system or in the Veterans' Administration."[10]

The Act of March 23, 1959, Public Law 86-4, §5, 73 Stat. 13 (1959), extended the special pay cut-off date from July 1, 1959, to July 1, 1963, and the Act of April 2, 1963, Public Law 88-2, §5, 77 Stat. 4 (1963), further extended it to July 1, 1967. The Uniformed Services Pay Act of 1963, Public Law 88-132, §4, 77 Stat. 210, 212 (1963), raised the monthly rate of special pay for physicians with between six and ten years of active service from $200 to $250 and the rate for those with ten or more years of active service from $250 to $350. These rate increases were added to the pay bill by the Senate Armed Services Committee, which explained its action as follows:

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[8] The Act of April 30, 1956, ch. 223 [Public Law 497, 84th Congress], §5, 70 Stat. 119, 122 (1956), generally provided the same benefits for dentists.

[9] See text accompanying footnote 4 to this chapter, above.

[10] House Report No. 1806 (Committee on Armed Services), pp. 2, 4, 6, accompanying H.R. 9428, 84th Congress, 2d Session (1956).

> Prior to 1956 special pay for physicians and dentists was authorized only in the amount of an additional $100 a month. The general military pay legislation of 1955 was not sufficient to retain physicians and dentists in the necessary numbers. In 1956 Congress increased the special pay, now ranging from $100 to $250 a month, in order to meet this problem. Following the 1956 legislation the retention rate increased considerably since, in terms of compensation, a career in the armed forces was made more attractive for physicians and dentists and the gap between military compensation for these groups was narrowed as compared to Government physician rates (civil service and Veterans' Administration) and the incomes of private physicians. Since 1956, even including the 1958 Military Pay Act, the gap has widened between the compensation of the military physicians and those in civilian Government and those in private practice.
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> The increase of $50 and $100 as provided in the bill, plus the increases in basic pay otherwise contained in the bill for the grades concerned, should serve to improve the now declining retention rate for those two groups.[11]

The Act of June 30, 1967, Public Law 90-40, §5, 81 Stat. 100, 105 (1967), extended the special pay cut-off date from July 1, 1967, to July 1, 1971, and the Act of September 28, 1971, Public Law 92-129, §104, 85 Stat. 348, 355 (1971), further extended it to July 1, 1973.

> The Act of July 9, 1973, Public Law 93-64, §§201-203, 87 Stat. 147, 149 (1973), extended the special pay cut-off date from July 1, 1973, to July 1, 1975, on the grounds that
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> it would be inequitable to cut off arbitrarily special pay for the health professionals in question who happen to have entered service after June 30, 1973, ... however, in all probability, the entire matter of special pays and bonuses for health professionals will be given further consideration in the not too distant future.[12]

The Act of May 6, 1974, Public Law 93-274, §2, 88 Stat. 94, 96 (1974), extended the special pay cut-off date from July 1, 1975, to July 1, 1977. The purpose of the act was to remedy an "immediate and critical problem involv[ing] physicians."[13] In addition, the

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[11] Senate Report No. 387 (Committee on Armed Services), pp. 24-25, accompanying H.R. 5555, 88th Congress, 1st Session (1963).

[12] Senate Report No. 93-235 (Committee on Armed Services), p. 16, accompanying S. 1916, 93d Congress, 1st Session (1973).

[13] House Report No. 93-984 (Committee of Conference), p. 5, accompanying S. 2770, 93d Congress, 2d Session (1974).

act modified the special pay structure for physicians by making them eligible for the maximum $350 monthly rate after two or more years of active service rather than after ten or more years.

> The Act of September 30, 1977, Public Law 95-114, §1, 91 Stat. 1046 (1977), further extended the cut-off date for physicians, this time to September 30, 1978. The extension for physicians was approved because of "a critical need to provide extra incentives ... to recruit adequate numbers of medical personnel."[14] The cut-off dates for all health professionals were further extended by the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §801, 92 Stat. 1611, 1619 (1978), this time to September 30, 1980. As reflected in the relevant Congressional report, the extension was predicated on the need to continue the existing incentives for health professionals retention purposes while a detailed review of the entire question of special pay for such personnel was undertaken by Congress.[15]

Prior to enactment of the Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, 94 Stat. 587 (1980), then, the rates of monthly special pay for physicians were as follows:

| Monthly Rate | Applicable To |
|---|---|
| $100 | Physicians with less than two years of active medical service. |
| $350 | Physicians with two or more years of active medical service. |

**Special Continuation Pay for Physicians**

The Act of December 16, 1967 (Uniformed Services Pay Act of 1967), Public Law 90-207, §1(2)(A), 81 Stat. 649, 651 (1967), established a special continuation pay entitlement for physicians and dentists, codified at former 37 U.S.C. §311.[16] The act

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[14] Senate Report 95-400 (Committee on Armed Services), p. 2, accompanying S. 1731, 95th Congress, 1st Session (1977). See House Report No. 95-479 (Committee on Armed Services), pp. 3-4, accompanying H.R. 8011, 95th Congress, 1st Session (1977).

[15] House Report No. 95-1118 (Committee on Armed Services), p. 113, accompanying H.R. 10929, 95th Congress, 2d Session (1978). See House Report No. 95-1402 (Committee of Conference), p. 52, accompanying H.R. 10929, 95th Congress, 2d Session (1978).

[16] Dentists were also covered by the special continuation pay program.

authorized, under regulations prescribed by the Secretary of Defense--or the Secretary of Health, Education, and Welfare (now the Secretary of Health and Human Services) for Public Health Service officers--payment of up to four months' additional basic pay for each year of an active duty agreement accepted by the Secretary concerned from a medical or dental officer who (1) had a critical specialty, (2) had completed any definitive active duty obligation he had under law or regulation, and (3) had executed an agreement to remain on active duty for at least one additional year. Although the act authorized continuation pay for both medical and dental officers, the dental officer authority was not used until 1972. In its report on the Uniformed Services Pay Act of 1967, Public Law 90-207, *id.*, the Senate Armed Services Committee made these observations with respect to continuation pay:

> The proposed continuation pay authority would be similar in form to the variable reenlistment bonus now authorized for the payment of first-term enlistees in critical skill areas.
>
> The Committee would emphasize that despite the fact that dental officers are within the scope of the authority authorizing continuation pay, it is not the intention of the Committee that this pay be made applicable to dental officers in view of the fact that the retention problem at the present time is in no way comparable to the present conditions of the Medical Corps.
>
> . . .
>
> The Committee emphasizes that the proposed permissive system for continuation pay is an extraordinary method of meeting a serious retention problem. The proposed authority appears to be the best means however for dealing with a serious and deteriorating problem of the retention of certain career medical officers. The Committee observes, at the same time, however, that this system does not represent the ideal approach to the matter of military compensation and such authority should be used only in drastic situations. The Committee has therefore added language which would require annual reports from the Secretaries of Defense and Health, Education, and Welfare regarding the operation of this special pay program and the justification for its continuance.[17]

[17] Senate Report No. 808 (Committee on Armed Services), pp. 10-11, accompanying H.R. 13510, 90th Congress, 1st Session (1967).

These observations, and the legislative history of the act in general, make it clear that although the income of private physicians was used for comparison purposes to determine how much, if any, extra pay was needed to counter the attraction of civilian practice and to induce military physicians to continue on active duty, the purpose of continuation pay was analogous to that of such retention incentives as the variable reenlistment bonus.

Defense representatives had indicated during the hearings on Uniformed Services Pay Act of 1967, Public Law 90-207, *id*., that entitlement to continuation pay "could begin after the end of the first obligated tour of duty." No member of Congress expressed a contrary view. However, after the law's enactment, the Comptroller General of the United States ruled that its actual language, which authorized payment to a medical officer "who has completed any other definitive active duty obligation that he has under law or regulation," meant that any and all obligated active service must be paid back as a prerequisite for continuation pay entitlement. The Act of October 18, 1968, Public Law 90-603, 82 Stat. 1187 (1968), amended this language to make it clear that an officer, if otherwise eligible, could receive continuation pay after the completion of his initial active duty obligation.

The Act of May 6, 1974, Public Law 93-274, §1(1) and (4), 88 Stat. 94, 94-96 (1974), terminated the continuation pay authority for medical officers below pay grade O-7 and authorized a larger payment, variable incentive pay, in its place. Since it did not make medical officers of pay grade O-7 or higher eligible for the variable incentive pay, the act continued the existing continuation pay authority for such officers.

**Variable Incentive Pay for Medical Officers**

The Act of May 6, 1974, Public Law 93-274, §1(4), 88 Stat. 94, 95-96 (1974), created variable incentive pay (VIP) for medical officers of the Armed Forces and the Public Health Service, codified at former 37 U.S.C. §313. The act authorized, under regulations prescribed by the Secretary of Defense--or the Secretary of Health, Education, and Welfare (now the Secretary of Health and Human Services) for Public

Health Service Officers--payment of up to $13,500 for each year of an active duty agreement accepted by the Secretary concerned from a qualified medical officer who (1) was below pay grade O-7, (2) had a critical specialty, (3) was not serving in an initial active duty obligation of four years or less or the first four years of an initial obligation of more than four years, and (4) was not undergoing intern or initial residency training. The Congressional intent in creating VIP was described in these terms:

> The purpose of the proposed legislation is to ensure a level of military physician staffing in an all-volunteer environment that will enable the military medical departments to continue to provide adequate health services for our Armed Forces.
>
> Historically, the most difficult officer group to retain on active duty beyond their first obligated tour is that of the health care professionals and within that group physicians are, by far, the most difficult subgroup to retain on active duty. A major cause of the difficulty is the disparity between the income of the military health professional and his civilian counterpart. It is only in the physician group that major pay disparities currently exist. Priority action is required in order to overcome this problem.
>
> The proposed legislation has the objective of authorizing an experimental eighteen months program to reduce the gap between the income of civilian and military physicians by improving the rates of special pay for this subgroup and by substituting an improved variable incentive pay in place of the existing continuation pay. We do not believe it feasible or desirable to attain complete parity with civilian physician incomes.[18]

It is clear from the legislative history of the act that, while the income of physicians in private practice was used as a benchmark to measure how much extra pay was needed to induce military physicians to remain on active duty, VIP--which was generally referred to as a "bonus" by all witnesses and members of Congress and persistently called a "reenlistment bonus" by one senator--was intended as a physicians' analog to such retention bonuses as the selective reenlistment bonus and special pay for nuclear-qualified officers. One defense witness, for instance, expressed this view in these terms:

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[18] Senate Report No. 93-658 (Committee on Armed Services), pp. 11-12, accompanying S. 2770, 93d Congress, 1st Session (1973).

One of the reasons we are asking for a bonus plan rather than an increase in basic compensation, is to permit us to tailor the amounts that we would pay to individuals based upon changing circumstances. It would hardly seem consistent with that goal to permit people to enter into long-term contracts which might result in our paying larger bonuses than was necessary.[19]

As implemented by Department of Defense regulations, VIP was limited to medical officers in pay grades O-3 through O-6 who accepted an active duty agreement of one, two, three, or four years. The offer was to be made only to officers whose professional qualifications or demonstrated performance warranted it. The regulations also provided that to be eligible for VIP a medical officer must have had no disqualifying active duty obligation, which was defined as including, in addition to the initial obligation specified in the law, an obligation resulting from (1) an agreement executed by an officer in a reserve component to enter active duty after completion of professional education and training, (2) participation in an educational program in which the officer was on active duty during his attendance at the professional school that qualified him as a medical officer, not to exceed a disqualifying period of the first four years as a medical officer, and (3) an agreement entered into under the continuation pay program. This last limitation was subject to an exception, however, in that an officer who would be eligible for VIP were he not under a continuation pay obligation could repay the prorated unearned portion of his continuation pay entitlement and thus qualify for VIP. While the law provided that VIP should be paid only to officers in critical skill specialties, the Department of Defense as a matter of policy treated all medical specialties in all years of service categories as "critical" for the purpose of VIP eligibility. VIP rates for all medical specialties were as follows:

| Years of Service (including constructive service credit) | Length of Active Duty Agreement | | | |
|---|---|---|---|---|
| | 1 Year | 2 Years | 3 Years | 4 Years |
| 4 through 13 | $12,000 | $12,500 | $13,000 | $13,500 |
| 14 through 19 | 11,500 | 12,000 | 12,500 | 13,000 |
| 20 through 25 | 11,000 | 11,300 | 11,600 | 12,000 |

[19] Hearings of December 14, 1973, on S. 2770 before the Senate Armed Services Committee, p. 98, 93d Congress, 1st Session (1973) (testimony of the Deputy Assistant Secretary of Defense for Health Resources and Programs).

| | | | | |
|---|---|---|---|---|
| 26 or more | 10,000 | 10,300 | 10,600 | 11,000 |
| Obligated Officers | 9,000 | 9,000 | 9,000 | 9,000 |

**Note:** An obligated officer was one who had an unserved non-disqualifying active duty obligation resulting from participation in military-funded medical training of one school year or more.

VIP could be paid in a lump sum after completion of the period specified in the active duty agreement, or in advance in equal annual, semiannual, or monthly installments, at the option of the officer concerned.

The Act of May 6, 1974, Public Law 93-274, §2, 88 Stat. 94, 96 (1974), specified that the VIP authority would expire on June 30, 1976. The Fiscal Year Adjustment Act, Public Law 94-273, §2(18), 90 Stat. 375 (1976), extended the authority to September 30, 1976, as one of a group of date adjustments made in connection with the new October-September fiscal year cycle. Section 305 of the Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, §305, 90 Stat. 923, 926 (1976), further extended the VIP authority to September 30, 1977; and the Act of September 30, 1977, Public Law 95-114, §1, 91 Stat. 1046 (1977), again extended the authority to September 30, 1978. The Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §801(a), 92 Stat. 1611, 1619 (1978), extended the authority to September 30, 1980. VIP authority as pertaining to medical personnel in the Armed Forces was terminated by the Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, §3(b), 94 Stat. 587, 590-591 (1980), although it continued to apply to qualifying medical personnel in the Public Health Service until September 15, 1981. At that time, that remaining authority was repealed by the Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, §414(a), 94 Stat. 2835, 2906 (1980).

The prohibition in the Act of May 6, 1974, Public Law 93-274, *id*., against variable incentive pay eligibility during initial residency training and its elimination of continuation pay for medical officers below pay grade O-7 adversely affected a small group of medical officers below that grade in a way not intended. The residency training of these officers had for various reasons--including, in some cases, a need for their services in combat zones--been delayed until after they had completed several years of

active duty. When they were in residency training they were, under the Act of May 6, 1974, *id*., excluded from eligibility for both variable incentive pay and continuation pay. To cover such officers, and as a "saved pay" measure, the Act of August 29, 1974, Public Law 93-394, 88 Stat. 792 (1974), reinstated continuation pay eligibility retroactively to June 1, 1974, for medical officers below pay grade O-6 who were undergoing initial residency training and who were on active duty on June 1, 1974.

The Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, §4, 94 Stat. 587, 591-592 (1980), adopted an entirely new set of special pay provisions for physicians and accordingly withdrew any remaining continuation pay entitlement authority from such personnel.

**Special Pay for Medical Officers of the Armed Forces**

The Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, §2(a), 94 Stat. 587, 587-588 (1980), substantially amended the prior provisions of Title 37, United States Code, dealing with special pay entitlements of health professionals in the Armed Forces. All prior authority dealing with special pay for physicians in the Armed Forces--*i.e*., former 37 U.S.C. §§302, 311, and 313 as in effect before enactment of the Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, *id*.--was effectively repealed, at least to the extent it covered such personnel,[20] to be replaced by an entirely new 37 U.S.C. §302, in which authority for such special pay is unified. In addition, the new §302 made permanent the special pay program for medical officers, thereby eliminating the concerns of many officers over whether the special pay programs for health professionals would be terminated.

[20] Neither 37 U.S.C. §§311 or 313, dealing with special continuation pay and variable incentive pay, respectively, was repealed outright. Rather, physicians in the Armed Forces were withdrawn from the scope of operation of those provisions. In particular, until enactment of the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985), 37 U.S.C. §311 still in terms authorized continuation pay for dentists in the Armed Forces, and physicians and dentists in the Public Health Service were also entitled to such pay under the provisions of 42 U.S.C. §210(a), as added by Section 805 of the Mental Health Systems Act, Public Law 96-398, §805, 94 Stat. 1564, 1608 (1980). 37 U.S.C. §313 continued to authorize variable incentive pay for physicians in the Public Health Service until repealed by the Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, §414(a), 94 Stat. 2835, 2906 (1980).

Under the new system of special pay for physicians in the Armed Forces--now formally referred to as "medical officers of the Armed Forces"--four different types of special pay, none of them subject to a statutory cutoff date, were established. The four types of special pay are: (1) variable special pay, codified at 37 U.S.C. §302(a)(2) and (3); (2) additional special pay for physicians not in training, codified at 37 U.S.C. §302(a)(4); (3) special pay for board certification, codified at 37 U.S.C. §302(a)(5); and (4) incentive special pay, codified at 37 U.S.C. §302(b). None of these pays is dependent on an affected officer's obligated duty status.

The four new special pays authorized for medical officers of the Armed Forces [21] by the Uniformed Services Health Professional Special Pay Act of 1980, Public Law 96-284, §2(a), 94 Stat. 587, 587-588 (1980), were all directed to the problem of retention. As stated by Congress:

> The most serious deficiency [in the military medical care system] was the numerical shortage of military physicians and to a lesser degree the shortage in the four categories of health professionals.... The unanimous opinion of [a number of health professionals] interviewed [in connection with Congressional consideration of the Act] was that a major improvement in the compensation system was needed if the numerical shortage in health professionals was to be overcome.[22]

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[21] A separate form of special pay was authorized for reserve officers who were medical officers of the Armed Forces, who served on active duty as medical officers for not less than one year, and who were under a call or order to active duty for less than one year. As initially enacted, the rate of special pay for affected personnel was $100 per month for officers who had completed less than two years of active duty and $350 per month for officers who had completed at least two years of active duty. See 37 U.S.C. §302(h), as amended by Section 1342(d) of the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §1342(d), 100 Stat. 3816, 3991 (1986). This special pay for Reserve medical officers was increased to $450 per month for all officers on active duty under a call or order to active duty for less than one year by the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §702(e), 103 Stat. 1352, 1468-1469 (1989). Under the amendments to 37 U.S.C. §302(h) made by the 1990/1991 National Defense Authorization Act, no distinction was made in the amount of pay authorized for reserve medical officers on the basis of the amount of active duty time they had completed.

[22] House Report No. 96-904 (Committee on Armed Services), p. 2, accompanying H.R. 6982, 96th Congress, 2d Session (1980). Also see *id.*, at p. 4, and Senate Report No. 96-749 (Committee on Armed Services), p. 2, accompanying S. 2460, 96th Congress, 2d Session (1980). (In a special transitional provision, Section 7 of the Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, §7, 94 Stat. 587, 593 (1980), provides that no medical officer affected by the Act is to receive less pay, including basic and special pays, under the new provisions than he would have had former 37 U.S.C. §§302, 311, and 313 continued to apply. See 37 U.S.C. §302 note. See also, *e.g.*, House Report 96-904 (Committee on Armed Services), p. 14, accompanying H.R. 6982, 96th Congress, 2d Session (1980).)

A discussion of each of the four special pays as initially enacted by Congress follows:

*Variable special pay*. Under the special pays program for medical officers of the Armed Forces established by the Uniformed Services Health Professionals Special Pay Act of 1980, variable special pay is payable to all military physicians on active duty. Except for general and flag officers, who received a flat $1,000 in variable special pay per year, and persons serving an internship, who received $1,200 per year, the rates of variable special pay initially established by the Uniformed Services Health Professionals Special Pay Act of 1980 ranged from a low of $5,000 to a high of $10,000 per year, depending on an affected officer's years of creditable service, as follows:

| Annual Years of Creditable Service | Variable Special Pay |
|---|---|
| Less than 6 | $5,000 |
| 6 but less than 8 | 10,000 |
| 8 but less than 10 | 9,500 |
| 10 but less than 12 | 9,000 |
| 12 but less than 14 | 8,000 |
| 14 but less than 18 | 7,000 |
| 18 but less than 22 | 6,000 |
| Over 22 | 5,000 |

Variable special pay, although established as an annual entitlement, is payable to affected personnel monthly.

As reflected in the relevant Congressional report, the rates of variable special pay initially established by Congress were "set to achieve the level of compensation by years of service that is believed by the [House Committee on Armed Services] to represent a system of compensation that would attract and retain the number and quality of physicians needed by the military services."[23]

[23] Senate Report No. 96-749 (Committee on Armed Services), p. 3, accompanying S. 2460, 96th Congress, 2d Session (1980). See House Report No. 96-904 (Committee on Armed Services), p. 5, accompanying

*Additional special pay*. The Uniformed Services Health Professionals Special Pay Act of 1980 also established another form of special pay--known as "additional special pay"--for medical officers of the Armed Forces not engaged in medical internship or initial residency training. Entitlement to such additional pay was, and continues to be, conditioned on an affected officer's execution of a written agreement to remain on active duty for a period not less than one year. As initially established, medical officers with less than ten years of creditable service were entitled to $9,000 per year in additional special pay, whereas officers with ten or more years of service were entitled to $10,000 per year. Additional special pay is payable annually as a lump sum at the beginning of the twelve-month period for which the payment is to be made. An officer who leaves active duty before the end of the twelve-month period for which he or she received a payment is required to refund the "unearned" portion of the payment.[24]

*Board certification pay*. Special pay for board certification is available to all military physicians who have achieved board certification in a medical specialty. As initially established by the Uniformed Services Health Professionals Special Pay Act of 1980, board certification pay was payable, on a monthly basis, in amounts ranging from $2,000 to $5,000 per year depending on an affected officer's years of creditable service, as follows:

| Years of Creditable Service | Annual Pay for Board Certification |
|---|---|
| Less than 10 | $2,000 |
| 10 but less than 12 | 2,500 |
| 12 but less than 14 | 3,000 |

H.R. 6982, 96th Congress, 2d Session (1980); and House Report No. 96-517 (Committee on Armed Services), p. 3, accompanying H.R. 5235, and Senate Report No. 96-507 (Committee on Armed Services), p. 2, accompanying S. 523, 96th Congress, 1st Session (1979).

[24] Under an amendment to 37 U.S.C. §302 effected by the Department of Defense Authorization Act, 1986, Public Law 99-145, §640(2), 99 Stat. 583, 652 (1985), a discharge in bankruptcy entered less than five years after the termination date of an agreement does not discharge the obligation in question. See House Report No. 99-81 (Committee on Armed Services), p. 233, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

| | |
|---|---|
| 14 but less than 18 | 4,000 |
| Over 18 | 5,000 |

*Incentive special pay*. Incentive special pay, the last of the special pays for medical officers of the Armed Forces authorized by the Uniformed Services Health Professionals Special Pay Act of 1980, was initially designed to be payable to medical officers of the Armed Forces not undergoing medical internship or initial residency training who were in critical medical specialties, who practiced in those specialties, and who executed written continuation agreements binding them to remain on active duty for a period of not less than one year. In connection with the requirement that an officer receiving incentive special pay be in a critical medical specialty, the Secretary of an affected officer's military department was required to certify that the officer was qualified in such a medical specialty. Officers meeting the various eligibility requirements were entitled to incentive special pay not to exceed $8,000 per year. As was true of additional special pay, incentive special pay was, and continues to be, payable annually in a lump sum at the beginning of the twelve-month period for which the payment is to be made. As initially enacted, the total amount of incentive special pay paid to all medical officers of the Armed Forces could not exceed six percent of the total amount of all special pays authorized for such officers under 37 U.S.C. §302 generally.

As reflected in the relevant Congressional Report, Congress intended that incentive special pay be used only "to provide additional incentive [*sic*] to physicians in specialties in critical supply."[25] In addition, Congress indicated it was establishing such special pay authority "to test the effectiveness of similar

[25] House Report No. 96-904 (Committee on Armed Services), p. 6, accompanying H.R. 6982, 96th Congress, 2d Session (1980). See Senate Report No. 96-749 (Committee on Armed Services), p. 3, accompanying S. 2460, 96th Congress, 2d Session (1980).

forms of additional pay to address other shortages in the physician force."[26] Congress also indicated that it expected the incentive special pay authority would not be used to alter the general structures of variable special pay by years of service.[27]

Only one amendment was made to the four special pay programs for medical officers of the Armed Forces before Congress extensively reconsidered the issue of medical officer retention in connection with its deliberations on the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §§702 and 703, 103 Stat. 1352, 1468-1471 (1989). In 1987, the incentive special pay program for medical officers of the Armed Forces was amended by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §716, 101 Stat. 1019, 1113 (1987), in two particulars. First, the act repealed the limitation of the total amount of incentive special pay to six percent of all special pays authorized for medical officers of the Armed Forces, and second, the act removed the $8,000 annual ceiling on the amount of incentive special pay payable to any one medical officer, provided that the only medical officers who could be paid more than $8,000 per year were medical officers determined by the Secretaries of their respective military departments to be qualified and serving in "health profession skill[s]" designated as "critically needed wartime skill[s]." In support of these two changes, the House Committee on Armed Services, which had proposed the changes in the first instance, noted that the six percent limitation and the $8,000 ceiling for incentive special pay, which had been "designed to provide a further incentive [in addition to variable special pay, additional special pay, and board certification pay] for hard-to-retain specialties," had been "established in 1980 and ... not changed since that time."[28] The committee went on to state:

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[26] House Report No. 96-904 (Committee on Armed Services), p. 6, accompanying H.R. 6982, 96th Congress, 2d Session (1980). See Senate Report No. 96-749 (Comm ittee on Armed Services), p. 3, accompanying S. 2460, 96th Congress, 2d Session (1980).

[27] Senate Report No. 96-749 (Committee on Armed Services), p. 3, accompanying S. 2460, 96th Congress, 2d Session (1980).

[28] House Report No. 100-58 (Committee on Armed Services), p.213, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

> As a result of the improvements in the medical special pay structure enacted in [the Uniformed Services Health Professionals Special Pay Act of] 1980 and the pipeline of medical school graduates provided by the Armed Forces Health Professions Scholarship Program and the Uniformed Services University of the Health Sciences, the [military] services are able to meet their active duty requirement for physicians in specialties like pediatrics, family practice, and internal medicine. This is not the case for a number of others, however, specifically those specialties that can command very high salaries in the civilian sector. These highly paid specialists, such as surgeons, are also the ones that will be in critically short supply in wartime, particularly in the early days of a mobilization.
>
> The committee believes greater flexibility is needed in the incentive special pay program to permit larger amounts to be targeted at physicians with critical wartime skills, even though this may result in payment to a smaller number of physicians. As a result, ... the committee recommends removal of the $8,000 limit on individual payments and the six percent limit on funds available for this program. For fiscal year 1988, the committee recommends that any increase in this program be absorbed from within existing resources. In the future, however, the department would be able to request the Congress to approve a higher appropriation level for incentive special pay.[29] [30]

Without amending any of the four special pay programs for medical officers of the Armed Forces set out at 37 U.S.C. §302, the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §612, 102 Stat. 1918, 1979-1981 (1988), established a new medical officer retention bonus as a provisional, uncodified program for dealing with "the retention of health care professionals."[31] [32] As the legislation was

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[29] House Report No. 100-58 (Committee on Armed Services), p.214, accompanying H.R. 1748, 100th Congress, 1st Session (1987). Cf. House Report No. 100-446 (Committee of Conference), p. 649, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

[30] As adopted, the amendments to the incentive special pay program did in fact require increased payments made during fiscal year 1988 to individual medical officers to be met out of existing funding requests made to Congress by the Department of Defense in its previous budget submissions. National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §716(b), 101 Stat. 1019, 1113 (1987).

[31] House Report No. 100-753 (Committee of Conference), p. 405, accompanying H.R. 4264, and House Report No. 100-989 (Committee of Conference), p. 407, accompanying H.R. 4481, 100th Congress, 2d Session (1988).

[32] The text of the provisional, uncodified medical officer retention bonus program in issue is set out as a note under 37 U.S.C. §302.

initially enacted, a qualified medical officer who executed a written agreement during the nine-month period starting January 1, 1989, and ending September 30, 1989, obligating him or her to remain on active duty for at least two years following the completion of any other active-duty obligation, was eligible for a "retention bonus" of "not more than $20,000 for each year covered by the agreement." Medical officers entitled to participate in the retention bonus program had to be medical officers of the Armed Forces in pay grades below pay grade O-7 with at least eight years of creditable service and also had to have completed any active-duty service commitments incurred for medical education or training before October 1, 1991. In determining the amount of a retention bonus payment in the case of a particular medical officer, the Secretary of Defense was required to "ensure that no officer receives pay under this section [*i.e.*, the provision authorizing the medical officer retention bonus] which, when added to all other pay and allowances ... results in such officer receiving total compensation in an amount that exceeds the total compensation paid to comparable ... civilian physicians employed in the private sector in employment other than self-employment."[33] Refunds were required from medical officers who signed up for the bonus but who did not complete their committed-to active-duty service obligation.[34] An overall limitation on medical officer retention bonus obligational authority of $30,000,000 was established for fiscal year 1989. In addition to the specific provisions authorizing the medical officer retention bonus program generally, the Secretary of Defense was required to submit various reports to Congress, including a report "describing the manner in which the authority [for the bonus program] is to be used" and a report containing "[a]n analysis of current and projected requirements of the Armed Forces for health professionals by specialty and years of service," an "assessment of the adequacy of the existing compensation system for such health care professionals," and "recommendations for legislation as the Secretary considers necessary to attract and

[33] National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §612(c), 102 Stat. 1918, 1979-1980 (1988). See 37 U.S.C. §302 note.

[34] A discharge in bankruptcy entered less than five years after the termination date of an agreement was specifically provided not to discharge the refund obligation. National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §612(e), 102 Stat. 1918, 1980 (1988). See 37 U.S.C. §302 note.

retain on active duty the health care professionals needed to meet the needs of the Armed Forces."[35]

In support of the medical officer retention bonus program, the House-Senate Conference Committee noted:

> ... The conferees recognize that the retention of health care professionals is difficult. While recognizing that compensation is not the only factor affecting retention, the conferees agree that it is a major consideration. The conference agreement directs the Secretary of Defense to submit a comprehensive report to the Committees on Armed Services of the Senate and House of Representatives evaluating the adequacy of the existing compensation package for health care professionals and any recommended changes to that structure. That report must include justification for future long-term specialty requirements, grade levels, training requirements, and levels of non-patient care physician positions....
>
> The conference agreement also requires that this long-term comprehensive report include a legislative proposal that provides for one of two approaches to an alternative compensation system for health care professionals linked to the compensation of private sector employed physicians....
>
> Further, the conferees agree that while developing an adequate health professional compensation system is the long-term solution, short-term concerns need to be addressed as well. The conference agreement, therefore, authorizes $30 million to establish a discretionary physicians' bonus to be implemented by the Secretary during fiscal year 1989.
>
> This temporary medical bonus program is to be provided to those physicians determined to be in short supply based either on specialty, years of experience, or other factors determined by the Secretary of Defense. This authority is granted only for those members who have more than eight years of creditable service, who have completed service obligations incurred as a result of education/or training, and whose total compensation currently falls below that of comparable physicians in private sector employment as determined by the Secretary of Defense. The conferees suggest that the salaries of physicians employed by Civilian Health Maintenance Organizations, or other similar organizations, may represent a good comparative benchmark. The Secretary would have authority to negotiate multi-year agreements with a minimum requirement for a two-year commitment period. The maximum bonus payable is

[35] National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §612(g), 102 Stat. 1918, 1980-1981 (1988). See 37 U.S.C. §302 note.

> $20,000 per year of commitment. However, the conferees generally expect that the total compensation that a military physician receives under this limited authority in any one year may not exceed a 48 percent increase in the total annual amount of variable special and additional special pays to which such a physician is entitled under [the special pays program for medical officers of the Armed Forces] during such year.[36]

In extensive comments on its proposed changes in 1989 and 1990 to the special pays programs for medical officers of the Armed Forces--which are quoted here *in extenso* because of the comprehensive background to and analysis of the problem of medical officer retention in the Armed Forces--the House Committee on Armed Services noted:

> *Background*
>
> The Uniformed Services Health Professionals Special Pay Act of 1980 (Public Law 96-284) revised and updated the physician special pay system to assist in the recruitment and retention of medical officers in the Armed Forces. Coupled with the large October 1980 and October 1981 pay raises for all military personnel, the new physician special pay structure was an unqualified success in achieving that goal. Aggregate physician continuation rates climbed from 78 percent in fiscal year 1977 to 90 percent in fiscal year 1983. Improved retention, combined with increased accessions, resulted in a 29 percent increase in active duty physicians from fiscal year 1980 through fiscal year 1987.
>
> As the value of the special pays has eroded over time, retention at the end of initial obligation has gradually declined. According to Congressional Budget Office data, DoD-wide end of initial obligation retention rates have dropped from a high of 60 percent in 1983 to 37 percent in fiscal year 1988. For those beyond initial obligation, the overall retention rate has declined from 89 percent to 85 percent.
>
> The decreasing value of the medical special pays is one factor in the drop in retention rates. The committee notes that conditions of work--such as inadequate numbers of nurses and ancillary medical personnel, lack of clerical support personnel, aging facilities and equipment, and the inability to participate in continuing medical education--are of equal, and probably greater, importance.
>
> For example, far too often a military physician, after a long and busy day of seeing patients, supervising interns, and attending to a multitude of administrative

[36] House Report No. 100-753 (Committee of Conference), pp. 405-406, accompanying H.R. 4264, and House Report No. 100-989 (Committee of Conference), pp. 407-408, accompanying H.R. 4481, 100th Congress, 2d Session (1988). See Senate Report No. 100-326 (Committee on Armed Services), pp. 94-95, accompanying S. 2355, 100th Congress, 2d Session (1988).

or other duties, must spend several hours handwriting or typing patient medical records. Military physicians have on numerous occasions reported wheeling patients to radiology or the laboratory themselves because of the lack of a corpsman to do the job. Such conditions would be unthinkable in the civilian sector and, based on recent surveys of military doctors, are a major factor in declining physician retention rates.

*Fiscal year 1989 action*

In order to stem the tide of physician losses before the problem became more serious, section 612 of the fiscal year 1989 Defense Authorization Act (Public Law 100-456) provided authority for an interim physician retention bonus for fiscal year 1989 and directed the Secretary of Defense to submit a comprehensive requirements-based analysis of military health care professionals, including the Secretary's recommendations for legislative change. The results of the reports provided by the Department have been disappointing at best. Much analysis remains to be done to satisfy the requirements of section 612(g) of Public Law 100-456.

Of particular concern is the lack of a robust objective peacetime force, disaggregated by grade or years of service and by specialty. The committee notes that it expressed dissatisfaction with the lack of similar information in its report on the special pays for health professionals in 1979, and that the situation appears to have changed very little since that time.

Unfortunately, the interim bonus authority, dubbed the Medical Officer Retention Bonus or MORB, proved to be divisive due to the way it was implemented by the Department of Defense. As submitted to Congress on November 15, 1988 the Department's plan for the MORB included a minimal bonus amount for primary care physicians--the doctors who comprise half the force and provide the bulk of the care to the beneficiary population. Subsequently, in late December primary care physicians were deleted from the program entirely. A storm of outrage ensued. The Department ultimately put the primary care physicians back in, following a congressional hearing in March. By that time, unfortunately, considerable damage had already been done.

*Committee recommendation*

In devising a new physician special pay plan, the committee has attempted to avoid the pitfalls and divisiveness of the MORB exercise. There currently appears to be a plethora of new medical special pay plans making their way through the corridors of the Pentagon. The committee has opted instead to restore the buying power of the current physician special pay system which has served its purpose well until its buying power began to erode in recent years.

. . .

*Incentive special pay*

> Under the committee recommendation, the service Secretaries would, after coordination with the Secretary of Defense, be authorized to pay an incentive special pay in an amount determined by the Secretary concerned, not to exceed $20,000 per year. To be eligible for the payment, the officer would execute an agreement to remain on active duty for a period of twelve months.
>
> The increases recommended in variable special pay, additional special pay, and board certification pay are intended to meet the need for a substantial, general increase in the level of special pay for physicians. The committee, therefore, does not intend incentive special pay to be paid to all specialty trained medical officers. Incentive special pay would instead continue to be authorized to address differential problems between specialties.
>
> In determining the eligibility and the amount of incentive special pay, the Secretary concerned should consider specialty shortages relative to wartime requirements, retention rates affecting the Department's ability to provide cost-effective peacetime health care, and service unique needs. Officers who receive special skill enhancement training to improve their cross-utilization in a wartime shortage specialty may be paid an incentive special pay. Incentive special pay should be paid by specialty and not by obligated status, or by length of service, except that some distinction may be made in the amount for officers with limited experience in specialty.[37]

In a similar vein, the Senate Committee on Armed Services, "[r]ecognizing the necessity of action now," recommended increasing the value of variable, additional, and board certification special pays "by approximately 35 percent" in order to "roughly restore the value of these special pays to the percent of total compensation they were designed to represent when the system was implemented in 1980."[38]

In conference, the House and Senate conferees, having agreed to extend the "medical officer retention bonus" program, changed the focus of the incentive special pay program to compensate for the planned phase-out of the bonus over time. As noted in the House-Senate Conference Report:

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[37] House Report No. 101-121 (Committee on Armed Services), pp. 285-287, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[38] Senate Report No. 101-81 (Committee on Armed Services), p. 178, accompanying S. 1352, 101st Congress, 1st Session (1989).

With regard to incentive special pay, the conferees capped maximum payment at $16,000 (the fiscal year1989 level) during fiscal year 1990; at $22,000 during fiscal year 1991; at $29,000 during fiscal year 1992; and at $36,000 during fiscal year 1993. Physicians receiving a medical officer retention bonus payment for service during a 12-month period will continue to be eligible for incentive special pay during that period at the rates in effect during fiscal years 1989 and 1990. When no longer eligible for a retention bonus payment, the physician will be eligible for the incentive special pay in effect at that time.

Within the above constraints, the conferees intend that the incentive special pay program be managed in such a way as (1) to transition smoothly out of the medical officer retention bonus environment without significantly disadvantaging physicians who have signed bonus contracts, and (2) to avoid large reductions in total compensation for such individuals as the retention bonus payments cease. For example, the conferees expect that the incentive special pay to an obligated officer who takes the medical officer retention bonus to be regulated to ensure that there are no abrupt or marked changes in the flow of compensation to that officer at the point when medical officer retention bonus payments to that officer cease.

Under these guidelines, the conferees intend that, beginning in fiscal year 1991, the amount of incentive special pay for each specialty increase by an amount sufficient to ensure that by fiscal 1993 the amount of incentive special pay plus any additional amount available for a multi-year contract ... approximates, at a minimum, the total of fiscal year 1989 incentive special pay plus an annual four year medical officer retention bonus payment. To the greatest extent possible, incentive special pay should not vary by specialty among the military Services.

Any increase in incentive special pay each year for each specialty, however, is contingent on the Services' ability to justify the need for improved retention.... Requirements are to be justified based on wartime needs, cross-utilization capabilities contributing to a specialty's ability to satisfy wartime requirements, or requirements generated from a specialty's ability to provide cost-effective peacetime health care in the direct care system based on the expected population to be supported. Incentive special pay for a specialty should not increase if the retention goals for that specialty have been met in the previous fiscal year or if the inventory for that specialty exceeds 110 percent of requirements.[39]

[39] House Report No. 101-331 (Committee of Conference), pp. 594-595, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

In its consideration of authorizations for fiscal year 1991, the House Committee on Armed Services proposed a prohibition on the payment of incentive special pay during fiscal year 1991 under the provisional medical officer retention bonus program established by the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §612, 102 Stat. 1918, 1979-1981 (1988), as expanded and extended by the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §703, 103 Stat. 1352, 1469-1471 (1989). H.R. 4739, §611, 101st Congress, 2d Session (1990). Stating that it did "not believe that the experience to date with the medical officer retention bonus program provides the requisite support to continue a multi-year contract plan of similar design at this time," the House Armed Services Committee noted that the Department of Defense "has yet to establish physician retention goals by specialty" and went on to question "the rationale for paying all specialties incentive special pay ... for multi-year contracts."[40]

> In conference, the House proposal to prohibit payments during fiscal year 1991 under the medical officer retention bonus program was effectively turned on its head and a new "multiyear retention bonus" program was established to succeed the uncodified, provisional medical officer retention bonus program established by the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, *id*. Under the "multiyear retention bonus" program adopted in the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §611(a)(1), 104 Stat. 1485, 1576 (1990), now codified at 37 U.S.C. §301d, medical officers of the Armed Forces in pay grades below pay grade O-7 who enter into written agreements to remain on active duty for two, three, or four years, and who have either eight years of creditable service or who have completed any active duty commitment they might have incurred for medical education and training, and who have completed any initial residency training before September 30th of the fiscal year in which they enter an agreement, were eligible for a "retention bonus" not to exceed $14,000 for each year of a four-year agreement, while some lesser amount, not specified in the act, was to be made available for each year of a two- or three-year agreement, "reduced to reflect the shorter service commitment." 37 U.S.C. §301d(a)(2).
>
> In connection with implementation of the "multiyear retention bonus" program, the Secretary of Defense was required to submit within 90 days after adoption of the program a report to Congress describing "the process that will be used to reassess the assignment of medical specialties to the various categories of

[40] House Report No. 101-665 (Committee on Armed Forces), p. 287, accompanying H.R. 4739, 101st Congress, 2d Session (1990).

multiyear bonuses ... and the means for ensuring that substantial changes to the total compensation of medical officers of the Armed Forces will be minimized." National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, *id*., §611(c), 104 Stat. at 1577. Medical officers of the Armed Forces who had entered into written agreements under the medical officer retention bonus program adopted by the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, *id*., were permitted to terminate those agreements in order to enter into agreements under the new "multiyear retention bonus" program. National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, *id*., §611(b)(1), 104 Stat. at 1576-1577. The National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, 116 Stat. 2568, increased the maximum annual bonus payment from $14,000 to $50,000.

In commenting on the new "multiyear retention bonus" program for medical officers of the Armed Forces, the House-Senate conference committee stated:

> Based on two years' experience with the medical officer retention bonus, the conferees are satisfied that a multi-year bonus is a cost effective approach to provide stability in managing the physician force. In conjunction with incentive special pay, a multi-year special pay can achieve desired retention goals and bring medical officer end strength by specialty more in line with requirements.
>
> . . .
>
> The primary purpose of multi-year special pay is to align actual retention with desired retention. Because retention needs may vary by specialty, different levels of multi-year payment would be appropriate for different specialties. However, this desire for accuracy must be weighed against the need for simplicity. Consequently, the conferees believe that the multi-year special pay should consist of no more than three different levels. Specific specialists should not be identified directly with a level of multi-year special pay; rather, a specialty should be eligible to receive a particular level of multi-year special pay based on the need to meet and maintain end strength requirements for that specialty.[41]

Following these deliberations, sections 702 and 703 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §§702 and 703, 103 Stat. 1352, 1468-1471 (1989), made a number of amendments to the variable special pay, the additional special pay, the board certification pay, and the incentive special pay programs of 37 U.S.C. §302.

[41]House Report No. 101-923 (Committee of Conference), p. 612, accompanying H.R. 4739, 101st Congress, 2d Session (1990). See *id*., pp. 611-613, generally.

Section 702(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §§702(a), 103 Stat. 1352, 1468 (1989), as amended by the National Defense Authorization for Fiscal Year 1991, Public Law 101-510, §612, 104 Stat. 1485, 1577 (1990), established new and generally higher rates of variable special pay for medical officers of the Armed Forces. (See Current Rates of Special Pay for Medical Officers of the Armed Forces, below.)

With respect to additional special pay, Section 702(b) of the 1990/1991 National Defense Authorization Act, Public Law 101-189, *id*., §702(b), 103 Stat. at 1468, provided that all medical officers of the Armed Forces not undergoing medical internship or initial residency training are entitled to such pay at the rate of $15,000 per year, provided they execute the required continuation agreements. The distinction made in the original additional special pay program between officers with less than ten years of creditable service and those with more than ten years of creditable service was dropped. Section 702(c) of the 1990/1991 National Defense Authorization Act, Public Law 101-189, *id*., §702(c), 103 Stat. at 1468, generally increased the rates of board certification pay. (See Current Rates of Special Pay for Medical Officers of the Armed Forces, below)

Finally, Section 702(d) of the 1990/1991 National Defense Authorization Act, Public Law 101-189, *id*., §702(d), 103 Stat. at 1468, further amended the incentive special pay program to provide a ceiling on such pay of $16,000 for any twelve-month period beginning in fiscal year 1990, of $22,000 for any twelve-month period beginning in fiscal year 1991, of $29,000 for any twelve-month period beginning in fiscal year 1992, and of $36,000 for any twelve-month period beginning after fiscal year 1992. The National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, 116 Stat. 2458, increased this ceiling to $50,000.

**Current rates of special pay for medical officers of the Armed Forces**: Medical officers of the Armed Forces may receive as many as five different types of medical

special pays in addition to any other pays and allowances to which they may otherwise be entitled: variable special pay, additional special pay, board-certification pay, incentive special pay, and multiyear retention bonus.

*Variable special pay*. Generally speaking, the amount of variable special pay to which a medical officer of the Armed Forces is entitled depends on the officer's years of creditable service, as follows:

| Years of Creditable Service | Annual Variable Special Pay Entitlement |
|---|---|
| Undergoing internship | $1,200 |
| Less than 6, not undergoing internship | $5,000 |
| 6 but less than 8 | $12,000 |
| 8 but less than 10 | $11,500 |
| 10 but less than 12 | $11,000 |
| 12 but less than 14 | $10,000 |
| 14 but less than 18 | $9,000 |
| 18 but less than 22 | $8,000 |
| Over 22 | $7,000 |

General and flag officers who are medical officers of the Armed Forces are entitled to $7,000 per year in variable special pay regardless of years of creditable service; medical officers undergoing medical internship training are entitled to $1,200 per year; and medical officers with less than six years of creditable service are entitled to $5,000 per year. An officer's years of creditable service include all periods spent in medical internship or residency training when the officer was not on active duty plus all the officer's years of active service as a medical officer of the Armed Forces. See 37 U.S.C. §302(g).

*Additional special pay*. A medical officer of the Armed Forces entitled to variable special pay under 37 U.S.C. §302(a)(2) or (3) who is on active duty under an active-duty agreement entered into pursuant to 37 U.S.C. §302(c) is entitled to additional special pay of $15,000 per year when not undergoing medical internship or initial residency training.

*Board-certification pay*. A medical officer of the Armed Forces entitled to variable special pay under 37 U.S.C. §302(a)(2) or (3) who is board certified in a medical specialty is entitled to board-certification pay as follows:

| Years of Creditable Service | Annual Pay for Board Certification |
|---|---|
| Less than 10 | $2,500 |
| 10 but less than 12 | $3,500 |
| 12 but less than 14 | $4,000 |
| 14 but less than 18 | $5,000 |
| Over 18 | $6,000 |

For the purpose of determining the amount of board-certification pay to which a particular medical officer of the Armed Forces is entitled, the officer's years of creditable service are computed in the same way as used in determining the officer's entitlement to variable special pay.

*Incentive special pay*. A medical officer of the Armed Forces entitled to variable special pay under 37U.S.C. §302(a)(2) or (3) who is on active duty under an active-duty agreement executed pursuant to 37 U.S.C. §302(c) may be paid up to $50,000 per year in incentive special pay year when not undergoing medical internship or initial residency training.

*Multiyear retention bonus*. A medical officer of the Armed Forces in a pay grade below pay grade O-7 who has completed initial residency training and who has at least eight years of creditable service or who has completed any active-duty service obligation incurred for medical education and training is eligible for a multiyear retention bonus of up to $50,000 for each year of a four-year active-duty service commitment or, in the case of a two- or three-year active-duty service commitment, to a lesser amount "reduced to reflect the shorter service commitment".

Although the maximum possible payment for both the incentive special pay and the multiyear retention bonus is $50,000, the range of the maximum totals of the two pays for a single individual is from $27,000 to $75,000.

The special pay authority for medical officers of the Armed Forces is permanent under current law, with no cutoff date specified.[42]

[42]The Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, 94 Stat. 2835 (1980), enacted on December 12, 1980, some five and one-half months after the Uniformed Services Health Professionals Special Pay Act, Public Law 96-284, 94 Stat. 587 (1980), also affected the pay of certain health professionals in the uniformed services. Section 402(a)(3) of DOPMA, *id*., §402(a)(3), 94 Stat. at 2904, repealed the previously existing "constructive service credits," codified at former 37 U.S.C. §205(a)(7) and (8), with which medical and dental officers of the uniformed services were credited for the purpose of determining, among other things, their basic pay entitlements, although Section 104(a) of DOPMA, *id*., §104(a), 94 Stat. at 2846-2848, effectively preserved such credits for certain other purposes, including the determination of initial grade as an officer, rank in grade, and service in grade for promotion

**Cost**: For the cost of medical officers' special pay from 1980 to 2004, see Tables II-24 of *Military Compensation Statistics Tables*, volume II of this edition.

eligibility. See new 10 U.S.C. §533, especially 10 U.S.C. §533(b)(1)(B), (C), (E), and (F), and (c); also see 10 U.S.C. §532(b)(1).

(Notwithstanding the repeal of the constructive service credit for the purpose of determining an affected officer's basic pay entitlement, however, Section 625 of DOPMA, *id*., §625, 94 Stat. at 2951, enacted as a save-pay provision, preserved the credit for basic pay purposes, among others, for persons otherwise entitled to such credits on September 14, 1981, as well as for certain other classes of persons. See 10 U.S.C. §611 note for the text of Section 625 of DOPMA, *id*., §625, 94 Stat. at 2951.)

**Chapter II.E.1.b.**

## Special Pay for Dentists (Dental Officers of the Armed Forces)

**Legislative Authority**: 37 U.S.C. §§302b, 303a, and 303b.

**Purpose**: To provide an additional pay to enable the Armed Forces to attract and retain a sufficient number of dental officers to meet health care needs of the services.

**Background**: The history of today's special pay program for dental officers of the Armed Forces can be traced back to 1947. Before then, dental officers had not been entitled to special pay of any kind. Since then, there have been three different special pay programs for dental officers. This chapter sets out the legislative history of those programs and describes how the present day program, denominated "special pay for dental officers of the Armed Forces," came into being.[1]

### Special Pay for Dental officers

The Army-Navy-Public Health Service Medical Officer Procurement Act of 1947, ch. 494 [Public Law 365, 80th Congress], §101, 61 Stat. 776, 776-777 (1947), authorized a $100 special monthly pay for Regular officers who were then commissioned in the Medical or Dental Corps and for those who would be so commissioned thereafter but before September 1, 1952. The special pay was also authorized for reserve officers of the Medical or Dental Corps who, during the same period, volunteered and were accepted for extended active duty of one year or longer. The act stipulated that no officer could be paid a career total of special pay for medical or dental service in excess of $36,000. The announced purpose of the act was to assist the armed services (and the Public Health Service) in attracting and retaining an adequate number of physicians and dentists by offering the $100 monthly special pay as an inducement to continued service. However,

[1] For an introductory statement on special pay programs for health professionals generally, see the "Background" section of Chapter II.E.1.a. hereof, "Special Pay for Physicians (Medical Officers of the Armed Forces)," at pages 379-380, above.

the Senate Armed Services Committee also stated that "[a]ctually, the $36,000 additional salary which will be paid the medical and dental officer if the bill is enacted, merely compensates him for the additional expense of his education, and for the five years of lost earning power which result from his longer period of academic training."[2] In addition to providing this special pay, the act authorized original appointments in the Army or Navy Medical or Dental Corps in any permanent commissioned grade up to colonel in the Army or captain in the Navy.

In 1948 the so-called Hook Commission made a comprehensive study[3] of the military pay system and recommended that the special pay programs for physicians and dentists be continued in essentially its existing form and amount, but that it not be paid to interns. In line with the commission's recommendations, the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §203, 63 Stat. 802, 809 (1949), restated the special pay authority and barred officers serving as medical or dental interns from entitlement. The Career Compensation Act of 1949, ch. 681, *id*., retained the September 1, 1952, cutoff date originally established in the Army-Navy-Public Health Service Medical Officer Procurement Act of 1947, ch. 494 [Public Law 365, 80th Congress], §101, 61 Stat. 776, 776-777 (1947), so that the only persons who would be entitled to special pay for medical or dental service after September 1, 1952, would be officers who had initially entered on active duty before that date.[4]

The Act of September 9, 1950, ch. 939 [Public Law 779, 81st Congress], §1, 64 Stat. 826, 826-827 (1950), established the so-called "doctor draft," which required males under age 50 qualified in medical, dental, or "allied specialist categories" to register

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[2] Senate Report No. 608 (Committee on Armed Services), p. 4, accompanying S. 1661, 80th Congress, 1st Session (1947).

[3] "*Career Compensation for the Uniformed Services*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," December 1948.

[4] The "cut-off" date for the special pay was not an "expiration" date; it created a bar against any new entitlement but did not terminate the special pay of any officer whose entitlement had been acquired prior to that time.

under the Selective Service Act and made them subject to special induction calls.[5] It also extended the $100 special pay entitlement to reserve medical and dental officers involuntarily ordered to active duty, as well as to those volunteering for active duty. The main purpose of this provision was to encourage draft-liable doctors and dentists to accept reserve commissions and to perform their active duty in that status rather than actually being inducted as enlisted members.

The Act of June 25, 1952, ch. 459 [Public Law 410, 82d Congress], §1, 66 Stat. 156, 156-157 (1952), extended the special pay cut-off date from September 1, 1952, to July 1, 1953, and the Act of June 29, 1953, ch. 158 [Public Law 84, 83d Congress], §8, 67 Stat. 86, 89 (1953), further extended it to July 1, 1955. The Act of June 30, 1955, ch. 250 [Public Law 118, 84th Congress], §203, 69 Stat. 223, 225 (1955), extended the special pay cut-off date once again, this time to July 1, 1959.

The Act of April 30, 1956, ch. 223 [Public Law 497, 84th Congress], §5, 70 Stat. 119, 122 (1956), changed the rate of special pay for dental officers from a flat rate to a graduated scale based on length of active service: $100 a month during the first two years of active service; $150 during active service years two to six; $200 during years six to ten; and $250 thereafter. It also gave dental officers a four-year constructive service credit for promotion and pay purposes.[6] Act of April 30, 1956, ch. 223, *id*., §2(2), 70 Stat. at 121. See 37 U.S.C. §205(a)(7) as in effect before enactment of the Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, §402, 94 Stat. 2835, 2904 (1980). These constructive service credits, in combination with the higher original-appointment grade authorized by the Army-Navy-Public Health Service Medical Officer Procurement Act of 1947, ch. 494 [Public Law 365, 80th Congress], §101, 61 Stat. 776, 776-777 (1947), were designed to bring about parity between officers who entered the

[5] Veterinarians, optometrists, pharmacists, and osteopaths were specifically included in the "allied specialist categories" construct in the "Doctors Draft Act." Act of September 9, 1950, ch. 939 [Public Law 779, 81st Congress], §6, 64 Stat. 826, 828 (1950).

[6] The Act of April 30, 1956, ch. 223 [Public Law 497, 84th Congress], §5, 70 Stat. 119, 122 (1956), also provided the same benefits for physicians.

service after a delay caused by additional dental education and training and those who entered after receiving a bachelor degree.[7] Thus, for example, a dentist entering active duty immediately after dental school would be appointed to pay grade O-3 and entitled to the basic pay of that grade for over four years of service. In addition, such an officer would be eligible for promotion to pay grade O-4 about three years after entering upon active duty. In other words, the pay grade, basic pay, and promotion opportunity of an affected officer would at this point be the same as they would have been had the officer entered the service after completing four years of college. The purpose of the constructive service credit and increased special pay was to arrest and reverse the "staggering loss" of regular dental officers by providing them "a much more favorable income than that which they have heretofore experienced" and by placing them "in a somewhat more favorable position when their present income is compared with that of their counterparts serving as physicians or dentists under the civil service system or in the Veterans' Administration."[8]

The Act of March 23, 1959, Public Law 86-4, §5, 73 Stat. 13 (1959), extended the special pay cut-off date from July 1, 1959, to July 1, 1963, and the Act of April 2, 1963, Public Law 88-2, §5, 77 Stat. 4 (1963), further extended it to July 1, 1967. The Uniformed Services Pay Act of 1963, Public Law 88-132, §4, 77 Stat. 210, 212 (1963), raised the monthly rate of special pay for dental officers with between six and ten years of active service from $200 to $250 and the rate for those with ten or more years of active service from $250 to $350. These rate increases were added to the pay bill by the Senate Armed Services Committee, which explained its action as follows:

Prior to 1956 special pay for physicians and dentists was authorized only in the amount of an additional $100 a month. The general military pay legislation of 1955 was not sufficient to retain physicians and dentists in the necessary numbers. In 1956 Congress increased the special pay, now ranging from $100 to $250 a month, in order to meet this problem. Following the 1956 legislation the retention rate increased

[7] See text accompanying footnote 4 to Chapter II.E.1.a. hereof, "Special Pay for Physicians (Medical Officers of the Armed Forces)."

[8] House Report No. 1806 (Committee on Armed Services), pp. 2, 4, 6, accompanying H.R. 9428, 84th Congress, 2d Session (1956).

considerably since, in terms of compensation, a career in the Armed Forces was made more attractive for physicians and dentists and the gap between military compensation for these groups was narrowed as compared to Government physician rates (civil service and Veterans' Administration) and the incomes of private physicians. Since 1956, even including the 1958 Military Pay Act, the gap has widened between the compensation of the military physicians and those in civilian Government and those in private practice.

The increase of $50 and $100 as provided in the bill, plus the increases in basic pay otherwise contained in the bill for the grades concerned, should serve to improve the now declining retention rate for those two groups.[9]

The Act of June 30, 1967, Public Law 90-40, §5, 81 Stat. 100, 105 (1967), extended the special pay cut-off date from July 1, 1967, to July 1, 1971, and the Act of September 28, 1971, Public Law 92-129, §104, 85 Stat. 348, 355 (1971), further extended it to July 1, 1973.

The Act of July 9, 1973, Public Law 93-64, §§201-203, 87 Stat. 147, 149 (1973), extended the special pay cut-off date from July 1, 1973, to July 1, 1975, on the grounds that

> it would be inequitable to cut off arbitrarily special pay for the health professionals in question who happen to have entered service after June 30, 1973, ... however, in all probability, the entire matter of special pays and bonuses for health professionals will be given further consideration in the not too distant future.[10]

The Act of May 6, 1974, Public Law 93-274, §2, 88 Stat. 94, 96 (1974), extended the special pay cut-off date from July 1, 1975, to July 1, 1977. The purpose of the act was to remedy an "immediate and critical problem involving physicians," and its extension of the dentist cut-off date was not by deliberate design.

The Act of September 30, 1977, Public Law 95-114, §1, 91 Stat. 1046 (1977), further extended the cut-off date for all health professionals, including dentists, this time to September 30, 1978. The extension for physicians and dentists was approved because

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[9] Senate Report No. 387 (Committee on Armed Services), pp. 24-25, accompanying H.R. 5555, 88th Congress, 1st Session (1963).

[10] Senate Report No. 93-235 (Committee on Armed Services), p. 16, accompanying S. 1916, 93d Congress, 1st Session (1973).

of "a critical need to provide extra incentives ... to recruit adequate numbers of medical personnel".[11] The cut-off dates for all health professionals were further extended by the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §801, 92 Stat. 1611, 1619 (1978), this time to September 30, 1980. As reflected in the relevant Congressional report, the extension was predicated on the need to continue the existing incentives for health professionals retention purposes while a detailed review of the entire question of special pay for such personnel was undertaken by Congress.[12]

The Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, §4(c), 94 Stat. 587, 591 (1980), made permanent the special pay authority for dental officers and other health professionals. As reflected in the relevant Congressional reports, Congress was convinced of the need to restructure the existing system of special pays for health professionals other than medical officers,[13] but its attempt to do so had met with a Presidential veto. In order to avoid another veto, Congress authorized the continuation of special pays for other health professionals at preexisting rates, subject to future review, but out of a desire to "alleviat[e] ... the uncertainty and concern among uniformed services health professionals that resulted from the President's veto ..., the committee included provisions ... that would make permanent the special pay authorized by current law for dentists, optometrists, and veterinarians of the military departments and for all health professionals of the commissioned corps of the Public Health Service."[14]

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[11] Senate Report 95-400 (Committee on Armed Services), p. 2, accompanying S. 1731, 95th Congress, 1st Session (1977). See House Report No. 95-479 (Committee on Armed Services), pp. 3-4, accompanying H.R. 8011, 95th Congress, 1st Session (1977).

[12] House Report No. 95-1118 (Committee on Armed Services), p. 113, accompanying H.R. 10929, 95th Congress, 2d Session (1978). See House Report No. 95-1402 (Committee of Conference), p. 52, accompanying H.R. 10929, 95th Congress, 2d Session (1978).

[13] See House Report No. 96-904 (Committee on Armed Services), p. 4, accompanying H.R. 6982, and Senate Report No. 96-749 (Committee on Armed Services), p. 2, accompanying S. 2460, 96th Congress, 2d Session (1980).

[14] House Report No. 96-904 (Committee on Armed Services), p, 4, accompanying H.R. 6982, 96th Congress, 2d Session (1980).

From the time of enactment of the Uniformed Services Pay Act of 1963, Public Law 88-132, §4, 77 Stat. 210, 212 (1963), until enactment of the Department of Defense Authorization Act, 1986, Public Law 99-145, §639, 99 Stat. 583, 649-651 (1985), then, the rates of monthly special pay for dental officers were as follows:

| Monthly Rate | Applicable To |
|---|---|
| $100 | Dentists with less than two years of active dental service. |
| $150 | Dentists with between two and six years of active dental service |
| $250 | Dentists with between six and ten years of active dental service |
| $350 | Dentists with ten or more years of active dental service. |

As far as dental officers were concerned, the only change to any special pay program affecting them between 1963 and 1985 was the implementation of a special continuation pay program, covered immediately below.

**Special Continuation Pay for Dental Officers**

The Act of December 16, 1967 (Uniformed Services Pay Act of 1967), Public Law 90-207, §1(2)(A), 81 Stat. 649, 651 (1967), established a special continuation pay entitlement for dental officers, codified at former 37 U.S.C. §311.[15] The act authorized, under regulations prescribed by the Secretary of Defense--or the Secretary of Health, Education, and Welfare (now the Secretary of Health and Human Services) for Public Health Service officers--payment of up to four months' additional basic pay for each year of an active duty agreement accepted by the Secretary concerned from a dental officer who (1) had a critical specialty, (2) had completed any definitive active duty obligation he had under law or regulation, and (3) had executed an agreement to remain on active duty for at least one additional year. Although the act authorized continuation pay for both medical and dental officers, the dental officer authority was not used until 1972. In its report on the Uniformed Services Pay Act of 1967, Public Law 90-207, *id*., the Senate Armed Services Committee made these observations with respect to continuation pay:

[15] Physicians were also covered by the special continuation pay program.

> The proposed continuation pay authority would be similar in form to the variable reenlistment bonus now authorized for the payment of first-term enlistees in critical skill areas.
>
> The Committee would emphasize that despite the fact that dental officers are within the scope of the authority authorizing continuation pay, it is not the intention of the Committee that this pay be made applicable to dental officers in view of the fact that the retention problem at the present time is in no way comparable to the present conditions of the Medical Corps.
>
> . . .
>
> The Committee emphasizes that the proposed permissive system for continuation pay is an extraordinary method of meeting a serious retention problem. The proposed authority appears to be the best means however for dealing with a serious and deteriorating problem of the retention of certain career medical officers. The Committee observes, at the same time, however, that this system does not represent the ideal approach to the matter of military compensation and such authority should be used only in drastic situations. The Committee has therefore added language which would require annual reports from the Secretaries of Defense and Health, Education, and Welfare regarding the operation of this special pay program and the justification for its continuance.[16]

These observations, and the legislative history of the act in general, make it clear that although the income of private physicians was used for comparison purposes to determine how much, if any, extra pay was needed to counter the attraction of civilian practice and to induce military physicians to continue on active duty, the purpose of continuation pay was analogous to that of such retention incentives as the variable reenlistment bonus. The fact that the Department of Defense did not originally seek continuation pay authority for dental officers and did not use that authority until the dentist retention problem became acute in 1972 buttresses the supply-and-demand function of the pay.

Defense representatives had indicated during the hearings on Uniformed Services Pay Act of 1967, Public Law 90-207, *id.*, that entitlement to continuation pay "could begin after the end of the first obligated tour of duty." No member of Congress expressed a contrary view. However, after the law's enactment, the Comptroller General of the

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[16] Senate Report No. 808 (Committee on Armed Services), pp. 10-11, accompanying H.R. 13510, 90th Congress, 1st Session (1967).

United States ruled that its actual language, which authorized payment to a medical or dental officer "who has completed any other definitive active duty obligation that he has under law or regulation," meant that any and all obligated active service must be paid back as a prerequisite for continuation pay entitlement. The Act of October 18, 1968, Public Law 90-603, 82 Stat. 1187 (1968), amended this language to make it clear that an officer, if otherwise eligible, could receive continuation pay after the completion of his initial active duty obligation.

Before adoption of the Department of Defense Authorization Act, 1986, Public Law 99-145, 99 Stat. 583 (1985), Department of Defense regulations implementing former 37 U.S.C. §311 for dental officers limited continuation pay eligibility to dental officers in pay grades O-3 through O-8. The regulations also provided that to be eligible for continuation pay a dental officer must have (1) had a critical specialty, (2) completed three or more years of service including active dental service and non-active-duty periods spent in approved dental training beyond the basic degree or in qualifying to take the appropriate certifying examination, (3) completed the initial active duty obligation, and (4) have executed a written agreement to remain on active duty for at least one additional year. While the law provided for Secretarial discretion in paying continuation pay to officers in critical specialties, the Department of Defense as a matter of policy treated all dental specialties in all years of service classifications as "critical" for the purpose of continuation pay eligibility.[17]

As thus implemented, continuation pay could be paid in equal annual or semi-annual installments beginning on the date the dental officer started service under an additional active duty agreement. The rates prescribed in the regulations for each year of service under an agreement were:

| Pay Grade | Continuation Pay Entitlement |
|---|---|
| O-8 | 2 months' basic pay |
| O-7 | 3 months' basic pay |
| O-3, O-4, O-5, O-6 | 4 months' basic pay |

[17] At different times, Congress expressed its intent that continuation pay for dental officers be paid only to shortage specialties, and in the Act of October 12, 1984 (Continuing Appropriations, 1985), Public Law No. 98-473, §8091, 98 Stat. 1837, 1940 (1984), went so far as to stipulate that continuation pay be reduced by 50 percent for any dental specialty manned at 95 percent or higher of its authorized strength.

The rates of monthly basic pay used in determining an affected officer's continuation pay were those in effect on April 1, 1980, see former 37 U.S.C. §311(a), except that any officer on active duty on September 30, 1979, who thereafter completed 20 years of active service was, for so long as he remained on active duty, entitled to receive a total amount of basic pay plus special pay under former 37 U.S.C. §311 that was not less than the sum of the basic and special pay to which the officer would have been entitled had (1) the rates of basic pay in effect on October 1, 1979, continued in effect after that date and (2) the regulations of the Secretary of Defense implementing the continuation pay program remained as they were on September 30, 1979. See 10 U.S.C. §611 note.

**Special Pay for Dental Officers of the Armed Forces**

The special and continuation pay programs for dental officers of the Armed Forces was substantially amended by the Department of Defense Authorization Act, 1986, Public Law 99-145, §639, 99 Stat. 583, 649-651 (1985). As indicated above, before enactment of the 1986 authorization act, dental officers received two forms of special pay: first, a "regular" special pay under the authority of former 37 U.S.C. §302b, and, second, a special "continuation pay" under the authority of former 37 U.S.C. §311. Under the amendment to the special pay program for dental officers that was effected by the Department of Defense Authorization Act, 1986, former sections 302b and 311 of Title 37 were repealed in their entirety and a new Section 302b, patterned after the special pay program for physicians under current 37 U.S.C. §302, was adopted in their stead. The new special pay program for dental officers of the Armed Forces became effective October 1, 1985.

Under the new system of special pay for dental officers of the Armed Forces, three different types of special pay, none of them subject to a statutory cutoff date, were established. The three types of special pay were: (1) variable special pay, codified at 37 U.S.C. §302b(a)(2); (2) additional special pay for dental officers not undergoing dental internship or residency training, codified at 37 U.S.C. §302b(a)(4); and (3) special pay for board certification, codified at 37 U.S.C. §302b(a)(5).

Under this system, variable special pay is payable to all "dental officers of the Armed Forces" on active duty under a call or order to active duty for a period not less than one year. Although established as an annual entitlement, variable special pay is payable to affected personnel monthly. Under the original pay schedule, general and flag officers–received a flat $1,000 in variable special pay per year and persons serving an internship or having less than three years of creditable service received $1,200 per year. For others, the rates of pay ranged from $2,000 to $6,000 per year depending on years of creditable service. As established by the 1985 legislation, the rates of variable special pay for all "dental officers of the Armed Forces" other than general and flag officers and persons serving a dental internship or having fewer than three years of creditable service, were as follows:

| Years of Creditable Service | Variable Special Pay |
|---|---|
| 3 but less than 6 | $2,000 |
| 6 but less than 8 | $4,000 |
| 10 but less than 14 | $6,000 |
| 14 but less than 18 | $4,000 |
| 18 or more | $3,000 |

Additional special pay of $6,000 per year was established for all "dental officers of the Armed Forces" with at least three but less than 14 years of creditable service who were not engaged in dental internship or residency training; affected personnel with at least 14 but less than 18 years of creditable service not engaged in such training were entitled to $8,000 per year in additional special pay; and dental officers with 18 or more years of creditable service were entitled to $10,000 per year in additional special pay. Entitlement to such "additional special pay" is conditioned on an affected officer's execution of a written agreement to remain on active duty for a period not less than one year. This pay is payable annually as a lump sum at the beginning of the 12-month period for which the payment is to be made. An officer who leaves active duty before the end of

the 12-month period with respect to which such a payment was made is required to refund the "unearned" portion of the payment.[18]

Special pay for board certification is available to all "dental officers of the Armed Forces" who have achieved board certification in a dental specialty. This pay is payable, on a monthly basis, in amounts that at their original levels ranged from $2,000 to $4,000 per year depending on an affected individual's years of creditable service: qualifying dental officers with less than 12 years of creditable service were entitled to $2,000 per year; those with at least 12 but less than 14 years of service, to $3,000 per year; and those with 14 or more years of service, to $4,000 per year.

In explaining the new dental pay program, the House Armed Services Committee, which was responsible for it, stated:

> Under current law, military dental officers serving in a specialty designated as critical by the Secretary of Defense may be paid not more than four months basic pay (using the rates of basic pay in effect on April 1, 1980) in exchange of each additional year that they agree to continue on active duty.
>
> Dental Officer Continuation Pay has been subject to repeated criticism from the Committee on Appropriations because the services have paid continuation pay not only to shortage specialties but also to those that are fully or almost fully manned. As a result, section 839 of Public Law 98-473, making continuing appropriations for fiscal year 1985, provided that effective July 1,1985, continuation pay would be reduced by 50 percent for any dental officer in a dental specialty manned at 95 percent or higher of its authorized strength.
>
> To prevent a drastic reduction in the income of military dentists, the committee recommends replacing the current Dental Officer Continuation Pay and monthly special pay for dental officers with a new dental officer special pay program patterned on the various special pays available to medical officers.
>
> Variable special pay would be paid on a monthly basis at the rate of $1,200 per year for a dental officer undergoing internship training. For those not in internship training, the rates would vary between $2,000 and $7,000 per year depending on the years of service with the exception of officers in pay grades above O-6 who would be entitled to variable special pay at the rate of $1,000 per

[18] Under 37 U.S.C. §302b(f), a discharge in bankruptcy entered less than five years after the termination date of an agreement does not discharge the obligation in question.

year. In addition, dental officers not undergoing internship or residency training would be entitled to additional special pay of from $6,000 to $10,000 per year, depending on years of service, in exchange for an agreement to remain on active duty for a period of not less than one year. Finally, dental officers who were board certified would be entitled to additional special pay at the rate of $2,000 to $4,000 per year, depending on years of service. Given the current concerns with respect to the quality of care provided in military facilities, the committee believes that board certification is an important professional stepping stone and, therefore, has tied this additional special pay to board certification rather than simply board qualification.

An officer who voluntarily terminated service before the end of a period of service which he had agreed to serve in exchange for additional special pay would be obligated to refund to the United States an amount equal to the unserved portion of the service obligation. The committee recommends that a discharge in bankruptcy under Title 11, United States Code, would not release an individual from the obligation to reimburse the United States.

The new dental special pays recommended by this section would become effective October 1, 1985. Payments under the current Dental Officer Continuation Program will be reduced for new service agreements entered into after July 1, 1985. To minimize the loss of income for affected dental officers, the committee recommends that those officers who enter into new service agreements between July 1 and September 30, 1985, be permitted to renegotiate those agreements as of October 1, 1985, for a minimum of one year's additional service under the terms of the new dental special pay program proposed by Section 634.[19]

The rates of special pay for dental officers of the Armed Forces proposed by the House were not agreed to by the Senate, and a House-Senate Conference Committee compromised on slightly lower rates of pay for some categories of service.[20] In addition, special transitional provisions were added in conference to make sure no dental officer suffered any loss in dental pay as a result of the adoption of the new form of dental pay.[21]

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[19] House Report No. 99-81 (Committee on Armed Services), pp. 232-233, accompanying H.R. 1872, 99th Congress, 1st Session (1985). Cf. Senate Report No. 99-118 (Committee of Conference), p. 432, and House Report No. 99-235 (Committee of Conference), p. 432, accompanying S. 1160, 99th Congress, 1st Session (1985).

[20] See Senate Report No. 99-118 (Committee of Conference), p. 432, and House Report No. 99-235 (Committee of Conference), p. 432, accompanying S. 1160, 99th Congress, 1st Session (1985).

[21] See Senate Report No. 99-118 (Committee of Conference), p. 432, and House Report No. 99-235 (Committee of Conference), p. 432, accompanying S. 1160, 99th Congress, 1st Session (1985).

The National Defense Authorization Acts for fiscal years 1997 and 1998 each raised the rates of variable special pay for certain officer categories. After completion of the 1998 legislation, the variable special pay rates for all dental officers had increased. The National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, 110 Stat. 2545, increased the rates for dental officers in the most junior service categories, from status as a dental intern to ten years of creditable service. After those increases, the pay range in the affected categories was from $3,000 to $7,000 per year. The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1789, altered the creditable service schedule and increased pay for all categories that had not been affected by the authorization act for the previous year. Thus, the existing creditable service category of six to ten years became six to eight years, followed by a new category, eight to twelve years. The former category of ten to 14 years was modified to 12 to 14 years, and the categories above 14 years remained the same. The pay range for these senior categories was from $7,000 for the six-to-eight year category to $12,000 for the eight-to-12-year category. As in the earlier version of this pay table, dental officers in the eight-to-12-year category were targeted in the new version; once past 12 years of creditable service, members' variable special pay begins to decline, reaching $8,000 at the 18-year mark.

The National Defense Authorization Act for Fiscal Year 1997 added one rate category for additional special pay for dental officers by prescribing that officers with less than three years of creditable service receive $4,000 per year of additional special pay. The National Defense Authorization Act for Fiscal Year 1998 reorganized the pay schedule for additional special pay for dental officers by establishing two categories of creditable service beyond the three-year mark, in place of the three categories that had existed previously: under that modification of 37 U.S.C.302b, dental officers with three to ten years of creditable service receive $6,000 per year of additional special pay, and those with more than ten years of creditable service receive $15,000 per year.

The National Defense Authorization Act for Fiscal Year 1997 increased board certification pay for dental officers in all categories of creditable service and restructured the pay table by adding two new categories to the three that existed. Thus, instead of the

categories “less than 12,” “12 to 14,” and “over 14,” the new table made breaks at the ten, 12, 14, and 18-year levels of service, establishing a total of five pay categories.

**Current rates of special pay for dental officers of the Armed Forces**: Dental officers of the Armed Forces may receive as many as three different types of dental special pays in addition to any other pays and allowances they may otherwise be entitled to--variable special pay, additional special pay, and board-certification pay.

*Variable special pay*. The rates of variable special pay for all dental officers of the Armed Forces other than general and flag officers and persons serving a dental internship or having fewer than three years of creditable service are as follows:

| Annual Years of Creditable Service | Variable Special Pay |
|---|---|
| 3 but less than 6 | $7,000 |
| 6 but less than 8 | $7,000 |
| 8 but less than 12 | $12,000 |
| 12 but less than 14 | $10,000 |
| 14 but less than 18 | $9,000 |
| 18 or more | $8,000 |

General and flag officers who are dental officers of the Armed Forces are entitled to variable special pay at the rate of $7,000 per year regardless of years of creditable service; a dental officer of the Armed Forces who has less than three years of creditable service or who is undergoing dental internship training is entitled to variable special pay at the rate of $3,000 per year. An officer's years of creditable service include all periods spent in dental internship or residency training when the officer was not on active duty plus all the officer's years of active service as a dental officer of the Armed Forces. See 37 U.S.C. §302b(g).

*Additional special pay*. A dental officer of the Armed Forces entitled to variable special pay under 37 U.S.C. §302b(a)(2) or (3) who is on active duty under an active-duty agreement entered into pursuant to 37 U.S.C. §302b(b) is entitled to additional special pay when not undergoing dental internship or residency training as follows:

| Years of Creditable Service | Annual Additional Special Pay Entitlement |
|---|---|
| Less than 3 | $4,000 |
| 3 but less than 10 | $6,000 |
| Over 10 | $15,000 |

For the purpose of determining the amount of additional special pay to which a particular dental officer of the Armed Forces is entitled, the officer's years of creditable service are computed in the same way as used in determining the officer's entitlement to variable special pay.

*Board-certification pay*. A dental officer of the Armed Forces entitled to variable special pay under 37 U.S.C. §302b(a)(2) or (3) who is board certified in a dental specialty is entitled to board-certification pay as follows:

| Years of Creditable Service | Annual Pay for Board Certification |
|---|---|
| Less than 10 | $2,500 |
| 10 but less than 12 | $3,500 |
| 12 but less than 14 | $4,000 |
| 14 but less than 18 | $5,000 |
| Over 18 | $6,000 |

For the purpose of determining the amount of board-certification pay to which a particular dental officer of the Armed Forces is entitled, the officer's years of creditable service are computed in the same way as used in determining the officer's entitlement to variable special pay.

*Accession Pay and Retention Bonus.* In 1996 and 1997, Congress took two courses of action to improve the supply of dentists in the Armed Forces and to retain dental officers qualified in certain specialties. The National Defense Authorization Act for Fiscal Year 1997 added a new subsection to §302 of 37 U.S.C. That subsection, §302h, established an accession bonus for graduates of accredited dental schools who execute a written agreement to remain on active duty as officers of the Armed Forces for a period of not less than four years. The amount of the bonus, technically to be determined by the relevant Secretary, is not to exceed $30,000. The National Defense Authorization Act for Fiscal Year 1998 added a new subsection to §301 of 37 U.S.C., establishing a multiyear retention bonus similar to that in effect for medical doctors. According to the new §301e, certain officers who sign a written agreement to continue active duty for two, three, or four years after termination of at least eight years of creditable service as dental officers are eligible for a retention bonus not to exceed $14,000 per year. Automatically eligible for such a bonus are dental officers specializing in oral and maxillofacial surgery; the Armed Forces have the option of offering such agreements to dental officers who do not possess this specialty.

The special pay authority for all health professionals, including dental officers of the Armed Forces, is permanent under current law, with no cutoff date specified.[22]

[22] The Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, 94 Stat. 2835 (1980), enacted on December 12, 1980, some five and one-half months after the Uniformed Services Health Professionals Special Pay Act, Public Law 96-284, 94 Stat. 587 (1980), also affected the pay of certain

**Cost**: For the cost of dental officers' special pay from 1972 to 2004, see Tables II-25 of *Military Compensation Statistics Tables*, volume II of this edition.

health professionals in the uniformed services. Section 402(a)(3) of DOPMA, *id*., §402(a)(3), 94 Stat. at 2904, repealed the previously existing "constructive service credits," codified at former 37 U.S.C. §205(a)(7) and (8), with which medical and dental officers of the uniformed services were credited for the purpose of determining, among other things, their basic pay entitlements, although Section 104(a) of DOPMA, *id*., §104(a), 94 Stat. at 2846-2848, effectively preserved such credits for certain other purposes, including the determination of initial grade as an officer, rank in grade, and service in grade for promotion eligibility. See new 10 U.S.C. §533, especially 10 U.S.C. §533(b)(1)(B), (C), (E), and (F), and (c); also see 10 U.S.C. §532(b)(1). (Notwithstanding the repeal of the constructive service credit for the purpose of determining an affected officer's basic pay entitlement, however, Section 625 of DOPMA, *id*., §625, 94 Stat. at 2951, enacted as a save-pay provision, preserved the credit for basic pay purposes, among others, for persons otherwise entitled to such credits on September 14, 1981, as well as for certain other classes of persons.
See 10 U.S.C. §611 note for the text of Section 625 of DOPMA, *id*., §625, 94 Stat. at 2951.)

**Chapter II.E.1.c.**

## Special Pay for Veterinarians

**Legislative Authority**: 37 U.S.C. §§303 and 303a.

**Purpose**: To provide an additional pay to enable the Armed Forces to attract and retain a sufficient number of veterinarians to meet the needs of the services.

**Background**: Special pay for veterinarians derives almost serendipitously from the interaction between preexisting special pay programs for medical and dental officers of the uniformed services and the "Doctors Draft Act," which made veterinarians subject to special induction orders along with doctors and dentists.[1]

The Army-Navy-Public Health Service Medical Officer Procurement Act of 1947, ch. 494 [Public Law 365, 80th Congress], §101, 61 Stat. 776, 776-777 (1947), authorized a $100 special monthly pay for regular officers who were then commissioned in the Medical or Dental Corps and for those who would be so commissioned thereafter but before September 1, 1952. The special pay was also authorized for reserve officers of the Medical or Dental Corps who, during the applicable period, volunteered and were accepted for extended active duty of one year or longer.

The Act of September 9, 1950, ch. 939 [Public Law 779, 81st Congress], §1, 64 Stat. 826, 826-827 (1950), frequently referred to as the Doctors Draft Act, amended the Selective Service Act of 1948, ch. 625 [Public Law 759, 80th Congress], 62 Stat. 604 (1948), to require males under age 50 qualified in medical, dental, or "allied specialist categories" to register under the Selective Service Act and made them subject to special induction calls. Section 6 of the Act of September 9, 1950, ch. 939, *id.*, §6, 64 Stat. at

[1] For a more complete treatment of the early history of special pay programs for medical and dental officers, see Chapters II.E.1.a. and II.E.1.b., "Special Pay for Physicians (Medical Officers of the Armed Forces)" and "Special Pay for Dentists (Dental Officers of the Armed Forces)", respectively, above. See in particular the "Background" section of Chapter II.E.1.a. hereof, "Special Pay for Physicians (Medical Officers of the Armed Forces)," for an introductory statement on special pay programs for health professionals generally, at pages 379-380, above.

828, defined "allied specialist categories" to include, among other specialties, veterinarians.[2]

The Act of June 25, 1952, ch. 459 [Public Law 410, 82d Congress], §1, 66 Stat. 156, 156-157 (1952), extended the special pay cut-off date for medical and dental officers from September 1, 1952, to July 1, 1953, thereby permitting medical and dental officers who first went on active duty after September 1, 1952, and before July 1, 1953, to receive the same special pay as medical and dental officers who first went on active duty before September 1, 1952.

The Act of June 29, 1953, ch. 158 [Public Law 84, 83d Congress], §8(1), 67 Stat. 86, 89 (1953), further extended the special pay cut-off date for medical and dental officers to July 1, 1955. As a result of a provision added by the Senate Armed Services Committee, the Act of June 29, 1953, ch. 158, *id*., §8(3), 67 Stat. at 89-90, made veterinary officers eligible for special pay of $100 per month on the rationale that "since the veterinarians were subject to the Doctors Draft Act, they should also receive the extra pay which is extended to physicians and dentists."[3] The cut-off date for the special pay authorizations for medical and dental officers also applied to veterinarians.

The cut-off date for the special pay programs for health professionals generally, including veterinarians, was subsequently extended on a number of occasions. The Act of June 30, 1955, ch. 250 [Public Law 118, 84th Congress], §203, 69 Stat. 223, 225 (1955), extended the special pay cut-off date to July 1, 1959. The Act of March 23, 1959, Public Law 86-4, §5, 73 Stat. 13 (1959), extended the special pay cut-off date from July 1, 1959, to July 1, 1963; the Act of April 2, 1963, Public Law 88-2, §5, 77 Stat. 4 (1963), extended it from July 1, 1963, to July 1, 1967; the Act of June 30, 1967, Public Law 90-

[2] Also included were optometrists, pharmacists, and osteopaths. Act of September 9, 1950, ch. 939 [Public Law 779, 81st Congress], §6, 64 Stat. 826, 828 (1950).

[3] Senate Report No. 305 (Committee on Armed Services), p. 10, accompanying H.R. 4495, 83d Congress, 1st Session (1953).

40, §5, 81 Stat. 100, 105 (1967), from July 1, 1967, to July 1, 1971; and the Act of September 28, 1971, Public Law 92-129, §104, 85 Stat. 348, 355 (1971), from July 1, 1971, to July 1, 1973.

The Act of July 9, 1973, Public Law 93-64, §§201-203, 87 Stat. 147, 149 (1973), again extended the special pay cut-off date for health professionals generally, this time from July 1, 1973, to July 1, 1975, on the grounds that

> it would be inequitable to cut off arbitrarily special pay for the health professionals in question who happen to have entered service after June 30, 1973, ... however, in all probability, the entire matter of special pays and bonuses for health professionals will be given further consideration in the not too distant future.[4]

The Act of May 6, 1974, Public Law 93-274, §2, 88 Stat. 94, 96 (1974), extended the special pay cut-off date from July 1, 1975, to July 1, 1977, for medical and dental officers but not for veterinarians. The failure to extend the cut-off date for veterinarians meant that all veterinarians on active duty before July 1, 1975, were eligible for special pay but those who first entered active duty after that date were not.

The Act of September 30, 1977, Public Law 95-114, §1, 91 Stat. 1046 (1977), further extended the cut-off date for physicians and dentists, this time to September 30, 1978, and reinstituted special pay for veterinarians, at the rate of $100 a month, also subject to a cut-off date of September 30, 1978, *id*., §2(a), 91 Stat. at 1046. The reinstitution of special pay for veterinarians was intended to redress the "inequitable situation" under which affected personnel who first came on active duty after July 1, 1975, were not eligible for special pay, but those on active duty before then were, and to improve retention.[5]

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[4] Senate Report No. 93-235 (Committee on Armed Services), p. 16, accompanying S. 1916, 93d Congress, 1st Session (1973).

[5] House Report No. 95-479 (Committee on Armed Services), p. 4, accompanying H.R. 8011, 95th Congress, 1st Session (1977). See Senate Report No. 95-400 (Committee on Armed Services), p. 3, accompanying S. 1731, 95th Congress, 1st Session (1977).

The cut-off dates for all health professionals were further extended by the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §801, 92 Stat. 1611, 1619 (1978), this time to September 30, 1980. As reflected in the relevant Congressional report, the extension was predicated on the need to continue the existing incentives for health professionals retention purposes while a detailed review of the entire question of special pay for such personnel was undertaken by Congress.[6]

The Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, §4(c), 94 Stat. 587, 591 (1980), made permanent the special pay authority for veterinarians. As reflected in the relevant Congressional reports, Congress was convinced of the need to restructure the existing system of special pays for health professionals other than medical officers,[7] but its attempt to do so had met with a Presidential veto. In order to avoid another veto, Congress authorized the continuation of special pays for other health professionals at preexisting rates, subject to future review, but out of a desire to "alleviat[e] ... the uncertainty and concern among uniformed services health professionals that resulted from the President's veto ..., the committee included provisions ... that would make permanent the special pay authorized by current law for dentists, optometrists, and veterinarians of the military departments and for all health professionals of the commissioned corps of the Public Health Service."[8]

Under 37 USC 303(b), a commissioned officer eligible for special pay for veterinarians is entitled to additional special pay at the same rate as is provided under Section 302c(b) for psychologists and other nonphysician health care providers. The amount is determined by years of creditable service if the officer has been certified as a Diplomate in a specialty recognized by the American Veterinarian Medical Association. That award, paid in equal monthly amounts, is as follows:

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[6] House Report No. 95-1118 (Committee on Armed Services), p. 113, accompanying H.R. 10929, 95th Congress, 2d Session (1978). See House Report No. 95-1402 (Committee of Conference), p. 52, accompanying H.R. 10929, 95th Congress, 2d Session (1978).

[7] See House Report No. 96-904 (Committee on Armed Services), p. 4, accompanying H.R. 6982, and Senate Report No. 96-749 (Committee on Armed Services), p. 2, accompanying S. 2460, 96th Congress, 2d Session (1980).

[8] House Report No. 96-904 (Committee on Armed Services), p, 4, accompanying H.R. 6982, 96th Congress, 2d Session (1980).

| Years of Creditable Service | Annual Payment |
|---|---|
| Less than 10 | $2,000 |
| 10 to 12 | $2.500 |
| 12 to 14 | $3,000 |
| 14 to 18 | $4,000 |
| 18 or more | $5,000 |

**Current rate of special pay for veterinarians**: An officer in the Veterinary Corps of the Army or who is designated as a veterinary officer of the Army or Air Force is entitled to the basic amount of $100 per month as special pay for veterinary service.

**Cost**: For the cost of veterinarian special pay from 1972 to 2004, see Table II-26 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.E.1.d.**

## Special Pay for Optometrists

**Legislative Authority**: 37 U.S.C. §§302a and 303a.

**Purpose**: To provide an additional pay to enable the Armed Forces to attract and retain a sufficient number of optometrists to meet health care needs of the services.

**Background**: The special pay program for optometrists derives ultimately from the interaction between the preexisting special pay programs for medical and dental officers[1] and the so-called Doctors Draft Act. Optometrists were first made eligible for special pay at the rate of $100 per month by the Act of September 28, 1971, Public Law 92-129, §202(a), 85 Stat. 348, 357-358 (1971). The act's extension of special pay to optometrists was based in part on the recommendations of the Special Subcommittee on Supplemental Service Benefits of the House Armed Service Committee. The full Committee explained its action as follows:

Of the major health professions subject to the doctor draft--medicine, dentistry, osteopathy, veterinary medicine and optometry[2]--only one, optometry, does not now qualify for special pay. Since 1966 four special induction calls have been issued for optometrists to meet the needs of the various services. The last such call was in October 1970, a calendar year in which optometrists were the only health-care professionals drafted.

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[1] For a more complete treatment of the early history of special pay programs for medical and dental officers, see Chapters II.E.1.a. and II.E.1.b., "Special Pay for Physicians (Medical Officers of the Armed Forces)" and "Special Pay for Dentists (Dental Officers of the Armed Forces)," respectively, above. See in particular the "Background" section of Chapter II.E.1.a. hereof, "Special Pay for Physicians (Medical Officers of the Armed Forces)," for an introductory statement on special pay programs for health professionals generally, at pages 379-380, above.

[2] Optometrists were made subject to draft by the Act of September 9, 1950, ch. 939 [Public Law 779, 81st Congress], §1, 64 Stat. 826, 826-827 (1950), frequently referred to as the Doctors Draft Act, which amended the Selective Service Act of 1948, ch. 625 [Public Law 759, 80th Congress], 62 Stat. 604 (1948), to require males under age 50 qualified in medical, dental, or "allied specialist categories" to register under the Selective Service Act and made them subject to special induction calls. Section 6 of the Act of September 9, 1950, ch. 939, *id*., §6, 64 Stat. at 828, defined "allied specialist categories" to include, among other specialties, optometrists. (Also included within the "allied specialist categories" were veterinarians, pharmacists, and osteopaths. Act of September 9, 1950, ch. 939 [Public Law 779, 81st Congress], §6, 64 Stat. 826, 828 (1950).)

> The inclusion of optometrists in a special pay category carries out the recommendations of the Committee's Special Subcommittee on Supplemental Service Benefits, which ... found great inconsistency in the staffing practices of the services and serious inadequacies in the eye care provided military personnel and their families in some instances. The subcommittee concluded that some of the services were understaffed with optometry officers and that improvement in the optometry staffing was necessary for improved eye care....
>
> The Committee believes that when the educational investment and earning capacity of optometrists in the public sector are taken into account the pay rates provided here [the pay rates added by the committee were considerably higher than the $100 a month actually adopted] compare justly for those provided in the law for medical and dental officers and for veterinary officers.[3]

No testimony was given by defense witnesses either in favor of or in opposition to special pay for optometrists in connection with the 1971 act. However, a few months earlier Brigadier General George J. Hayes, staff director in the office of the assistant Secretary of Defense for health affairs, had stated to the Subcommittee on Supplemental Service Benefits that "at the present time we have taken the position that special pay for optometry has not been indicated as a retention measure. Until we see that there needs to be some need for this, we would hold to this position."

As initially adopted, the special pay program for optometrists applied to all optometrists who first came on active duty before July 1, 1973. This meant that an optometrist who was on active duty on the date of enactment of the Act of September 28, 1971, Public Law 92-129, 85 Stat. 348, 357-358 (1971), or who first came on active duty after the date of enactment but before July 1, 1973, would be entitled to the special pay indefinitely, but an optometrist who first came on active duty after June 30, 1973, would not.

The Act of July 9, 1973, Public Law 93-64, §§201-203, 87 Stat. 147, 149 (1973), extended the special pay programs cut-off date for all health professionals from July 1, 1973, to July 1, 1975, on the grounds that

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[3] House Report No. 92-82 (Committee on Armed Services), p. 19, accompanying H.R. 6531, 92d Congress, 1st Session (1971).

> it would be inequitable to cut off arbitrarily special pay for the health professionals in question who happen to have entered service after June 30, 1973, ... however, in all probability, the entire matter of special pays and bonuses for health professionals will be given further consideration in the not too distant future.[4]

The Act of May 6, 1974, Public Law 93-274, §2, 88 Stat. 94, 96 (1974), extended the special pay cut-off date from July 1, 1975, to July 1, 1977, for medical and dental officers but not for optometrists. The failure to extend the cut-off date for optometrists meant that all optometrists on active duty before July 1, 1975, were eligible for special pay but those who first entered active duty after June 30, 1975, were not.

The Act of September 30, 1977, Public Law 95-114, §1, 91 Stat. 1046 (1977), extended the cut-off date for physicians and dentists, this time to September 30, 1978, and reinstituted special pay for optometrists, at the rate of $100 a month, also subject to a cut-off date of September 30, 1978, *id*., §2(a), 91 Stat. at 1046. The reinstitution of special pay for optometrists was intended to redress the "inequitable situation" under which affected personnel who first came on active duty after July 1, 1975, were not eligible for special pay, but those on active duty before then were, and to improve retention.[5]

The cut-off dates for all health professionals were further extended by the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §801, 92 Stat. 1611, 1619 (1978), this time to September 30, 1980. As reflected in the relevant congressional report, the extension was predicated on the need to continue the

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[4] Senate Report No. 93-235 (Committee on Armed Services), p. 16, accompanying S. 1916, 93d Congress, 1st Session (1973).

[5] House Report No. 95-479 (Committee on Armed Services), p. 4, accompanying H.R. 8011, 95th Congress, 1st Session (1977). See Senate Report No. 95-400 (Committee on Armed Services), p. 3, accompanying S. 1731, 95th Congress, 1st Session (1977).

existing incentives for health professionals retention purposes while a detailed review of the entire question of special pay for such personnel was undertaken by Congress.[6]

The Uniformed Services Health Professionals Special Pay Act of 1980, Public Law 96-284, §4(c), 94 Stat. 587, 591 (1980), made permanent the special pay authority for optometrists. As reflected in the relevant Congressional reports, Congress was convinced of the need to restructure the existing system of special pays for health professionals other than medical officers,[7] but its attempt to do so had met with a Presidential veto. In order to avoid another veto, Congress authorized the continuation of special pays for other health professionals at preexisting rates, subject to future review, but out of a desire to "alleviat[e] ... the uncertainty and concern among uniformed services health professionals that resulted from the President's veto ..., the committee included provisions ... that would make permanent the special pay authorized by current law for dentists, optometrists, and veterinarians of the military departments and for all health professionals of the commissioned corps of the Public Health Service."[8]

Under amendments to the special pay program for optometrists made by the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §617(a), 104 Stat. 1485, 1578-1579 (1990), optometrists became eligible for a special retention bonus of up to $6,000 per year in addition to regular special pay of $100 per month. Under the retention bonus program, an officer entitled to regular special pay as an optometrist who had completed any initial active-duty training obligation incurred for education and training, who had been determined by the Secretary of his military

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[6] House Report No. 95-1118 (Committee on Armed Services), p. 113, accompanying H.R. 10929, 95th Congress, 2d Session (1978). See House Report No. 95-1402 (Committee of Conference), p. 52, accompanying H.R. 10929, 95th Congress, 2d Session (1978).

[7] See House Report No. 96-904 (Committee on Armed Services), p. 4, accompanying H.R. 6982, and Senate Report No. 96-749 (Committee on Armed Services), p. 2, accompanying S. 2460, 96th Congress, 2d Session (1980).

[8] House Report No. 96-904 (Committee on Armed Services), p, 4, accompanying H.R. 6982, 96th Congress, 2d Session (1980).

department to be qualified as an optometrist, and who executed a written agreement to remain on active duty as an optometrist for a period of not less than one year could be paid up to $6,000 for any twelve-month period in which he was not undergoing internship or initial residency training. Pursuant to Section 617(b) of the 1991 Authorization Act, Public Law 101-510, *id*., §617(b), 104 Stat. At 1579, the Secretary of Defense was required to submit a written report to the House and Senate Armed Services Committees justifying the need to make retention bonus payments to optometrists and setting out how the retention-bonus authority would be implemented before permitting any payments to be made to optometrists under the augmented authority. Pursuant to further provisions of the act, codified at 37 U.S.C. §302a(b)(4), the eligibility of an optometrist receiving retention special pay under 37 U.S.C. §302a(b)(1) may be terminated at any time by the Secretary of the optometrist's military department.

The special retention pay program for optometrists arose out of a proposal of the Senate Armed Services Committee to increase optometrists' special pay from $100 per month to $350 per month beginning October 1, 1991.[9] The House Armed Services Committee objected to the Senate proposal, and the ~~contingent~~ retention bonus program was agreed to in conference in place of the Senate proposal.[10] The National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, 116 Stat. 2458, increased the maximum annual amount of special retention pay for optometrists from $6,000 to $15,000; the eligibility requirements set out by the National Defense Authorization Act for Fiscal Year 1991 remained in effect.

**Current rates of special pay for optometrists**: An officer designated as an optometry officer of the Army, Navy, or Air Force, or an officer formerly designated as an optometry officer of the Army or Air Force appointed as a general officer, is entitled

[9] S. 2884, §612, 101st Congress, 2d Session (1990). See Senate Report No. 101-384 (Committee on Armed Services), p.172, accompanying S. 2884, 101st Congress, 2d Session (1990).

[10] House Report No. 101-923 (Committee of Conference), pp. 614-615, accompanying H.R. 4739, 101st Congress, 2d Session (1990).

to $100 per month as special pay for optometry service. An officer receiving special pay for optometry service under 37 U.S.C. §302a(a) who is qualified as an optometrist, who has completed any active-duty service commitment incurred for education and training, and who is on active duty under an active-duty agreement entered into pursuant to 37 U.S.C. §302a(b)(3) may be entitled to retention special pay for optometry service of up to $15,000 per year.

**Cost**: For the cost of optometrist special pay from 1972 to 2004, see Table II-27 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.E.1.e.**

## Special Pay for Psychologists, Pharmacists, and Other Nonphysician Health Care Providers

**Legislative Authority**: 37 U.S.C. §302c.[1], §302i, and §302j

**Purpose**: To provide a special incentive for highly qualified psychologists, pharmacists, and other nonphysician health care providers to enter and remain in military service, in part to overcome a perceived shortage of personnel with such qualifications in the Armed Forces and in part to relieve demands for even more hard-to-recruit-and-retain medical specialists, including psychiatrists, among others.

**Background**: Special pay for psychologists was first authorized for psychologists in the Public Health Service by the Act of October 26, 1987, Public Law 100-140, §2(a), 101 Stat. 830, 830-831 (1987), and was extended to psychologists in the Army, the Navy, and the Air Force by the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §704(a), 103 Stat. 1352, 1471 (1989), subject to justification by the Secretary of Defense of the need for such pay to the House and Senate Committees on Armed Services. Subject to this justification, the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, *id*., extended entitlement to special pay for psychologists to members of the Army, Navy, and Air Force who have been designated by their respective services as psychologists and have been board certified in psychology--in the words of the governing statute, to a member of the Army, Navy, or Air Force who has been "designated as a psychologist ... and ... been awarded a diploma as a Diplomate in Psychology by the American Board of Professional Psychology." To qualify for the special pay, members of the Army and Navy must be members of the Medical Service Corps of their respective services and members of the Air Force must be biomedical services officers. Extension of special pay to psychologists was first

[1] The catchline for Section 302c, Title 37, United States Code, reads "Special pay: psychologists and nonphysician health care providers." The legislative history of Section 302c is inconsistent with respect to the spelling of the word, "nonphysician," sometimes spelling it "nonphysician" and sometimes spelling it "non-physician." The current chapter title adopts the spelling, "nonphysician," inasmuch as that is the spelling set out in the catchline to Section 302c, Title 37, United States Code. In quoting from relevant House and Senate reports, however, the current chapter preserves the spelling adopted in those reports.

proposed in 1986. At that time, approximately one year before Congress in fact authorized special pay for psychologists in the Public Health Service in the Act of October 26, 1987, Public Law 100-140, *id.*, the Senate Committee on Armed Services, in deliberations on the 1987 Senate defense authorization bill,[2] proposed authorizing special pay for military psychologists out of

> ... concern that the Department of Defense and the military departments continue to resist the full utilization of non-physician providers in providing health care services, especially at this time when there are substantial shortages of physicians in all components of the armed forces. The committee also notes that continued practice of requiring physicians to perform many functions which can legally, ethically, and actually be performed by nonphysician providers creates unnecessary demand for physician services and produces low morale among non-physician providers.
>
> This problem is especially acute with respect to the utilization of psychologists by the armed forces. In order to attempt to bring about a rethinking of this problem, while at the same time encouraging well qualified psychologists to enter and remain on active duty, the committee recommends the creation of a special pay for the most highly qualified psychologists.
>
> . . .
>
> ... [T]he committee intends that this pay be viewed as an indication of its support for the greater utilization of well qualified psychologists by the Armed Forces and that more well qualified psychologists be recruited and retained to perform many of the functions now being performed by psychiatrists in the military medical services.[3]

Notwithstanding the Senate's justification of special pay for military psychologists, the House-Senate Conference Committee rejected the proposal, noting, however:

> The conferees note their displeasure with the continued failure of the Department of Defense to expand the use of non-physician [health services] providers. The conferees believe that non-physician providers like psychologists are a cost-effective way to significantly extend the capability of the Department of Defense to provide care to its beneficiary population. The conferees serve notice

[2] S. 2638, 99th Congress, 2d Session (1986).

[3] Senate Report No. 99-331 (Committee on Armed Services), pp. 233-234, accompanying S. 2638, 99th Congress, 2d Session (1986).

> that, if the Department of Defense does not implement a plan for expanded use of non-physician providers, they intend to mandate such an expansion in the future.
>
> Although the conferees are very sympathetic to the intent of the Senate special pay provision and believe that tying such special pay to a board certification requirement is an innovative way to encourage non-physician providers to enhance their professional credentials, they believe that the issue requires further study and have, therefore, deferred acceptance of the Senate provision.[4]

The same concerns expressed by the Senate Armed Services Committee and the House-Senate Conference Committee in 1986 evidently lay behind adoption of the Act of October 26, 1987, Public Law 100-140, *id*., which, as above noted, extended special pay to psychologists in the Public Health Service. The fact is, however, neither the Senate nor the House of Representatives ever formally expressed their reasons for adopting special pay for psychologists in 1987, as no report was ever issued on S. 1666, 100th Congress, 1st Session (1987), the bill that, upon enactment, became the Act of October 26, 1987, Public Law 100-140, *id.*

Extension of special pay for psychologists to psychologists in the Army, Navy, and Air Force resulted from a floor amendment made by Senator Inouye to the Senate's 1990/1991 defense authorization bill, S. 1352, 101st Congress, 1st Session (1989). In support of his amendment, Senator Inouye essentially justified special pay for military psychologists on the grounds that there was a shortage of military psychologists and a retention incentive was needed to keep qualified psychologists in the Armed Forces:

> Mr. President, this amendment addresses the need for a pay bonus for military psychologists. Board certified physicians in the military receive an annual pay bonus currently ranging from $2,000 to $5,000, depending on their years of service, while board certified psychologists are not eligible for the pay bonus. My amendment would authorize the Department of Defense to pay board certified psychologists the same bonuses as those received by physicians.
>
> To become a board certified psychologist requires extensive supervised training and passing a difficult national examination. Obviously, a board certified psychologist possesses impressive credentials.

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[4] House Report No. 99-1001 (Committee of Conference), p. 483, accompanying S. 2638, 99th Congress, 2d Session (1986).

> There is a shortage of psychologists in the military, and my amendment would provide a cost-effective retention tool--one that we should adopt.[5]

In commenting on Senator Inouye's floor amendment, the House-Senate Conferees merely noted that it had accepted

> ... an amendment that would authorize the Secretary of Defense, at his discretion, to pay board certification pay to eligible military psychologists after the Secretary submits a report to the Committees on Armed Services of the Senate and House of Representatives justifying the need for this pay and describing the way in which the authority will be implemented.[6]

The National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §618(a), 104 Stat. 1485, 1579 (1990), further extended the special pay program, this time to "nonphysician health care providers" who are officers in the Medical Service Corps of either the Army or the Navy or biomedical sciences officers in the Air Force, who are "health care provider[s] (other than ... psychologist[s])," who have "postbaccalaureate" degrees, and who are board certified. This extension resulted from a Senate proposal that would have extended the special pay program for psychologists to podiatrists, but only to podiatrists. In commenting on, and going beyond, the Senate proposal, the House-Senate Conference Committee noted:

> The [Senate] amendment would broaden the authority granted last year for board certification pay for psychologists to allow the Secretary of Defense to implement board certification special pays for nonphysician health care providers with a post-baccalaureate professional degree. The amendment would also require the Secretary of Defense to submit to the Committees on Armed Services of the Senate and House of Representatives, each time the Secretary decides to implement such pay, justification for the need for such pay and a description of how such pay will be implemented.[7]

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[5] 135 *Cong. Rec*. S8758 (daily ed. July 26, 1989) (statement of Senator Inouye).

[6] House Report No. 101-331 (Committee of Conference), p. 595, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[7] House Report No. 101-923 (Committee of Conference), p. 615, accompanying H.R. 4739, 101st Congress, 2d Session (1990). Cf. Senate Report No. 101-384 (Committee on Armed Services), p. 172, accompanying S. 2884, 101st Congress, 2d Session (1990) ("The committee recommends a provision ... that would authorize special pay for podiatrists.").

The National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §611, 106 Stat. 2315, 2420-2421 (1992), again extended the definition of "nonphysician health care providers," this time to include chiropractors within the class of persons authorized special pay under 37 U.S.C. §302c.[8] [9] Similarly, nurses were included within the category of "nonphysician health care providers" by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §617[10], 110 Stat. 186, 362 (1996), with the result that board-certified nurses with postbaccalaureate degrees who are health care providers are also entitled to special pay under 37 U.S.C. §302c.[11] [12]

**Current rates of pay authorized for psychologists and other nonphysician health care providers:**

| Years of Creditable Service | Special Pay Authorized |
|---|---|
| Less than 10 | $2,000 |
| 10 but less than 12 | $2,500 |

[8] House Report No. 102-527 (Committee on Armed Services), p. 243, accompanying H.R. 5006, 102d Congress, 2d Session (1992); cf. House Report No. 102-966 (Committee of Conference), p. 713, accompanying H.R. 5006, 102d Congress, 2d Session (1992).

[9] A companion provision of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §505, 106 Stat. 2315, 2404 (1992), authorized chiropractors to be appointed as commissioned officers in the Army (the Army Medical Specialist Corps), the Navy (the Medical Service Corps of the Navy), and the Air Force (as biomedical science officers).

[10] The catchline for Section 617 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, *id.*, read "Clarification of Authority to Provide Special Pay for Nurses." Also see the catchlines introducing discussion of the provision in the relevant Senate and House reports: Senate Report No. 104-112 (Committee on Armed Services), p. 255, accompanying S. 1026, 104th Congress, 1st Session (1995), House report No. 104-406 (Committee of Conference), p. 816, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House report No. 104-406 (Committee of Conference), p. 806, accompanying S. 1124, 104th Congress, 2d Session (1996).

[11] See Senate Report No. 104-112 (Committee on Armed Services), p. 255, accompanying S. 1026, 104th Congress, 1st Session (1995) ("The committee recommends a provision that would add military nurses to the health care professionals who may receive a special pay for being board certified in their specialty."). Cf. House report No. 104-406 (Committee of Conference), p. 816, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House report No. 104-406 (Committee of Conference), p. 806, accompanying S. 1124, 104th Congress, 2d Session (1996).

[12] For other special pays to which nurses may be entitled, see Chapter II.E.1.f. hereof, "Special Pay for Nurse Anesthetists and Other Nurses and Accession Bonus for Registered Nurses," below.

| | |
|---|---|
| 12 but less than 14 | $3,000 |
| 14 but less than 18 | $4,000 |
| 18 or more | $5,000 |

**Note:** Creditable service is computed by adding all periods spent in internship or residency training while not on active duty to all periods of active duty as a health care provider.

The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-154, added a new category of health-related special pay, for pharmacists, for which the law created two new subsections of 37 U.S.C., §302i and §302j. In recommending such pay, the Senate Armed Services Committee referred to a perceived need for more pharmacy officers in the military:

The recommended provision would provide the military departments…additional incentives to recruit and retain pharmacy officers.[13]

The new special pay applies to pharmacy officers at grade O-6 and below of the Medical Service Corps of the Army and Navy and in the Biomedical Sciences Corps of the Air Force. The same legislation provides for the payment of an accession bonus, not to exceed $30,000, for qualified pharmacists who execute a written agreement to accept a commission in the Armed Forces and to remain on active duty for at least four years. The duty assignments of such members are as a pharmacy officer in the Medical Service Corps of the Army or Navy or as a biomedical services officer in the Air Force. The pay schedule prescribed by the authorization act of 2001 was as follows:

| Years of Creditable Service | Pay Authorized |
|---|---|
| Less than 3 | $3,000 |
| 3 but less than 6 | $7,000 |
| 6 but less than 8 | $7,000 |
| 8 but less than 12 | $12,000 |
| 12 but less than 14 | $10,000 |
| 14 but less than 18 | $9,000 |
| more than 18 | $8,000 |

[13] Senate Report No. 106-616 (Committee on Armed Services), accompanying S. 2549, 106th Congress, 2d Session.

The National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, 116 Stat. 2569, redesignated special pay for pharmacist officers as retention special pay for pharmacist officers and prescribed a maximum yearly payment of $15,000 for all recipients in place of the pay schedule established in 2001.

**Cost**: For the cost of nonphysician provider special pay from 1995 to 1997, see Table II-28 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.E.1.f.**

## Special Pay for Nurse Anesthetists and Other Nurses and Accession Bonus for Registered Nurses

**Legislative Authority**: 37 U.S.C. §§302d and 302e; cf. 37 U.S.C. §302c(d).[1]

**Purpose**: To provide a special incentive for nurses to enter and remain in military service to insure adequate numbers of experienced nurses to meet military medical care needs in both peacetime and wartime settings.

**Background**: The National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §§705 and 706, 103 Stat. 1352, 1471-1474 (1989), established two new programs to overcome shortages of nurses generally and of certified registered nurse anesthetists (CRNAs) in particular. Both programs were initially established as two-year test programs. Under the first of the programs, adopted as Section 705(a)(1) of the 1990/1991 National Defense Authorization Act, *id*., §705(a)(1), 103 Stat. at 1471-1472, a registered nurse who, during the period beginning November 29, 1989, and ending on September 30, 1991, executed a written agreement to accept a commission and be assigned to duty as an officer of the Nurse Corps of the Army or Navy or an officer of the Air Force designated as a nurse and to remain on active duty for a minimum of four years became entitled to an "accession bonus" not to exceed $5,000.[2] All registered nurses were eligible to participate in the "accession bonus" program except nurses who received financial assistance from the Department of Defense to pursue baccalaureate degree programs in exchange for agreements to accept appointments as officers and persons determined not to be qualified to become and remain licensed as registered nurses. The exact amount of the bonus was left to the determination of the

[1] In addition to being entitled to special pay under 37 U.S.C. §§302d and 302e as nurses *per se*, nurses may also be entitled to special pay as "nonphysician health care providers" under 37 U.S.C. §302c(d). See footnotes 19 and 20 and accompanying text to this chapter, below. Also see footnote 3 hereof, below.

[2] The program was also available to registered nurses executing written agreements under which they agreed to accept commissions as officers designated as nurses in the commissioned corps of the Public Health Service. 10 U.S.C. §302d(c).

Secretaries of the military services, depending on the needs of each service. The nurse "accession bonus" program is codified at 37 U.S.C. §302d.[3]

In commenting on the need for an "accession bonus" for nurses, the House Armed Services Committee noted:

> The committee is aware that shortfalls in professional nurses now exist in both the active and reserve forces that, if not corrected, will have a major effect on the military medical care system's ability to perform both its wartime and peacetime missions. These shortfalls are the result, in part, of the national nursing shortage, the existence of which forces the military nurse corps to compete more effectively than ever before for the available supply of civilian sector nurses.

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[3] The National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §707, 103 Stat. 1352, 1474-1475 (1989), also established a financial assistance program, codified at 10 U.S.C. §2130a, for nurse officer candidates. The reason underlying adoption of the financial assistance program was the perceived "shortfalls in [the number of] professional nurses [that] now exist in both the active and reserve forces" that could adversely affect the "military medical care system's ability to perform both its wartime and peacetime missions." House Report No. 101-121 (Committee on Armed Services), p. 289, accompanying H.R. 2461, 101st Congress, 1stSession (1989); see Senate Report No. 101-81 (Committee on Armed Services), p.179, accompanying S. 1352, 101st Congress, 1st Session (1989), and House report No. 101-331 (Committee of Conference), 595, accompanying H.R. 2461, 101st Congress, 1st Session (1989). Under the initial funding levels of this program, a person who executes a "written agreement" to accept an appointment as a nurse officer could be paid up to $5,000 upon acceptance of the agreement, provided that the first installment could not exceed $2,500, and a stipend of up to $500 per month, for a maximum of 24 months, for each month the person is "enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution...." The National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, 116 Stat. 2569, raised the limit of the total amount paid upon acceptance from $5,000 to $10,000 and the limit of the initial payment from $2,500 to $5,000. Under the "written agreement," an officer candidate is obligated to enlist in a reserve component of an armed force, to complete the nursing program, to accept appointment as a nurse officer upon completion of the program, and to serve on active duty as a nurse officer for either four or five years (four years in the case of a person whose agreement was accepted in that person's fourth year in a nursing program, five years in the case of a person whose agreement was accepted in that person's third year in a nursing program). As originally enacted, the financial assistance program was scheduled to terminate on September 30, 1991, but the program has since been extended a number of times--first, to September 30, 1992, by the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §613(c)(1), 104 Stat. 1485, 1577 (1990), and the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §612(c)(1), 105 Stat. 1290, 1376 (1991); second, to September 30, 1993, by the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §162(h), 106 Stat. 2315, 2421 (1992); third, to September 30, 1995, by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §611(a), 107 Stat. 1547, 1679 (1993); fourth, to September 30, 1996, by the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §612(a), 108 Stat. 2663, 2783 (1994); to September 30, 1997, by the National Defense Authorization Act for Fiscal Year 1996, Public law 104-106, §612(a), 110 Stat. 186, 359 (1996); and through December 31, 2004 by the successive annual authorization legislation for each of the intervening years, the most recent of which was the National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136. The reasons for the different extensions of the financial assistance program parallel those for extending the special pay programs for nurses, for which see below in this chapter.

> The committee is especially concerned about the military services' failure to attain recruitment goals for nurses. Since fiscal year 1988 none of the services has been able to recruit sufficient numbers and types of nurses to fully perform mission requirements. Although health care research identifies numerous reasons for this phenomenon, the lack of adequate monetary incentives stands out as a major obstacle to the recruitment of military nurses.[4]

Under the second of the programs, adopted as Section 706(a)(1) of the 1990/1991 National Defense Authorization Act, Public Law 101-189, *id*., §706(a)(1), 103 Stat. at 1472-1473, an officer of the Nurse Corps of the Army or Navy or an officer of the Air Force designated as a nurse who was a qualified certified registered nurse anesthetist on active duty for a period of not less than one year and who, during the period beginning November 29, 1989, and ending on September 30, 1991, executed a written agreement to remain on active duty for a minimum of one year or more became entitled to "incentive special pay" not to exceed $6,000 per year.[5] The exact amount of the bonus was left to the determination of the Secretaries of the military services, depending on the needs of each service and the period of obligated service provided for in the written agreement. Incentive special pay for nurse anesthetists is codified at 37 U.S.C. §302e.

With respect to the special incentive pay program for certified registered nurse anesthetists, the House Armed Services Committee was clearly concerned about staffing shortages:

> The committee is deeply concerned about the nation's wartime medical readiness, and believes that the level and adequacy of in-theater casualty care is directly related to the availability of highly skilled health care professionals. Critical among these are nurses, and specifically, certified registered nurse anesthetists (CRNAs).
>
> . . .
>
> Since 1983 the number of programs available [for CRNAs] and the number of graduates in the civilian sector has declined. Likewise, the military nurse corps have experienced great difficulty in achieving recruiting goals.

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[4] House Report No. 101-121 (Committee on Armed Services), p. 289, accompanying H.R. 2461, 101st Congress, 1st Session (1989). *cf. id*., pp. 288-289, generally. Also see Senate Report No. 101-81 (Committee on Armed Services), p. 178, accompanying S. 1352, 101st Congress, 1st Session (1989) ("The committee remains concerned about maintaining adequate staffing levels of nurses in the military medical care system.").

[5] The program was also available to registered nurses executing written agreements under which they agreed to accept commissions as officers designated as nurses in the commissioned corps of the Public Health Service. 37 U.S.C. §302e(b)(1).

> Despite the strengthening of in-service recruiting for specialty training, nurse anesthesia manpower shortages have been critical across the services since fiscal year 1988, with an average of 35 percent of all military treatment facilities undermanned....
>
> The CRNA shortage is further exacerbated by the exodus of experienced military nurse anesthetists to the private sector, where, on average, they can earn salaries in excess of $35,000 above their military compensation....[6]

On the basis of experience with the nurse accession bonus program and the incentive special pay program for certified registered nurse anesthetists, Congress extended the termination date for both programs from September 30, 1991, to September 30, 1992, in the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §613(a) (accession bonus for registered nurses) and §612(b) (special pay for nurse anesthetists), 104 Stat. 1485, 1577 (1990). At the same time, Congress amended 37 U.S.C. §302e to authorize special incentive pay for nursing specialties in addition to nurse anesthetists that are "designated by the Secretary [of Defense] as critical to meet requirements (whether such specialty is designated as critical to meet wartime or peacetime requirements)." National Defense Authorization Act for Fiscal Year 1991, *id*., §614(a)(3), 104 Stat. at 1577. Nursing specialties included in the expanded incentive special pay program were limited to specialties that require "post-baccalaureate education and training." 37 U.S.C. §302e(b)(2)(B). Before including any nursing specialty in the expanded incentive special pay program, the Secretary of Defense is required to submit a report to Congress justifying the need for inclusion of that specialty and describing how the program will be implemented for that specialty. National Defense Authorization Act for Fiscal Year 1991, *id*., §614(c), 104 Stat. at 1578. See 37 U.S.C. §302e note.

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[6] House Report No. 101-121 (Committee on Armed Services), pp. 289-290, accompanying H.R. 2461, 101st Congress, 1st Session (1989). Also see Senate Report No. 101-81 (Committee on Armed Services), p. 179, accompanying S. 1352, 101st Congress, 1st Session (1989):

> The committee is aware that the Department of Defense is experiencing difficulty attracting and retaining qualified certified registered nurse anesthetists (CRNAs). In order to compete for these individuals and in recognition of their additional specialty training, the committee recommends ... a provision ... authorizing incentive pay of up to $6,000 per year for nurse anesthetists. The secretary of the military department concerned may, upon acceptance of the written agreement, pay an incentive pay to an eligible individual in an amount that shall not exceed
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> $6,000 per year for obligated individuals
> $15,000 per year for unobligated individuals who sign a one-year contract
> $20,000 per year for unobligated individuals who sign a two-year contract
> $25,000 per year for unobligated individuals who sign a three-year contract

Currently, no nursing specialties have been "designated ... as critical" under the expanded authority conferred by the 1991 National Defense Authorization Act, Public Law 101-510, §612(b), *id*., and certified registered nurse anesthetists remain the only nursing specialty authorized to receive incentive special pay under 37 U.S.C. §302e.

Extension of authority for incentive special pay to nursing specialties in addition to nurse anesthetists came about as a result of a Senate proposal to extend the incentive special pay program for nurse anesthetists to certified nurse-midwives and intensive care nurses.[7] In conference, the Senate proposal was broadened "to allow the Secretary of Defense to prescribe this incentive special pay for any other nursing specialty that requires post-baccalaureate education and training for which there is a critical shortage based on wartime or peacetime requirements."[8]

Since first extending the termination dates for both programs to September 30, 1992, in the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, 104 Stat. 1485 (1990), Congress has further extended the termination date on four occasions--first, in the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §612(g) (accession bonus for registered nurses) and §612(i) (special pay for nurse anesthetists and other critical nursing specialties), 106 Stat. 2315, 2421 (1992), the termination dates for both programs were extended from September 30, 1992, to September 30, 1993; second, in the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §611(b) (accession bonus for registered nurses) and §611(c) (special pay for nurse anesthetists and other critical nursing specialties), 107 Stat 1547, 1669 (1993), the termination dates were extended from September 30, 1993, to September 30, 1995; third, in the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §612(b) (accession bonus for registered nurses) and §612(c)(1) (special pay for nurse anesthetists and other critical nursing specialties), 108 Stat. 2663, 2783 (1994), the termination dates were further extended from September 30,

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[7] S. 2884, §613, 101st Congress, 2d Session (1990). See Senate Report No. 101-384 (Committee on Armed Services), p. 172, accompanying S. 2884, and House Report No. 101-923 (Committee of Conference), p. 614, accompanying H.R. 4739, 101st Congress, 2d Session (1990).

[8] House Report No. 101-923 (Committee of Conference), p. 614, accompanying H.R. 4739, 101st Congress, 2d Session (1990).

1995, to September 30, 1996; in the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §612(b) (accession bonus for registered nurses) and §612(c) (special pay for nurse anesthetists and other critical nursing specialties), 110 Stat. 186, 359 (1996), and the termination dates were further extended from September 30, 1996, to September 30, 1997; finally, the termination dates have been extended through December 31, 2004 by the successive annual authorization legislation for each of the intervening years, the most recent of which was the National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136.

In support of the extension of the termination dates for both programs from September 30, 1992, to September 30, 1993, the House and Senate Armed Services Committees contented themselves merely with indicating that they "recommend[ed]" the extensions in question.[9] With respect to the additional extension from September 30, 1993, to September 30, 1995, the House Armed Services Committee reported out a bill, H.R. 2401, 103d Congress, 1st Session (1993), that provided permanent authority for incentive special pay for nurse anesthetists and other critical nursing specialties and accession bonuses for registered nurses, thereby doing away with the termination dates that had to be extended from year to year.[10] The Senate bill, S. 1298, §612, 103d Congress, 1st Session (1993), however, merely provided for extending the termination date from September 30, 1993, to September 30, 1994.[11] The Senate proposal was adopted in conference.[12] In connection with the extension of the termination dates from September 30, 1995, to September 30, 1996, the Senate Armed Services Committee proposed increasing the incentive special pay for nurse anesthetists and other critical

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[9] House Report No. 102-527 (Committee on Armed Services), p. 244, accompanying H.R. 5006; and Senate Report No. 102-352 (Committee on Armed Services), p. 208, accompanying S. 3114, 102d Congress, 2d Session (1992). Cf. House Report No. 102-966 (Committee of Conference), p. 713, accompanying H.R. 5006, 102d Congress, 2d Session (1992).

[10] H.R. 2401, §611, 103d Congress, 1st Session (1992). See House Report No. 103-200 (Committee on Armed Services), p. 293, accompanying H.R. 2401, 103d Congress, 1st Session (1993).

[11] Senate Report No. 103-112 (Committee on Armed Services), p. 152, accompanying S. 1298, 103d Congress, 1st Session (1993).

[12] House Report No. 103-357 (Committee of Conference), p. 683, accompanying H.R. 2401, 103d Congress, 1st Session (1993).

nursing specialties from a maximum of $6,000 per year to $15,000 per year while at the same time extending the program termination dates for both the incentive special pay program and the accession bonus for registered nurses to September 30, 1998,[13] while the bill reported out by the House Armed Services Committee provided merely for increasing the incentive special pay for nurse anesthetists and other critical nursing specialties from a maximum of $6,000 per year to $15,000.[14] In support of its proposal to increase the maximum amount of incentive special pay for nurse anesthetists and other critical nursing specialties from $6,000 to $15,000, the Senate Armed Services Committee noted:

> ... At present, certified registered nurse anesthetists can earn far more as civilians than as military personnel, and the compensation gap continues to increase.[15]

Accordingly, the National Defense Authorization Act for Fiscal Year 1996, Public Law 103-337, increased the proposal to increase the amount of incentive special pay from a maximum of $6,000 to $15,000 a year and extended the program termination dates from September 30, 1995, to September 30, 1996.[16]

In connection with the extension of the termination dates for both programs from September 30, 1996, to September 30, 1997, effected by the National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201 §612(b) (accession bonus for registered nurses) and §612(c) (special pay for nurse anesthetists and other critical nursing specialties), 110 Stat. 2538 (1996), the House originally proposed a two-year

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[13] S. 2182, §612, 103d Congress, 2d Session (1994). See Senate Report No. 103-282 (Committee on Armed Services), p. 194, accompanying S. 2182, 103d Congress, 2d Session (1994).

[14] H.R. 4301, §611, 103d Congress, 2d Session (1994). See House Report No. 103-499 (Committee on Armed Services), p. 251, accompanying H.R. 4301, 103d Congress, 2d Session (1994).

[15] Senate Report No. 103-282 (Committee on Armed Services), p. 194, accompanying S. 2182, 103d Congress, 2d Session (1994).

[16] House Report No. 103-701 (Committee of Conference), p. 713, accompanying S. 2182, 103d Congress, 2d Session (1993).

extension, to September 30, 1998, whereas the Senate proposed only a one-year extension.[17] A one-year extension was agreed to in conference.[18]

In a related but slightly different context, nurses were specifically included within the category of persons entitled to special pay for nonphysician health care providers by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §617, 110 Stat. 186, 362 (1996), provided they meet the other requirements of 37 U.S.C. §302c(d). [19] For a discussion of these other requirements and of the amount of pay authorized for nurses who qualify as nonphysician health care providers, see Chapter II.E.1.e., "Special Pay for Psychologists and Other Nonphysician Health Care Providers", immediately above.[20]

The National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, made substantial increases in the accession bonus for registered nurses and the incentive special pay for nurse anesthetists. The bonus rose from $5,000 to $30,000 and the incentive pay rose from $15,000 to $50,000.

**Current rates of pay authorized**: The maximum accession bonus currently authorized for registered nurses is $30,000 and the maximum annual incentive special pay currently authorized for nurse anesthetists and other officers in critical nursing specialties is $50,000 per year.

**Cost**: For the cost of special pay for nurses from 1990 to 2004, see Tables II-29 of *Military Compensation Statistics Tables*, volume II of this edition.

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[17] H.R. 1530, §612, and S. 1026, §612, 104th Congress, 1st Session (1995). See House Report No. 104-131 (Committee on National Security), p. 230, accompanying H.R. 1530, and Senate Report No. 104-112 (Committee on Armed Services), pp. 254-255, accompanying S. 1026, 104th Congress, 1st Session (1995); cf. House Report No. 104-406 (Committee of Conference), p. 815, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), p. 805, accompanying S. 1124, 104th Congress, 2d Session (1996).

[18] House Report No. 104-406 (Committee of Conference), p. 815, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), p. 805, accompanying S. 1124, 104th Congress, 2d Session (1996).

[19] See 37 U.S.C. §302c(d) as amended by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §617, 110 Stat. 186, 362 (1996).

[20] See in particular footnotes 10 through 12 and accompanying text of Chapter II.E.1.e., "Special Pay for Psychologists and Other Nonphysician Health Care Providers," above.

**Chapter II.E.2.a.**

## Engineering and Scientific Career Continuation Pay

**Legal Authority**: 37 U.S.C. §315.

**Purpose**: To provide an additional incentive for officers of the uniformed services with certain specially needed engineering and scientific skills to remain on active duty following completion of their initial active service obligations.

**Background**: In the Uniformed Services Pay Act of 1981, Public Law 97-60, §120(a), 95 Stat. 989, 998-999 (1981), Congress established a new special pay program to induce officers in the Armed Forces with certain critically needed engineering and scientific skill specialties to remain on active duty, rather than returning to the civilian job market, after completion of their respective terms of obligated service. Under the provisions of the 1981 Pay Act, officers performing duties requiring an engineering or scientific degree in a skill specialty designated as of critical importance to the Armed Forces and in which there was a critical manning shortage were, subject to certain conditions set out below, eligible for engineering and scientific career continuation pay at rates ranging up to $3,000 per year. To be eligible for such pay, an officer was required to be in a pay grade below O-7, to hold an engineering or science degree from an accredited college or university, to be certified by the Secretary of his military department as having the technical qualifications for being detailed to engineering or scientific duty, to have completed at least three but less than 19 years of engineering or scientific duty as an officer, and to have executed a written agreement to remain on active duty for detail in an engineering or scientific capacity for at least one but not more than four years. Upon acceptance of such an agreement, an affected officer became eligible for the special continuation pay in an amount not to exceed $3,000 multiplied by the number of years, including fractions thereof, for which the officer agreed to remain on active duty. The pay could be paid either in a lump sum or in equal periodic installments, as determined by the Secretaries of the various military departments.

In adopting this new entitlement, Congress noted generally that the United States was currently facing a growing shortage of engineers and that that shortage, coupled with increased demand for such personnel in the private sector, had driven starting salaries to the $19,000 to $24,000 range.[1] Congress then went on to note that, "[g]iven these circumstances, it is not surprising that the military services are experiencing difficulty in attracting and retaining officers skilled in certain engineering and scientific disciplines."[2] To address this problem, the House of Representatives proposed an accession bonus of up to $15,000 for an initial four-year obligation and a continuation bonus of up to $3,000 per year for each year an officer with at least three but less than 19 years of service agreed to remain on active duty.[3] The Senate, agreeing to the special continuation pay, declined to adopt the accession bonus, and the latter was, in conference, deleted from the program.[4] The legislative history of the engineering and scientific career continuation pay program adopted in the Uniformed Services Pay Act of 1981, Public Law 97-60, id., underlines Congress's intent that the pay not be authorized for military personnel already eligible for accession and continuation bonus payments under other provisions of law.[5] In addition, Congress suggested that the bonus be phased out in such a way as to prevent significant decreases in total annual compensation when an officer loses eligibility.[6]

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[1] House Report No. 97-109 (Part 1) (Committee on Armed Services), p. 8, accompanying H.R. 3380, 97th Congress, 1st Session (1981).

[2] House Report No. 97-109 (Part 1) (Committee on Armed Services), p. 8, accompanying H.R. 3380, 97th Congress, 1st Session (1981).

[3] H.R. 3380, §5, 97th Congress, 1st Session (1981). See House Report No. 97-109 (Part 1) (Committee on Armed Services), pp. 8, 20, and House Report No. 97-109 (Part 2) (Committee on Appropriations), p. 22, accompanying H.R. 3380, 97th Congress, 1st Session (1981).

[4] House Report No. 97-265 (Committee of Conference), p. 25, accompanying S. 1181, 97th Congress, 1st Session (1981). *cf.* Senate Report No. 97-146 (Committee on Armed Services), accompanying S. 1181, 97th Congress, 1st Session (1981).

[5] House Report No. 97-109 (Part 1) (Committee on Armed Services), p. 8, accompanying H.R. 3380, and House Report No. 97-265 (Committee of Conference), p. 25, accompanying S. 1181, 97th Congress, 1st Session (1981).

[6] House Report No. 97-109 (Part 1) (Committee on Armed Services), p. 8, accompanying H.R. 3380, and House Report No. 97-265 (Committee of Conference), p. 25, accompanying S. 1181, 97th Congress, 1st Session (1981). (While the House had suggested merely that the new pay be phased out so that officers with 19 years of service not experience a significant decrease in compensation, the Conference Committee

In presentations to the House Armed Services Committee, the Air Force and the Navy indicated that, together, they planned to use the new authority to pay bonuses of $1,000 to 1,000 officers, $2,000 to 650 officers, and $3,000 to 234 officers to improve retention during fiscal year 1982; the Army and Marine Corps indicated they did not expect to pay any such bonuses at all.[7]

The Department of Defense Authorization Act, 1986, Public Law 99-145, §637(a), 99 Stat. 583, 648-649 (1985), extended program eligibility to officers of the Public Health Service and the National Oceanic and Atmospheric Administration as well as officers in the Armed Forces. Under the provisions of current 37 U.S.C. §315, all the uniformed services are capable of implementing engineering and scientific career continuation pay. Thus, officers in the uniformed services performing duties requiring an engineering or scientific degree in a skill specialty designated as of critical importance to the uniformed services (as determined by the Secretary of the department concerned) and in which there is a critical manning shortage are eligible for engineering and scientific career continuation pay. 37 U.S.C. §315(a), as amended by the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*.

The legislative history of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., does not speak to the question of why program eligibility was extended to officers in the Public Health Service and the National Oceanic and Atmospheric Administration. The House and Senate Conference Reports merely state:

> Currently, engineering and scientific career continuation pay may be paid to certain officers of the Armed Forces in critical shortage skills.
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> The Senate bill [S. 1160, 99th Congress, 1st Session (1985)] contained a provision ... that would also authorize the payment of this special pay to members

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suggested the pay be phased out by the end of the 14th year of service. The law, however, only requires that it be phased out before the beginning of an officer's 19th year of service.)

[7] House Report No. 97-109 (Part 1) (Committee on Armed Services), p. 20, and House Report No. 97-109 (Part 2) (Committee or Appropriations), p. 22, accompanying H.R. 3380, 97th Congress, 1st Session (1981).

of the National Oceanic and Atmospheric Administration and the Public Health Service.

The House amendment contained no similar provision.

The House recedes.[8] [9]

In fact, the *Fifth Quadrennial Review of Military Compensation*,[10] in statutorily required reports to Congress, recommended extending engineering and scientific career

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[8] House Report No. 99-235 (Committee of Conference), p. 431, and Senate Report No. 99-118 (Committee of Conference), p. 431, both accompanying S. 1160, 99th Congress, 1st Session (1985).

[9] In its consideration of authorizations for the Department of Defense for fiscal year 1986, the Senate Committee on Armed Services initially reported out S. 1029, which was accompanied by Senate Report No. 99-41, 99th Congress, 1st Session (1985). Before this bill was considered by the full Senate, the Senate Committee on Armed Services reported out a clean bill, S. 1160, but did not issue a report on the new bill. As explained by Senator Goldwater, Chairman of the Committee:

... The Armed Services Committee reported S. 1029 to the Senate on April 29 of this year. The bill was accompanied by Senate Report No. 99-41.

When the Armed Services Committee learned that the Senate would approve no real growth in the defense budget, it reconvened on Wednesday of this week [May 15, 1985] to make further program reductions to conform to the ceiling in the budget resolution. The Committee has reported a clean bill, S. 1160, reflecting these new budget levels....

Most of the Senate Report 99-41 continues to be applicable to this bill....

131 *Cong. Rec*. 12438, 12500 (1985) (daily ed., 131 *Cong. Rec*. S6415, S6475 (May 17, 1985)) (statement of Senator Goldwater). In "explanatory background information" on some of the differences between S. 1029 and S. 1160, the following appears:

The compensation and benefits provisions of the bill contain significant differences from those contained in S. 1029....

... In addition the Committee recommended increases or enhancements to a number of special and incentive pays....

Each of these benefit increases or enhancements are in addition to the modest improvements in benefits previously recommended in S. 1029.

131 *Cong. Rec*. 12474 (1985) (daily ed., 131 *Cong. Rec*. S6450 (May 17, 1985)) (statement of Senator Goldwater). Neither Senate Report No. 99-41 nor the "explanatory background information" provided by Senator Goldwater specifically dealt with the "enhancements" to the engineering and scientific career continuation pay program contained in S. 1160 and subsequently adopted in the Department of Defense Authorization Act, 1986, Public Law 99-145, §637(a), 99 Stat. 583, 648-649 (1985).

[10] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system of

continuation pay entitlements to officers in the Public Health Service and the National Oceanic and Atmospheric Administration as follows:

> Title 37 U.S.C. authorizes this pay [*i.e.*, engineering and scientific career continuation pay] for the "Armed Forces." Public Health Service and the National Oceanic and Atmospheric Administration are "Uniformed Services" not authorized to use this bonus. Because there is no immediate critical need in these services, this should not preclude them from the authority to implement this incentive in the future if the need should arise. The statute should apply to all Uniformed Services.[11]

Congress may well have been persuaded by this reasoning.

Because of the purpose of the special pay program for engineering and scientific duty officers--namely, "attracting and retaining officers skilled in certain engineering and scientific disciplines"[12] on active duty[13]--engineering and scientific career continuation pay is not authorized for members of the reserve forces performing inactive-duty training.

**Current rate of pay authorized**: Engineering and scientific career continuation pay is currently authorized at a rate not to exceed $3,000 for each year of an active-duty agreement.[14]

**Cost**: For the cost of engineering and scientific career continuation pay from 1982 to 1988, see Table II-30 of *Military Compensation Statistics Tables*, volume II of this edition.

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the uniformed services. The Ninth Quadrennial Review of Military Compensation was convened in 1999, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in late 2001.

[11] Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, p. 381, November 1983. Also see Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*," Volume III, pp. 16-17, November 1983, and Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-8, January 1984.

[12] House Report No. 97-109 (Part 1) (Committee on Armed Services), p. 8, accompanying H.R. 3380, 97th Congress, 1st Session (1981).

[13] Under 37 U.S.C. §315(b)(6), engineering and scientific career continuation pay is authorized only for officers executing agreements obligating them to remain on active duty. Also see text at footnotes 1, 2, and 3 to this chapter above.

[14] A qualifying active-duty agreement must obligate an affected officer to remain on active duty for at least one but not more than four years.

**Chapter II.E.2.b.**

## Enlistment Bonus

**Legislative Authority**: 37 U.S.C. § 309.

**Purpose**: To provide a monetary incentive to induce persons to enlist for and serve in military skill specialties experiencing critical personnel shortages.

**Introduction**: Enlistment bonus authority pre-dates the formation of the United States. A 1776 resolution of the Continental Congress offered a cash bonus or "bounty" as a spur to enlistments. The enlistment "bounty" played a prominent part in raising United States military forces until after the Civil War (1861-1865). It then fell from favor, principally because it had proved ineffective and been subject to abuse during that war. Except for one year in the 1920s, it was not revived until 1971, when an enlistment bonus was again authorized as a corollary to the end of conscription and the move to a relatively large "all-volunteer" military force. The crucial difference between the original enlistment bonus program and the present day enlistment bonus program is that, whereas the original enlistment bonus, or “bounty,” was available to anyone enlisting in the precursor of today’s Army, present day enlistment bonus authority is applicable only to persons enlisting in military skill specialties designated as “critical.” Whereas the original enlistment bonus was payable only to persons enlisting in the Army, today's enlistment bonus authority extends to members of all branches of the Armed Forces.

**Background**: The first congressional authority for an enlistment bonus--called a "bounty for enlistment" at the time--was the Act of March 3, 1791, ch. 28, §4, 1 Stat. 222 (1791), which granted a $6 "bounty" to "each non-commissioned officer, private and musician, who has enlisted pursuant to [an earlier enactment], or who shall enlist pursuant to this act."[1] The Act of March 5, 1792, ch. 9, §5, 1 Stat. 241, 242 (1792),

[1] The Act of March 3, 1791, ch. 28, §12, 1 Stat. 222, 224 (1791), also authorized a $3 "bounty" to be paid to "each of the non-commissioned officers, privates and musicians" raised as Presidential "levies" of the United States. The act further provided that "troops inlisted [*sic*] under the denomination of levies" and "non-commissioned officers, privates and musicians of the militia" were, when "call[ed] into service of the United States," entitled to "the same pay, rations and forage ... as the troops of the United States." Act of March 3, 1791, ch. 28, *id*., §10, 1 Stat. at 223.

increased the "bounty" to $8 for every "recruit who shall be enlisted by virtue of this act" as well as to "the non-commissioned officers, privates and musicians now in service, who have enlisted for three years" under the authority of the same earlier enactment referred to in the Act of March 3, 1791, ch. 28, *id*. The Act of March 3, 1795, ch. 44, §6, 1 Stat. 430 (1795), further increased the bounty payable "to each person not now in the army of the United States ... who shall hereafter enlist," this time to $14, $4 of which was to be "deferred until [the enlistee] shall have joined the corps in which he is to serve." The amount of the "bounty" authorized fluctuated in a fairly narrow range[2] until theAct of January 27, 1814, ch. 7, §1, 3 Stat. 94, 94-95 (1814), boosted it to the then-mammoth sum of $124. The $124 authorized was, however, a "bounty" with a string attached. An earlier law had created a separation payment equal to three months' pay. A recruit had to give up his right to the separation payment to qualify for the $124 enlistment bounty.

The Mexican War (1846) brought the next change to the program. The Act of February 11, 1847, ch. 8, §9, 9 Stat. 123, 125-126 (1847), authorized a bounty of 160 acres of public land or, alternatively, $100 in Treasury scrip to men enlisting in the Army for 12 months or longer. Those enlisting for less than a year were entitled to 40 acres or $25, again in scrip, provided they "marched to the seat of war." Use of the enlistment bounty waned during the period of peace that followed, but reached the height of its development after the Civil War broke out.

The federal "bounty," or "premium," soared to a peak of $402 during the Civil War. Under the then-existing volunteer army system, states, counties, and municipalities also paid a bounty. Competition for volunteers was intense, causing local bounties to climb as high as $1,500. The practice of "bounty jumping" plagued the system: soldiers who had been paid a bounty deserted, enlisted in some other state, and collected another bounty. The process was frequently repeated several times. Bounty payments were

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[2] *e.g.*, under the Act of March 16, 1802, ch. 9, §12, 2 Stat. 132, 135 (1802), the "bounty" for "each able-bodied citizen, recruited ... to serve the term of five years" was set at $12--$2 less than the bounty authorized by the Act of March 3, 1795, ch. 9, *id*., §5, 1 Stat. at 242--$6 of which was "deferred until [the enlistee] shall be mustered and have joined the corps in which he is to serve."

discontinued for enlistments entered into after April 30, 1865. The enlistment bounty never recovered completely from its unsavory Civil War reputation. It remained in virtual eclipse as a recruitment device for roughly the next 100 years until, upon reemergence, it was restructured and given a different name. The blunt language of Section 3 of the Act of May 18, 1917, ch. 15 [Public Law 12, 65th Congress], §3, 40 Stat. 76, 78 (1917), enacted shortly after the United States entered World War I, reflects the low repute in which the bounty and certain other Civil War recruitment practices were held:

> No bounty shall be paid to induce any person to enlist in the military service of the United States; and no person liable to military service shall hereafter be permitted or allowed to furnish a substitute for such service; nor shall any substitute be received, enlisted, or enrolled in the military service of the United States; and no such person shall be permitted to escape such service or to be discharged therefrom prior to the expiration of his term of service by the payment of money or any other valuable thing whatsoever as consideration for his release from military service or liability thereto.

Indeed, to the present day 10 U.S.C. §514 provides:

> (a) No bounty may be paid to induce any person to enlist in an armed force. A clothing allowance or enlistment bonus authorized by law is not a bounty for the purposes of this subsection.
>
> (b) No person liable for active duty in an armed force under this subtitle [10 U.S.C. Subtitle A, "General Military Law"] may furnish a substitute for that active duty. No person may be enlisted or appointed in an armed force as a substitute for another person.[3]

Although bounties *per se* are still prohibited, enlistment bonuses are to be distinguished from bounties and have been authorized at different times over the years. Thus, the Act of June 4, 1920, ch. 227 [Public Law 242, 66th Congress], §27, 41 Stat. 759, 775 (1920), granted a $90 bonus,[4] payable at the end of the term of enlistment, to persons enlisting in the Army for three years. This enlistment bonus was repealed the

[3] In this same connection, see also Selective Service Act of 1948, ch. 625 [Public Law 759, 80th Congress], §8, 62 Stat. 604, 614 (1948), which is the source of current 10 U.S.C. §514. Both provisions specifically state that clothing allowances and enlistment bonuses if "authorized by law" are not within the prohibitions on "bounties." (The catchline for 10 U.S.C. §514 is "Bounties prohibited; substitutes prohibited".)

[4] *cf.* Act of June 4, 1920, ch. 227 [Public Law 242, 66th Congress], §4, 41 Stat. 759, 761 (1920).

following year in the Act of June 30, 1921 (Army Appropriation Act of 1922), ch. 33 [Public Law 27, 67th Congress], §1, 42 Stat. 68, 74 (1921).

The Act of September 28, 1971 (Military Selective Service Act Amendments of 1971), Public Law 92-129, §203(a), 85 Stat. 348, 358 (1971), adding Section 308a to Title 37, United States Code,[5] allowed, until June 30, 1973, payment of an enlistment bonus of not more than $3,000 to persons who enlisted for three or more years in a combat element of an armed force or who extended their initial period of active duty in such an element to a total of at least three years. Use of the bonus began June 1, 1972, when the Army and Marine Corps were permitted to test the program by paying a $1,500 bonus to persons enlisting for four years of service in an infantry, artillery, or armor career field. When draft calls stopped after December 1972, enlistments into the combat arms skills began to decline. On May 1, 1973, the amount of the combat arms bonus was increased to $2,500, and the Army extended the program to cover 12 new combat technical skills. Congress, however, believed the program should not be so extended, and, in the Act of July 9, 1973, Public Law 93-64, §204, 87 Stat. 147, 149 (1973), changed the controlling language to provide that the bonus was payable only for enlistments or extensions in the fields of infantry, artillery, or armor, while at the same time extending the basic authority to June 30, 1974.

The Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Public Law 93-277, §2(2), 88 Stat. 119, 120-121 (1974), removed the "combat arms" limitation from the enlistment bonus program; permitted a bonus payment of up to $3,000 to persons enlisting for four or more years, or extending an initial enlistment for such a period, in any skill designated as "critical" for the purposes of the enlistment bonus program; and provided for the enlistment bonus authority to be extended through June 30, 1977.

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[5] Recognizing the continuing prohibition on "bounties" found at 10 U.S.C. §514, Congress, in adopting the enlistment bonus provisions set out at 37 U.S.C. §308a, specifically provided that the prohibitions of 10 U.S.C. §514(a) should not be applicable. 37 U.S.C. §308a(a) as added by the Act of September 28, 1971 (Military Selective Service Act Amendments of 1971), Public Law 92-129, §203(a), 85 Stat. 348, 358 (1971); see current 37 U.S.C. §308a(a) ("Notwithstanding section 514(a) of title 10 [United States Code] or any other law, . . .").

Between enactment of the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Public Law 93-277, *id*., and 1992, the basic authority for the payment of enlistment bonuses was extended eight times: first, from June 30, 1977, to September 30, 1978, by the Act of June 29, 1977, Public Law 95-57, §2, 91 Stat. 253 (1977); second, to September 30, 1980, by the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §802(b), 92 Stat. 1611, 1619 (1978); third, to September 30, 1982, by the Department of Defense Authorization Act, 1981, Public Law 96-342, §804(b), 94 Stat. 1077, 1092 (1980); fourth, to December 17, 1982, by the Act of October 2, 1982, Public Law 97-276, §131, 96 Stat. 1186, 1197 (1982); fifth, to March 31, 1983, by the Act of December 21, 1982, Public Law 97-377, §798, 96 Stat. 1830, 1865 (1982); sixth, to September 30, 1984, by the Act of March 30, 1983, Public Law 98-14, §1, 97 Stat. 55 (1983); seventh, to September 30, 1987, by the Department of Defense Authorization Act, 1985, Public Law 98-525, §621(a), 98 Stat. 2492, 2540 (1984);[6] and eighth, to September 30, 1992, by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §626(a), 101 Stat. 1019, 1104 (1987).[7] The

[6] In connection with congressional action on the Department of Defense Authorization Act, 1985, Public Law 98-525, §621(a), 98 Stat. 2492, 2540 (1984), the House Armed Services Committee recommended a five-year extension of enlistment bonus authority, to September 30, 1989, House Report No. 98-691 (Committee on Armed Services), p. 257, accompanying H.R. 5167, 98th Congress, 2d Session (1984), but the Senate Armed Services Committee recommended only a two-year extension, Senate Report No. 98-500 (Committee on Armed Services), p. 208, accompanying S.2723, 98th Congress, 2d Session (1984). A three-year extension to September 30, 1987 was agreed to in conference. See House Report No. 98-1080 (Committee of Conference), p. 297, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[7] With respect to the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §626(a), 101 Stat. 1019, 1104 (1987), the House Armed Services Committee recommended a five-year extension of enlistment bonus authority, to September 30, 1992, House Report No. 100-446 (Committee of Conference), p. 644, accompanying H.R. 1748, and House Report No. 100-58 (Committee on Armed Services), p. 205, accompanying H.R. 1748, 100th Congress, 1st Session (1987), but the Senate Armed Services Committee recommended only a two-year extension, House Report No. 100-446 (Committee of Conference), p. 644, accompanying H.R. 1748, 100th Congress, 1st Session (1987). The five-year extension initially recommended by the House Armed Services Committee was agreed to in Conference. House Report No. 100-446 (Committee of Conference), p. 644, accompanying H.R. 1748, 100th Congress, 1st Session (1987). As stated by the House Armed Services Committee:

The enlistment and selective reenlistment [also covered by the extension] bonus programs have proven invaluable in recruiting and retaining high quality individuals for all components of the Total Force. The committee believes that these programs have permitted the services to selectively target their resources to meet service-unique accession and retention needs in a judicious and cost effective manner.

need to attract additional personnel to military combat skill areas experiencing critical shortages underlay all these extensions.[8]

Since 1992, the program termination date has been extended annually by the national defense authorization acts for the respective years. The only exceptions were the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, which mandated a two-year extension through September 30, 1995, and the National Defense Authorization Act for Fiscal Year 1999, which mandated a three-month extension to move the termination date from the end of the fiscal year, September 30, to the end of the calendar year, December 31. The National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, extended the program through December 31, 2004. In all cases, the House and Senate Armed Services Committees simply noted that they recommended the extensions, with no additional comment.

In addition to the extensions discussed above, four additional substantive changes to the basic legislation have been made since 1974. The Department of Defense Authorization Act, 1981, Public Law 96-342, §804(b), 94 Stat. 1077, 1092 (1980), increased the maximum amount of enlistment bonus payable with respect to any single enlistment from $3,000 to $5,000, and the Uniformed Services Pay Act of 1981, Public Law 97-60, §117(b)(1), 95 Stat. 989, 996 (1981), further increased the maximum from $5,000 to $8,000, while at the same time providing that the first installment of the bonus could not exceed $5,000, with the remainder to be paid in equal periodic installments payable not less frequently than once every three months. As reflected in relevant Congressional reports, these increases were adopted because of the "need to ensure that the active Armed Forces not only have the total number of persons required, but that those recruited ... have the ability to use and maintain the increasingly more sophisticated weapons with which those forces are being equipped" and in response to the conviction

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House Report No. 100-58 (Committee on Armed Services), p. 205, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

[8] See, *e.g.*, House Report No. 100-446 (Committee of Conference), p. 644, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

that the "resources needed to attract the number and kinds of people required must be provided."[9] [10] The maximum amount of the bonus payable was again increased in 1989, this time from $8,000 to $12,000, with the first installment limited to a maximum of $7,000, by the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §612(a)(1) and (2), 103 Stat. 1352, 1445-1446 (1989). This increase was authorized "to assist [especially the Army] in recruiting high quality personnel to fill critical skill requirements."[11] As stated by the House Armed Services Committee, which had proposed the increase:

> Under current law, an individual who enlists in the Armed Forces in a critical skill may be paid an enlistment bonus of up to $8,000. The first installment of that bonus may not exceed $5,000.
>
> Several of the services have begun to experience recruiting difficulties during the current fiscal year at a time when youth unemployment has declined markedly and private sector wages are on the rise.
>
> To assist the services in remaining competitive for high quality young men and women, [the bill] would increase the maximum bonus payable to $12,000, with the first installment not to exceed $7,000.
>
> The committee expects the services to use this enhanced authority very judiciously, for only the most difficult-to-recruit skills, and anticipates that only the Army will exercise the authority during fiscal year 1990....[12]

Accordingly, between 1989 and 1999 the four-year enlistment bonus program authorized by 37 U.S.C. §308a offered a maximum bonus of $12,000 for a four-year enlistment,

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[9] House Report No. 97-109 (Part 1) (Committee on Armed Services), p. 5, accompanying H.R. 3380, 97th Congress, 1st Session (1981). See House Report No. 97-109 (Part 2) (Committee on Appropriations), pp. 8-9, accompanying H.R. 3380, 97th Congress, 1st Session (1981); Senate Report No. 97-146 (Committee on Armed Services), p. 11, accompanying S.1181, 97th Congress, 1st Session (1981); and House Report No. 97-265 (Committee of Conference), p. 24, accompanying S.1181, 97th Congress, 1st Session (1981). See also Senate Report No. 96-826 (Committee Armed Services), pp. 122-125, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

[10] The $5,000 limit on the amount of the first installment of an enlistment bonus payment was adopted because of budgetary concerns.

[11] House Report No. 100-331 (Committee of Conference), p. 585, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[12] House Report No. 101-121 (Committee on Armed Services), p. 275, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

with a maximum payment of $7,000 authorized for the first installment. The National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, 113 Stat. 652, increased the maximum bonus from $12,000 to $20,000, with payments to be made either in a single lump sum or in installments. The Senate Armed Services Committee made this comment on the rationale for these changes:

> The committee believes [that] increasing the maximum amount of and paying the enlistment bonus in a lump-sum will serve as an incentive to enlistees to successfully complete their skill training.[13]

The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-152 prescribed a single enlistment bonus of $20,000 for all enlistees with designated special skills (see below).

In recognition of special recruiting problems confronting the Army, the Uniformed Services Pay Act of 1981, Public Law 97-60, §117(c)(1), 95 Stat. 989, 996 (1981), also adopted a special provision, codified as 37 U.S.C. §308f, allowing the Army to pay an enlistment bonus, in the maximum amount of $4,000, to recruit high school graduates (or persons who have received equivalency certificates) who score at or above the fiftieth percentile on the Armed Forces Qualification Test (frequently referred to as the "AFQT") and who enlist for at least three years in a skill designated as critical. As previously indicated, the standard enlistment bonus payable under 37 U.S.C. §308a may be paid only to persons enlisting for four or more years, and Congress felt that, in light of the Army's special problems in attracting and retaining the "number and kinds of people required" to deal with the "increasingly more sophisticated weapons," a special recruiting tool was needed.[14] For this reason, it authorized "a one-year test program" to determine whether a lower bonus for a three-year enlistment could produce an enlisted profile

[13] Senate Report 106-050 (Committee on Armed Services), accompanying S. 1059, 106th Congress, 1st Session (1999).

[14] House Report No. 97-109 (Part 1) (Committee on Armed Services), pp. 5-7, accompanying H.R. 3380, 97th Congress, 1st Session (1981).

adequate to meet the specialized needs of the modern Army.[15] The authority for what originally began as a "one year test program" has subsequently been extended six times: first, to September 30, 1984, by the Act of March 30, 1983, Public Law 98-14, §2, 97 Stat. 55 (1983); second, to September 30, 1987, by the Department of Defense Authorization Act, 1985, Public Law 98-525, §621(a), 98 Stat. 2492, 2540 (1984); third, to September 30, 1992, by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §626(a), 101 Stat. 1019, 1104 (1987); [16] fourth, to September 30, 1995, by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §613(e), 107 Stat 1547, 1681 (1993);[17] fifth, to September 30, 1996, by the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337,

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[15] House Report No. 97-109 (Part 1) (Committee on Armed Services), pp. 5-7, accompanying H.R. 3380, 97th Congress, 1st Session (1981). Also see House Report No. 97-265 (Committee of Conference), p. 24, accompanying S.1181, 97th Congress, 1st Session (1981).

[16] The same compromise concerning the length of the extension under the Department of Defense Authorization Act, 1985, Public Law 98-525, §621(a), 98 Stat. 2492, 2540 (1984), and the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §626(a), 101 Stat. 1019, 1104 (1987), was reached for the Section 308f enlistment bonus, 37 U.S.C. §308f, as was reached for the Section 308a, 37 U.S.C. §308a, enlistment bonus. See footnotes 7 and 8 to this chapter, above, respectively.

[17] When Congress extended the termination date for the critical-skills enlistment bonus program authorized by 37 U.S.C. §308a from September 30, 1992, to September 30, 1993, in the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, 106 Stat. 2315 (1992)--see text accompanying footnote 11 to this chapter, above--it did not make a comparable extension to the Army enlistment bonus program authorized by 37 U.S.C. §308f. Neither the House or Senate Armed Services Committees gave any reason for not extending the termination date for the Army bonus enlistment program. Indeed, neither even mentioned the Army enlistment bonus program. *cf*. House Report No. 102-527 (Committee on Armed Services), pp. 243-244, accompanying H.R. 5006; Senate Report No. 102-352 (Committee on Armed Services), p. 208, accompanying S. 3114; and House Report No. 102-966 (Committee of Conference), p. 612, accompanying H.R. 5006, 102d Congress, 2d Session (1992). When in November of 1993 Congress again extended the termination date for the critical-skills enlistment bonus program of 37 U.S.C. §308a from September 30, 1993, to September 30, 1995, it at the same time extended the termination date for the Army enlistment bonus program from September 30, 1992, to September 30, 1995. National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §613(e), 107 Stat 1547, 1681 (1993). In so doing, it specifically made the extension applicable to any Army enlistments that occurred on or after September 30, 1992, National Defense Authorization Act for Fiscal Year 1994, *id*., §613(h)(3), 107 Stat. at 1682, thereby effectively filling in the period of lapsed authority. No separate reason was given for extending the Army enlistment bonus program after a 14-month period of lapsed authority. See House Report No. 103-200 (Committee on Armed Services), pp. 294-295, accompanying H.R. 2401; Senate Report No. 103-112 (Committee on Armed Services), p. 152, accompanying S. 1298; and House Report No. 103-357 (Committee of Conference), p. 683, accompanying H.R. 2401, 103d Congress, 1st Session (1994). Indeed, the fact that the Army enlistment bonus authority was not even separately mentioned together with the fact that the extension of the program was given retroactive effect could support the conclusion that the failure to extend the authority in the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, 106 Stat. 2315 (1992), was inadvertent.

§613(c), 108 Stat. 2663, 2783 (1994); and to September 30, 1997, by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §613(c), 110 Stat. 186, 359 (1996), and by [18] In support of the 1994 extension of the Army enlistment bonus authority almost a full year before it was otherwise due to expire, the Senate Armed Services Committee, which was the moving force behind the extension, merely noted that it "recommended" the extension for the critical-skills enlistment bonus program authorized by 37 U.S.C. §308a; no separate mention was made of the Army enlistment bonus program.[19] The national defense authorization acts for fiscal years 1997 through 2000 prescribed the same one-year extensions as had been the norm in most of the previous years.

The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-152, made the $20,000 bonus applicable to individuals with critical skills who enlist for as little as two years. U.S.C. 37 §309, which was created by that legislation, consolidated the enlistment bonus programs under one set of conditions, repealing §§308a and 308f. Those sections had respectively prescribed enlistment bonuses for “skill[s] designated as critical” (a minimum four-year enlistment) and for enlistees with a critical skill but an education level of high school or its equivalent (a minimum two-year enlistment, which had been reduced from three years by the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65). Under 37U.S.C. §308f, the latter category had received a maximum bonus of $6,000. In the words of the House Armed Services Committee:

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[18] The House bill, H.R. 1530, 104th Congress, 1st Session (1995), contained a provision--§613--that would have extended the 37 U.S.C. §308f authority for two years, whereas the Senate bill, S. 1026, 104th Congress, 1st Session (1996), contained a provision--also §613--that would have extended the authority for only one year. A one-year extension was agreed to in conference. House Report No. 104-450 (Committee of Conference), pp. 805-806, accompanying S. 1124, 104th Congress, 2d Session (1996), and House Report No. 104-406 (Committee of Conference), pp. 815-816, accompanying H.R. 1530, 104th Congress, 1st Session (1996); cf. House Report No. 104-131 (Committee on National Security), p. 231, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and Senate Report No. 104-112 (Committee on Armed Services), pp. 254-255, accompanying S. 1026, 104th Congress, 1st Session (1995).

[19] Senate Report No. 103-282 (Committee on Armed Services), pp. 193-194, accompanying S. 2182, 103d Congress, 2d Session (1994); Cf. House Report No. 103-701 (Committee of Conference), p. 713, accompanying S. 2182, 103d Congress, 2d Session (1994).

> This section would consolidate existing enlistment bonus authorities and establish a maximum amount of $20,000 that may be paid to any enlistee.[20]

Thus the two enlistment bonus programs, whose coexistence had begun with the establishment of the three-year enlistment program by the Uniform Services Pay Act of 1981, were combined with a single bonus maximum of $20,000. The repeal of 37 U.S.C. §308a and §308f effectively replaced those sections' specific references to "a person who enlists in an armed force for a period of at least four years in a skill designated as critical" (§308a) and the specific educational requirements for two-year enlistees (§308f) with the more general description of potential recipients of the enlistment bonus in the new §309: "a person who enlists in an armed force for a period of at least 2 years."

The Air Force did not use the existing enlistment bonus authority before 1981 in its recruiting efforts, and the Navy temporarily suspended its use of the program in 1977 and 1978. The Army and the Marine Corps are the only services that have consistently used the program.

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To reiterate: notwithstanding statutory authority explicitly countenancing the use of enlistment bonuses for recruitment purposes, Section 514 of Title 10, United States Code, 10 U.S.C. §514, continues to prohibit the use of "bounties" for those purposes:

> (a) No bounty may be paid to induce any person to enlist in an armed force. A clothing allowance or enlistment bonus authorized by law is not a bounty for the purposes of this section.
>
> (b) No person liable for active duty in an armed force under this subtitle may furnish a substitute for that active duty. No person may be enlisted or appointed in an armed force as a substitute for another person.

As made clear by subsection (a) of Section 514, an "enlistment bonus authorized by law" is not one of the prohibited "bounties," even when transparently made to induce a person to enlist in an armed force. Arguably, any other form of payment--whether involving present or deferred compensation--made to induce a person to enlist in an

[20] House Report 106-616 (Committee on Armed Services), accompanying H.R. 4205, 106th Congress, 2d Session (2000).

armed force could be viewed as a prohibited "bounty," although any payment made pursuant to specific statutory authorization could always be argued to be an "enlistment bonus," even if not explicitly characterized as such. Clearly, however, any payment not authorized by law made to induce a person to enlist in an armed force runs the risk of being characterized as a "bounty"--and an unlawful "bounty" at that.

**Current rates of pay authorized**: The maximum critical skills enlistment bonus currently authorized under 37 U.S.C. §309 is $20,000. The enlistment bonus may be paid in a lump sum or in equal periodic installments.

**Cost**: For the cost of the enlistment bonus from 1972 to 2004, see Table II-31 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.E.2.c.**

## Selective Reenlistment Bonus (SRB)

**Legislative Authority:** 37 U.S.C. §308.[1]

**Purpose**: To provide a monetary incentive to encourage the reenlistment of sufficient numbers of qualified enlisted uniformed services personnel in critical skill specialties with high training costs or demonstrated retention shortfalls.

**Introduction**: Unlike the enlistment bonus, which until recently was used chiefly as a device for raising military forces during a war or other national emergency,[2] the primary purpose of the reenlistment bonus has been to maintain an adequate level of experienced and qualified enlisted personnel in the peacetime forces of the uniformed services. Legislative authority for a reenlistment bonus of one form or another has existed continuously since shortly after the Revolutionary War under a number of different names: "bounty for reenlistment" (until the word "bounty" grew to have unfavorable connotations[3]); honorable discharge gratuity; enlistment allowance; reenlistment allowance; reenlistment bonus; regular reenlistment bonus; variable reenlistment bonus; and selective reenlistment bonus. Even the longevity pay steps now included in basic pay rates were originally conceived as reenlistment incentives. Although the various reenlistment bonus programs have been drastically changed over time, one thread is common to all: in order to qualify for the bonus, a member must serve "continuously" or reenlist "immediately." This "now-or-never" arrangement, though integral to all the programs, has always been applied more flexibly than the ordinary meaning of the terms

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[1] The present chapter also deals with the incentive special pay program authorized at 37 U.S.C. §312a for nuclear-trained and qualified enlisted members. See footnotes 29 and 30 to this chapter together with accompanying text, below.

[2] The Act of September 28, 1971 (Military Selective Service Act Amendments of 1971), Public Law 92-129, §203(a), 85 Stat. 348, 358 (1971), which added Section 308a to Title 37, United States Code, was the first enlistment bonus authority that was targeted to filling vacancies in particular military skills as opposed to more wholesale and indiscriminate raising of troops. See text accompanying footnotes 1 through 6 of Chapter II.E.2.b., "Enlistment Bonus," above.

[3] See discussion of "bounties" generally in text accompanying footnotes 4 through 6 in Chapter II.E.2.b., "Enlistment Bonus," above.

"continuous" and "immediate" might suggest. Depending on the bonus involved, a non-disqualifying break in service of from 24 hours to three months has been allowed.

**Background**: The Act of March 3, 1795, ch. 44, §6, 1 Stat. 430 (1795), provided the first authority for the payment of a "bounty" or bonus to persons reenlisting in the armed forces of the United States.[4] It established a "bounty of sixteen dollars" to "be allowed and paid to each soldier now in the service of the United States, or discharged therefrom subsequent to the third day of March last [1794], who shall re-enlist" in the service of the United States. The Act of March 2, 1833, ch. 68, §3, 4 Stat. 647 (1833), replaced the fixed-sum reenlistment "bounty" with an award of two months' pay. Since that same Act also prescribed enlisted pay rates that ranged from $6 to $16 a month, the change was not particularly significant in terms of bonus dollars. The Act of July 5, 1838, ch. 162, §29, 5 Stat. 256, 260 (1838), increased the bonus to three months' pay accompanied by a warrant for 160 acres of public land after ten years of service. However, for reasons obscured by time, the land warrant was repealed just two days later. All these bonus provisions applied only to members of the Army.

The lump-sum reenlistment bonus was replaced in the Act of August 4, 1854, ch. 247, §2, 10 Stat. 575 (1854), by a system under which Army enlisted personnel received a $2 monthly addition to their regular pay during their first continuous reenlistment and a further addition of $1 per month during each succeeding reenlistment. Since the length of Army enlistments and reenlistments was then fixed at five years, these additions to pay, referred to as "bounties for reenlistment," were distinguishable from five-year longevity pay steps only by the fact that they were based on continuous cumulative service rather than total cumulative service. The Act of August 5, 1854, ch. 268, §1, 10 Stat. 583, 586 (1854), authorized the same additional pay for enlisted Marines. The Act of March 2,

[4] The first enlistment bonus, or "bounty," had been authorized by the Act of March 3, 1791, ch. 28, §4, 1 Stat. 222 (1791). See text accompanying footnote 2 to Chapter II.E.2.b., "Enlistment Bonus," above. Since the normal enlistment period at that time was three years, persons who had enlisted in response to the inducements offered by the Act of March 3, 1791, ch. 28, *id*., had begun to finish their terms of obligated service in March of 1794 and following, and it was determined that incentives should be offered to persuade them to reenlist.

1855, ch. 136, §2, 10 Stat. 627 (1855), established what was in effect a reenlistment bonus equal to three months' pay for Navy enlisted personnel who had been honorably discharged and who had reenlisted within three months of discharge. Referred to again as a "bounty for reenlistment," the "bounty" was in fact a lump-sum bonus that gave Navy enlisted personnel three months' additional pay for reenlisting no matter whether they reenlisted immediately after being honorably discharged or waited three months before reenlisting.[5]

Until 1908, the Navy remained the only service with lump-sum reenlistment bonus authority. The Act of March 3, 1899, ch. 413, §16, 30 Stat. 1004, 1008 (1899), however, modified the Navy's bonus provision by changing the length of reenlistment required for eligibility from three years to four years and by increasing the amount of the bonus from three months' to four months' pay. In addition, the Act of March 3, 1899, ch. 413, *id*., established a Navy "continuous-service pay" that, conceptually, was the same as the Army and Marine Corps "bounty for reenlistment." The Navy item provided a $1.36 monthly addition to regular pay for each continuous reenlistment.

The Act of May 11, 1908 (Army Appropriation Act of 1909), ch. 163 [Public Law 112, 60th Congress], 35 Stat. 106, 109-110 (1908), authorized a lump-sum bonus of three months' pay for Army privates, musicians, and trumpeters who entered a first reenlistment as well as a "continuous-service pay" increase. This authority was expanded by the Act of June 4, 1920 (National Defense Act Amendments of 1920), ch. 227 [Public Law 242, 66th Congress], §27, 41 Stat. 759, 775 (1920), which fixed the Army term of reenlistment at three years, removed the grade and first reenlistment restrictions applying to the bonus under the Act of May 11, 1908, ch. 163, *id*., and provided a lump-sum bonus of $90 for all reenlistments.[6] The National Defense Act Amendments of 1920, ch. 227, *id*., §4, 41 Stat. at 761, also repealed the "bounty for reenlistment" that had been in effect

[5]Although referred to as a "bounty for reenlistment," the payment could be analogized to a lump-sum leave payment—equal to three months' pay--that was payable only to honorably discharged Navy enlisted personnel who reenlisted within three months of being discharged.

[6] *cf*. Act of June 4, 1920 (National Defense Act Amendments of 1920), ch. 227 [Public Law 242, 66th Congress], §4, 41 Stat. 759, 761 (1920).

since 1854 and in its place established a "continuous-service pay" of 10 percent of enlisted base pay for each five years of consecutive service, up to a maximum of 40 percent. This Army provision also applied to Marine Corps enlisted personnel because of a statute that linked the pay of those two services.

A second Act of June 4, 1920 (Navy Appropriation Act of 1921), ch. 228 [Public Law 243, 66th Congress], §7, 41 Stat. 812, 836 (1920), fixed the term of reenlistment in the Navy and Marine Corps as two, three, or four years, and authorized a concomitant reenlistment bonus of two, three, or four months' pay, respectively. Because this law specifically covered the Marine Corps, the bonus provisions for that service were governed by it rather than by the general statute linking Army and Marine Corps pay.

In summary, as of 1920 Navy personnel were entitled to a reenlistment bonus of two, three, or four months' pay and to "continuous-service pay" of $1.36 per month for each consecutive reenlistment; Army personnel were entitled to a reenlistment bonus of $90 and to "continuous-service pay" of 10 percent of base pay for each five years of consecutive service; and Marine Corps personnel were entitled to the Navy reenlistment bonus but the Army "continuous-service pay."

The Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §9 (Army and Marine Corps) and §10 (Navy), 42 Stat. 625, 629-630 (1922), brought a degree of order, but not uniformity, to this chaotic situation. It established a service-wide form of reenlistment bonus called, arguably misleadingly, an "enlistment allowance." The "enlistment allowance," though payable only upon reenlistment, was computed by multiplying the number of years served in the term of enlistment from which last discharged by $50 for members of the first three grades,[7] and by $25 for members of other grades.[8] The Navy bonus could not exceed $200 for members of the first three grades, $100 for members of other grades, but no

[7] Present pay grades E-7, E-6, and E-5

[8] Present pay grades E-4, E-3, E-2, and E-1.

ceiling was placed on Army or Marine Corps bonuses. Additional pay for consecutive service was displaced by additional pay based on length of service, without regard to continuity. Terminologically, "continuous service pay" was replaced by "permanent addition[s] to pay." Here, too, the Navy provision was slightly different from the other services. Navy enlisted personnel were entitled to an additional 10 percent of base pay upon completion of four years of service and to a further five percent for each subsequent four years of service, not to exceed a total of 25 percent. Army and Marine Corps enlisted personnel were entitled to a straight 5 percent addition for each four years of service, not to exceed 25 percent. The evolution of this pay from a "bounty for reenlistment," to a "continuous-service pay," to a "permanent addition to pay" completed its transformation from a special pay specifically intended as a reenlistment inducement to a regular pay that recognized and rewarded the value of experience.

Payment of reenlistment bonuses was suspended during the depression years, from July 1, 1933, through June 30, 1939. The Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §10, 56 Stat. 359, 364 (1942), effectively re-adopted the reenlistment bonus provisions of the Joint Service Pay Readjustment Act of 1922, ch. 212, *id.*, as applied to members of the Army and Marine Corps. Under the Pay Readjustment Act of 1942, ch. 413, *id.*, §10, 56 Stat. at 364, enlisted personnel in the first three grades of all services who reenlisted were entitled to an "enlistment allowance" computed by multiplying $50 by the "number of years served in the enlistment period from which he has last been discharged," while enlisted personnel in other grades were entitled to an "enlistment allowance" computed by multiplying $25 by the "number of years served...." The Armed Forces Voluntary Recruitment Act of 1945, ch. 393 [Public Law 190, 79th Congress], §8, 59 Stat. 538, 541 (1945), provided that the bonus be computed for all grades by multiplying the number of years served in the term of enlistment from which last discharged by $50, instead of by $50 for the first three grades and $25 for the other four grades. There was, however, no fundamental change to the bonus system between 1922 and 1949.

The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §207, 63 Stat. 802, 811-812 (1949), restructured the reenlistment bonus so that it would

more effectively serve the purpose for which it was intended by (1) tying the amount of the bonus to the number of years to be served rather than to service already performed, (2) increasing the bonus in proportion to the length of the reenlistment period so as to encourage longer reenlistments, and (3) placing a career dollar and number limit on bonuses so that no bonus would be payable for the last few years of service. Specifically, the Career Compensation Act of 1949, ch. 681, *id*., §207(a), 63 Stat. at 811, authorized a bonus of $40, $90, $160, $250, or $360 for a reenlistment of two, three, four, five, or six years, respectively. The bonus could not be paid for obligated service in excess of 30 years and was limited to a cumulative career total of $1,440. No more than four bonuses could be paid to any one person.[9]

The reenlistment bonus provisions adopted in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §207, 63 Stat. 802, 811-812 (1949), derived from recommendations made to the secretary of defense by the Advisory Commission on Service Pay, the so-called Hook Commission, which undertook the first comprehensive study of military compensation since 1908. In making its recommendation on reenlistment bonuses to the secretary of defense, which were later adopted essentially without change by Congress, the Hook Commission stated:

> Today, and for some time, a special payment has been offered to encourage men in the enlisted grades to renew their terms of service regularly and so build a career of continuing duty. The Commission favors the continuance of such an inducement.
>
> The present system, giving a man a bonus of $50 per year for the number of years of the preceding enlistment, does not adequately serve the purpose for which it was intended. True, it is some incentive to reenlist, but it is essentially based on the service performed, rather than on the service promised. The latter principle is clearly the more logical and should be incorporated to render the bonus more effective.

[9] The reenlistment bonus provisions of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §207, 63 Stat. 802, 811-812 (1949), were initially classified to 37 U.S.C. §239. See 37 U.S.C. §239 (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the reenlistment bonus provisions deriving from the Career Compensation Act of 1949, as amended, were codified at 37 U.S.C. §308.

> To correct this situation, the Commission, concurring with the Services, suggests, first, that the bonus should be based on the number of years for which a man is reenlisting; second, it should be increased in proportion to the length of his reenlistment period; third, it should require a man's reenlistment within a reasonable time in order to insure continuous service; and fourth, the number of bonuses which a man may draw should be limited so that there will be no bonus for a reenlistment to complete the last few years of service.[10]

By 1954 Congress had, on the basis of experience with the reenlistment bonus program under the Career Compensation Act of 1949, ch. 681, *id.*, come to question the efficacy of the program for the purposes intended and concluded that the effectiveness of the program could be improved by directing more of the available bonus dollars into first-term reenlistments and progressively less into second and subsequent reenlistments. Accordingly, the Act of July 16, 1954, ch. 535 [Public Law 506, 83d Congress], §2, 68 Stat. 488, 488-489 (1954), modified the program and authorized a bonus of one month's basic pay for each year of a first reenlistment; two-thirds of one month's basic pay for each year of a second reenlistment; one-third of one month's basic pay for each year of a third reenlistment; and one-sixth of one month's basic pay for each year of a fourth or subsequent reenlistment. It also provided that the bonus could not be paid for obligated service in excess of 20 years, although it did raise the cumulative career ceiling on bonuses from $1,440 to $2,000. This "regular" reenlistment bonus remained in full operation until the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Public Law 93-277, §2(1), 88 Stat. 119, 119-120 (1974), provided for its gradual elimination starting June 1, 1974.[11] Members on active duty on June 1, 1974, who would have been eligible at the end of their current or subsequent enlistments for the bonus as it existed on May 31, 1974, continued to be eligible.

The history of the current "selective reenlistment bonus" program can be traced to 1965, when the military services began to experience increasing problems in first-term

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[10] "*Career Compensation for the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," pp. 30-31, December 1948.

[11] See, *e.g.*, Senate Report No. 93-659 (Committee on Armed Services), pp. 3, 11-12, accompanying S. 2771, 93d Congress, 1st Session (1973); House Report No. 93-857 (Committee on Armed Services), pp. 3-6, 12, accompanying S. 2771, 93d Congress, 2d Session (1974); and House Report No. 93-985 (Committee of Conference), pp. 3-4, accompanying S. 2771, 93d Congress, 2d Session (1974).

retention and career manning in a number of technical, high-training-cost skills. In addressing the problem, the Department of Defense recommended the creation of a flexible reenlistment bonus program that could be tailored to fit particular skill retention requirements and that could be changed as those requirements changed. Congress responded favorably to the recommendation and established the "variable reenlistment bonus" (VRB) program in the Act of August 21, 1965, Public Law 89-132, §3, 79 Stat. 545, 547 (1965). The regular reenlistment bonus authority was not disturbed; it continued side-by-side with the VRB program. The Act of August 21, 1965, Public Law 89-132, *id.*, permitted the payment of an additional sum of not more than four times the amount of the regular reenlistment bonus to a member who was designated as having a critical military skill and who was reenlisting for the first time. In practice, four VRB award levels were designated based mainly on first-term training costs and career manning shortages in critical military skills. A qualified member having a skill at the highest level of criticality was authorized a VRB payment equal to four times the amount of his regular reenlistment bonus, in addition to the regular bonus; one having a skill at the next highest level was authorized a VRB of three times the amount of his regular bonus, in addition to the regular bonus; and so forth. Because of the $2,000 ceiling on regular bonuses, the largest potential VRB award was $8,000. The VRB program was terminated by the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Public Law 93-277, 88 Stat. 119 (1974), covered more fully below. However, a member who had reenlisted under the program before June 1, 1974, retained eligibility for any unpaid VRB installments as they became due.

Over the years, various deficiencies were noted in both the regular reenlistment bonus and VRB programs. The regular bonus had to be paid to any enlisted member accepted for reenlistment regardless of the criticality of his skill. It was estimated that, as a result, over $43 million was spent unnecessarily in fiscal years 1972 and 1973 to make payments to reenlistees serving in skills where sufficient retention would have been

achieved without a monetary incentive to reenlist.[12] VRB, on the other hand, was paid only for first reenlistments and was thus not responsive to retention problems occurring in critical skills at the second and later reenlistment points. To correct these deficiencies, the Department of Defense proposed the elimination of the regular bonus for new entrants and the expansion of VRB into a bonus that could be paid at any problem decision point during a member's first ten years of service.

The essence of the Department of Defense proposal was adopted in the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Public Law 93-277, §2(1), 88 Stat. 119, 119-120 (1974), the source of present "selective reenlistment bonus" (SRB) authority. The Act provided that SRB could be paid in an amount not to exceed $15,000 to a member who had completed at least 21 months but not more than 10 years of active duty, who was designated as having a critical skill, and who reenlisted or extended his enlistment for at least three years. For computation purposes, the Act specified that obligated service in excess of 12 years could not be used in determining the amount of SRB payable for any enlistment that entailed obligated service extending beyond such period. SRB authority under the act was programmed to terminate June 30, 1977. This termination date was subsequently extended, first to September 30, 1978, by the Act of June 29, 1977, Public Law 95-57, §1(b), 91 Stat. 253 (1977), and then to September 30, 1980, by the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §802(b), 92 Stat. 1611, 1619 (1978). Retention and manning problems underlay both extensions.

In 1980, the SRB eligibility criteria were broadened by the Department of Defense Authorization Act, 1981, Public Law 96-342, §804, 94 Stat. 1077, 1092 (1980), to allow members with up to 14 years of active service to participate. At the same time, the 1981 authorization act provided that obligated service in excess of 16 years could not be used in computing SRB payments under 37 U.S.C. §308. Concomitantly, the

[12] Increased Bonus and Special Pay for Military Physicians and Expansion of Enlistment Bonus and Revision of Reenlistment Bonus Authorities: Hearings on S. 2770 and S. 2771 before the Senate Committee on Armed Services, pp. 13-14, 93d Congress, 1st Session (1973)

maximum bonus payable was increased from $15,000 to $20,000, although the House and Senate conferees directed that the $20,000 payment should be reserved for enlisted personnel in nuclear skills, whereas $16,000 was the maximum that should be available to other personnel.[13] Finally, the termination date for the SRB program was extended to September 30, 1982.

The Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §3(f), 94 Stat. 3359, 3364 (1980), further amended 37 U.S.C. §308 to provide that an enlisted member who extended his obligated service, whether by actual reenlistment or by an extension of an existing enlistment, in order to retain eligibility for continuous submarine duty incentive pay, as adopted under the act, would not lose, or have adversely affected, his eligibility for a reenlistment bonus. In essence, under this amendment, an affected enlisted member could reenlist before the expiration of an existing term of obligated service and receive credit for such unexpired portion of service in computing the amount of any SRB entitlement. As explained in the relevant Congressional report, the reason for this special consideration for enlisted submariners was the "large shortfall in senior [Naval petty] officers" and the "requirement for a significantly large percentage of the submarine enlisted crew to be in these senior grades."[14]

The Uniformed Services Pay Act of 1981, Public Law 97-60, §117(a), 95 Stat. 989, 996 (1981), further amended the SRB provisions to authorize any enlisted member to reenlist before the expiration of an extension of an existing enlistment and to use up to two years of the unexpired extension for which no bonus had been paid in determining his eligibility for, and the amount of, a reenlistment bonus under the SRB program.[15]

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[13] House Report No. 96-1222 (Committee of Conference), p. 96, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

[14] Senate Report No. 96-1051 (Committee on Armed Services), p.3, accompanying H.R. 7626, 96th Congress, 2d Session (1980). Also see *id*., p. 4.

[15] See House Report No. 97-109 (Committee on Armed Services), p. 12, accompanying H.R. 3380, and House Report No. 97-265 (Committee of Conference), pp. 23-24, accompanying S.1181, 97th Congress, 1st Session (1981).

The September 30, 1982, termination date for the SRB program has been extended a number of times: first, to December 17, 1982, by the Act of October 2, 1982, Public Law 97-276, §131, 96 Stat. 1186, 1197 (1982); second, to March 31, 1983, by the Act of December 21, 1982, Public Law 97-377, §798, 96 Stat. 1830, 1865 (1982); third, to September 30, 1984, by the Act of March 30, 1983, Public Law 98-14, §1, 97 Stat. 55 (1983); fourth, to September 30, 1987, by the Department of Defense Authorization Act, 1985, Public Law 98-525, §621(a), 98 Stat. 2492, 2540 (1984); fifth, to September 30, 1992, by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §626(a), 101 Stat. 1019, 1104 (1987); [16] sixth, to September 30, 1993, by the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §612(a), 106 Stat. 2315, 2421 (1992); seventh, to September 30, 1995, by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §613(b), 107 Stat. 1547, 1681 (1993); eighth, to September 30, 1996, by the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §613(b), 108 Stat. 2663, 2783 (1994); and to September 30, 1997, by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §613(b), 110 Stat. 186, 359 (1996). The annual authorization acts for fiscal years 1997 through 2004 made similar one-year extensions in the program. Concern over retention and manning problems underlay these extensions, although in explanation of several recent extensions the House and Senate Armed Services Committees have merely noted that they were "recommend[ing]" an extension.[17] As the

[16] The National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, 101 Stat. 1019 (1987), was enacted on December 4, 1987, something over two months after the selective reenlistment bonus authority of the unamended 37 U.S.C. §308 had expired--namely, on October 1, 1987. Section 626(c) of the 1988/1989 Authorization Act, Public Law 100-180, *id*., §626(c), 101 Stat. at 1104, provided special coverage for persons who might have taken advantage of the selective reenlistment bonus program during the period of lapsed authority but for the fact that the authority had in fact expired.

[17] With respect to the Department of Defense Authorization Act, 1985, Public Law 98-525, §621(a), 98 Stat. 2492, 2540 (1984), see House Report No. 98-691 (Committee on Armed Services), p. 257, accompanying H.R. 5167, 98th Congress, 2d Session (1984); Senate Report No. 98-500 (Committee on Armed Services), p. 208, accompanying S. 2723, 98th Congress, 2d Session (1984); and House Report No. 98-1080 (Committee of Conference), p. 297, accompanying H.R. 5167, 98th Congress, 2d Session (1984). With respect to the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §626(a), 101 Stat. 1019, 1104 (1987), see House Report No. 100-58 (Committee on Armed Services), p. 205, accompanying H.R. 1748, 100th Congress, 1st Session (1987); *cf*., House Report No. 100-446 (Committee of Conference), p. 644, accompanying H.R. 1748, 100th Congress, 1st Session (1987). With respect to the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §612(a), 106 Stat. 2315, 2421 (1992), see House Report No. 102-527 (Committee on Armed Services), p. 243,

House Armed Services Committee noted in connection with the program extension authority made by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, 101 Stat. 1019 (1987):

> The enlistment [also covered by the extension] and selective reenlistment bonus programs have proven invaluable in recruiting and retaining high quality individuals for all components of the Total Force. The committee believes that these programs have permitted the services to selectively target their resources to meet service-unique accession and retention needs in a judicious and cost effective manner.[18]

In addition to extending the termination date for the SRB program to September 30, 1987, as set out immediately above, the Department of Defense Authorization Act, 1985, Public Law 98-525, §621(b), 98 Stat. 2492, 2540 (1984), also increased the maximum bonus payable under the program from $20,000 to $30,000, although it provided that not more than ten percent of the bonuses payable in any fiscal year could

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accompanying H.R. 5006, and Senate Report No. 102-352 (Committee on Armed Services), p. 208, accompanying S. 3114, 102d Congress, 2d Session (1992); cf. House Report No. 102-966 (Committee of Conference), p. 713, accompanying H.R. 5006, 102d Congress, 2d Session (1992). With respect to the National Defense Authorization Act for Fiscal Year 1993, Public Law 103-160, §613(b), 107 Stat. 1547, 1681 (1993), see House Report No. 103-200 (Committee on Armed Services), p. 294, accompanying H.R. 2401, and Senate Report No. 103-112 (Committee on Armed Services), p. 152, accompanying S. 1298, 103d Congress, 1st Session (1993); cf. House Report No. 103-357 (Committee of Conference), p. 683, accompanying H.R. 2401, 103d Congress, 1st Session (1994). With respect to the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §613(b), 108 Stat. 2663, 2783 (1994), see Senate Report No. 103-282 (Committee on Armed Services), p. 193, accompanying S. 2182, 103d Congress, 2d Session (1994); cf. House Report No. 103-701 (Committee of Conference), p. 713, accompanying S. 2182, 103d Congress, 2d Session (1994). With respect to the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §613(b), 110 Stat. 186, 359 (1996), see Senate Report No. 104-112 (Committee on Armed Services), p. 254, accompanying S. 1026, 104th Congress, 1st Session (1995); *cf.* House report No. 104-131 (Committee on National Security), p. 231, accompanying H.R. 1530, 104th Congress, 1st Session (1995), House Report No. 104-406 (Committee of Conference), pp. 815-816, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), pp. 805-806, accompanying S. 1124, 104th Congress, 2d Session (1996).

[18] House Report No. 100-58 (Committee on Armed Services), p. 205, accompanying H.R. 1748, 100th Congress, 1st Session (1987). (With respect to the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §626(a), 101 Stat. 1019, 1104 (1987), the House Armed Services Committee recommended a five-year extension of selective reenlistment bonus authority, to September 30, 1992, House Report No. 100-446 (Committee of Conference), p. 644, accompanying H.R. 1748, 100th Congress, 1st Session (1987), and House Report No. 100-58 (Committee on Armed Services), p. 205, 100th Congress, 1st Session (1987), but the Senate Armed Services Committee recommended only a two-year extension, House Report No. 100-446 (Committee of Conference), p. 644, accompanying H.R. 1748, 100th Congress, 1st Session (1987). The five-year extension initially recommended by the House Armed Services Committee was agreed to in Conference. House Report No. 100-446 (Committee of Conference), p. 644, accompanying H.R. 1748, 100th Congress, 1st Session (1987).)

exceed $20,000. In explanation of the increase, the Committee of Conference[19] stated as follows:

> The Senate amendment also contained a provision (§1028) that would remove the present statutory ceiling of $20,000 on the selective reenlistment bonus. However, under the Senate provision, no more than 10 percent of the selective reenlistment bonuses paid during any fiscal year could exceed $25,000.
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> The House bill contained no similar provision.
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> The House recedes with an amendment increasing the current $20,000 ceiling for the selective reenlistment bonus to $30,000. However, no more than 10 percent of the selective reenlistment bonuses paid during any fiscal year could exceed $20,000.[20]

In adopting the increase in the maximum SRB authorized, Congress was implicitly acceding to a portion of the recommendations of the *Fifth Quadrennial Review of Military Compensation*.[21] In 1984, the *Fifth Quadrennial Review* recommended that the "dollar ceiling should be removed; ... eliminate bonus cap; ... lift pay cap."[22] Although Congress did not completely remove the "dollar ceiling," it did raise the "ceiling" by 50 percent.

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[19] Although both the House and Senate Armed Services Committees issued reports on the Department of Defense Authorization Act, 1985, Public Law 98-525, §621(b), 98 Stat. 2492, 2540 (1984), neither the House Report (No. 98-691 (Committee on Armed Services), accompanying H.R. 5167, 98th Congress, 2d Session (1984)) nor the Senate Report (No. 98-500 (Committee on Armed Services), accompanying S. 2723, 98th Congress, 2d Session (1984)) dealt with the increase in the maximum SRB payment authorized. (The provision effecting the increase came from a Senate floor amendment.)

[20] House Report No. 98-1080 (Committee of Conference), p. 297, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[21] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system. The Ninth Quadrennial Review of Military Compensation was convened in 1999, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in late 2001.

[22] Executive Summary, *Report of the Fifth Quadrennial Review of Military Compensation*, p. VI-11, January 1984. See also Special and Incentive Pays, *Report of the Fifth Quadrennial Review of Military Compensation*, Volume III, pp. 688 (Finding No. 2) and 689 (Recommendation No. B.2), November 1983.

In the Department of Defense Authorization Act, 1986, Public Law 99-145, §631, 99 Stat. 583, 643 (1985), Congress further amended the SRB program to require that at least 75 percent of the bonus payable for reenlistment be paid "in a lump sum at the beginning of the period for which the bonus is paid, with any remaining amount paid in equal annual installments."[23] In explanation of this requirement, the House Armed Services Committee noted:

> Currently, a service member eligible to receive a selective reenlistment bonus may receive a maximum of 50 percent of the selective reenlistment bonus upon reenlisting and the remaining 50 percent in installment payments during the reenlistment period. Although payment of the full bonus in a lump-sum is authorized, the Committee on Appropriations has limited the available funding to 50 percent. In order to provide a greater up-front incentive to reenlist, the committee recommends providing 75 percent of the bonus upon reenlistment and the remaining 25 percent in installment payments during the reenlistment period.
>
> Providing a larger up-front monetary incentive to reenlist makes sense from the member's, as well as from the government's, standpoint. From the member's point of view, a larger cash payment at the beginning of the reenlistment period would provide a more attractive reason to reenlist as well as the means to place a down payment on a home, to pay tuition bills, or to make necessary family purchases. From the government's point of view, the initiative would increase the service's ability to retain high-quality individuals to fill critical specialties at no additional (and perhaps less) cost.[24]

The Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., specified that the 75-percent-lump-sum requirement was to become effective October 1, 1986, the first day of fiscal year 1987.[25]

Notwithstanding the statutory requirement of 37 U.S.C. §308(b)(1) for 75 percent of a selective reenlistment bonus payment to be made in an up-front lump sum, the National Defense Authorization Act for 1987, Public Law 99-661, §663(a), 100 Stat.

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[23] The amendment made to the SRB program by the Department of Defense Authorization Act, 1986, Public Law 99-145, §631, 99 Stat. 583, 643 (1985), is codified at 37 U.S.C. §308(b)(1).

[24] House Report No. 99-81 (Committee on Armed Services), pp. 229-230, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

[25] Department of Defense Authorization Act, 1986, Public Law 99-145, §631(b), 99 Stat. 583, 643 (1985). See 37 U.S.C. §308 note. Also see House Report No. 99-235 (Committee of Conference), pp. 430-431, and Senate Report No. 99-118 (Committee of Conference), pp. 430-431, accompanying S. 1160, 99th Congress, 1st Session (1985).

3816, 3894 (1986), in a cost-reduction and -containment effort, limited the initial lump sum payment to 50 percent for fiscal year 1987. The National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §625(a), 101 Stat. 1019, 1104 (1987), amended the 75 percent up-front lump-sum requirement to provide that the initial installment could not be less than 50 percent. As explained by the House Armed Services Committee:

> The fiscal year 1986 Defense Authorization Act ... provided that not less than 75 percent of a selective reenlistment bonus would be paid to an individual at the beginning of the period covered by the bonus. (The payment of the full bonus in a lump-sum was already authorized, but the Committee on Appropriations had limited the available funding to 50 percent.) Although Congress authorized this change in order to provide a greater up-front incentive for service members to reenlist, fiscal restraints prevented the implementation of the 75 percent lump-sum reenlistment bonus provision.
>
> The committee continues to support the need for a greater up-front incentive to reenlist; however, current fiscal realities continue to make such bonus payments infeasible. Accordingly, the committee recommends prohibiting the payment of more than 50 percent up-front lump sum reenlistment bonus during fiscal years 1988 and 1989.[26]

As ultimately enacted, the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §625(a), 101 Stat. 1019, 1104 (1987), merely provided that the amount of an initial installment payment under the selective reenlistment bonus program could not be less than 50 percent of the amount of the total bonus--without any special additional restrictions for fiscal years 1988 and 1989.[27]

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[26] House Report No. 100-58 (Committee on Armed Services), pp. 206-207, accompanying H.R. 1748, 100th Congress, 1st Session (1987). See Senate Report No. 100-57 (Committee on Armed Services), p. 147, accompanying S. 1174, 100th Congress, 1st Session (1987). *cf.*, House Report No. 100-446 (Committee of Conference), p. 644, accompanying H.R. 1748, 100th Congress, 1st Session (1987).

[27] The 50 percent upper limit on initial installments of selective reenlistment bonus payments has been effectively continued under successive appropriations acts--for fiscal year 1988, by the Act of December 22, 1987 (Continuing Appropriations, 1988), Public Law 100-202, §8073, 101 Stat. 1329, 1329-74 (1987); for fiscal year 1989, by the Department of Defense Appropriations Act, 1989, Public Law 100-463, §8060, 102 Stat. 2270, 2270-27 (1988); for fiscal year 1990, by the Department of Defense Appropriations Act, 1990, Public Law 101-165, §9083, 103 Stat. 1121, 1147 (1989); for fiscal year 1991, by the Department of Defense Appropriations Act, 1991, Public Law 101-511, §8061, 104 Stat. 1856, 1888 (1990); for fiscal year 1992, by the Department of Defense Appropriations Act, 1992, Public Law 102-172, §8054, 105 Stat. 1150, 1184 (1991); for fiscal year 1993, by the Department of Defense Appropriations Act, 1993, Public Law 102-396, §9052, 106 Stat. 1876, 1914 (1992); for fiscal year 1994, by the Department of Defense Appropriations Act, 1994, Public Law 103-139, §8039, 107 Stat. 1418, 1449 (1993); for fiscal year 1995, by the Department of Defense Appropriations Act, 1995, Public Law 103-335, §8035, 108 Stat. 2599, 2626

The National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §611(a), 103 Stat. 1352, 1445 (1989), amended the preexisting selective reenlistment bonus program in two particulars. First, it increased the maximum selective reenlistment bonus payment from $30,000 to $45,000; second, it increased the multiplier used in determining the maximum amount of a bonus from six months of basic pay multiplied by the number of years of additional obligated service to ten months of basic pay multiplied by the number of years of additional obligated service. Under this amendment, the maximum amount of a selective reenlistment bonus payment was 10 months of basic pay multiplied by the number of years of additional obligated service or $45,000, whichever is less. As indicated in the relevant Congressional report, the increase in the ceiling on selective reenlistment bonus payments and the change in the method for determining the amount of a particular payment was made at the urging of the Department of Defense:

> The Department of Defense requested authority to increase the ceiling on selective reenlistment bonuses for enlisted personnel. The current ceiling, provided for in section 308(a) of title 37, United States Code, is six months of basic pay multiplied by the number of years of additional obligated service, not to exceed six years or $30,000, whichever is less. The Department of Defense requested that the six months in the formula be increased to 10 months and the limit be increased to $45,000, whichever is less.
>
> The committee recommends ... approval of the request. The committee expects this increased authority to be used only to improve the retention of enlisted nuclear personnel in the Navy.[28]

The National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §615(a), 104 Stat. 1485, 1578 (1990), gave the secretary of defense authority to terminate selective reenlistment bonus installment payments to members who, without fault on their part, failed to complete enlistments for which they were continuing to receive SRB installment payments.

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(1994); and for fiscal year 1996, by the Department of Defense Appropriations Act, 1996, Public Law 104-61, §8030, 109 Stat. 636, 658 (1996).

[28] Senate Report No. 100-81 (Committee on Armed Services), p. 179, accompanying S. 1352, 101st Congress, 1st Session (1989). The House, not having proposed any similar increase in the selective reenlistment bonus, acceded to the Senate recommendation in Conference. See, House Report No. 101-331 (Committee of Conference), p. 585, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

Preexisting law had effectively provided that members who voluntarily or because of misconduct did not complete enlistments for which they were receiving SRB payments or who were determined not to be technically qualified in the skill for which they were receiving SRB payments and who failed to complete enlistments for which they were receiving SRB payments were required to refund the percentage of the bonus that had, as of the date of their separation, been unearned. Members who were disqualified from the skill for which they were receiving or had received SRB payments because of injury, illness, or other impairment not the result of their own misconduct were exempted from the refund requirement. The National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, *id*., §615(a), 104 Stat. at 1578, thus gave the Department of Defense an option other than having to continue payments and require a refund: now, the Department of Defense may simply discontinue payments. The National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, 113 Stat. 652, raised the maximum payment from $45,000 to $60,000 and the multiplier used in determining the maximum bonus amount from ten months of basic pay to fifteen.

The special pay for nuclear-trained-and-qualified enlisted members, codified at 37 U.S.C. §312a, established by the Act of October 27, 1972, Public Law 92-581, §1(3), 86 Stat. 1277, 1277-1278 (1972), falls into the reenlistment bonus category. By analogy to what the Senate Committee on Armed Services characterized as the "very successful" special continuation pay program for nuclear-trained-and-qualified officers,[29] the Act of October 27, 1972, Public Law 92-581, *id*., authorized a payment of up to $15,000 to enlisted members "qualified for duty in connection with the supervision, operation, and

[29]As noted by the Senate Committee on Armed Services in explanation of its adoption of the special pay for nuclear-trained-and-qualified enlisted members:

The bill provides a special continuation pay for nuclear-qualified and experienced enlisted personnel who reenlist and continue to contribute their significant experience and technical expertise by serving on board the surface ships and submarines of the nuclear-powered fleet. It also would extend for 2 years the very successful officers continuation pay for officers serving in the nuclear submarine fleet and make that pay available to officers who are on active duty in connection with supervision, operation, and maintenance of naval nuclear power plants.

Senate Report No. 92-1307 (Committee on Armed Services), p. 2, accompanying H.R. 16925, 92d Congress, 2d Session (1972).

maintenance of naval nuclear propulsion plants" who reenlisted between their sixth and tenth year of active duty for at least two additional years. No payments were authorized under the program after June 30, 1975, 37 U.S.C. §312a(e) as added by the Act of October 27, 1972, Public Law 92-581, *id*., §1(3), although the statutory authority has never been repealed. Because the problem that led to the adoption of a special pay program for nuclear-trained-and-qualified enlisted personnel was so similar to the problems addressed by the selective reenlistment bonus program, discussed above, and because it was felt that the latter program could deal with the shortage of nuclear-trained-and-qualified enlisted personnel, the special pay program for such personnel has been effectively subsumed in the selective reenlistment bonus program.[30]

A number of regulations have been adopted over the years by the secretary of defense for implementing SRB payment authority. First, three SRB eligibility "zones" were established: Zone A originally was comprised of reenlistments falling between 21 months and six years of active duty, then the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65 reduced the minimum continuous service time to 17 months; Zone B, of reenlistments falling between six and ten years of active duty; and Zone C, of reenlistments falling between ten and 14 years of active duty.[31] Under these zones, a member completing between 17 months of continuous and six years of total active duty can qualify for a Zone A SRB; a member completing between six and ten years of continuous active duty can, whether or not he received a Zone A bonus, qualify for a Zone B SRB; and a member completing between ten and 14 years of continuous active duty can, whether or not he received a Zone A or B bonus, qualify for a Zone C

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[30] Presumably, the authority for special pay for nuclear-trained-and-qualified enlisted personnel was not extended past June 30, 1975, because of the intervening adoption of selective reenlistment bonus authority in the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Public Law 93-277, §2(1), 88 Stat. 119, 119-120 (1974), discussed above.

[31] Zone A - "at least 21 months of continuous active duty ... but not more than 6 years of active duty on the date of reenlistment or beginning of an extension of enlistment"; Zone B - "at least 6 but not more than 10 years of active duty on the date ..."; and Zone C - "at least 10 but not more than 14 years of active duty on the date...." *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶10911(b), (c), and (d), respectively.

SRB.[32] In order to qualify for an SRB payment for any zone, the member must possess a "critical" skill[33] and reenlist or extend an existing enlistment for at least three years. In addition, for a Zone A SRB the reenlistment or extension must, when combined with the member's existing active service time, add up to at least six years of service; for Zone B, to at least 10 years of service; and for Zone C, to at least 14 years of service.[34]

Second, to be eligible for either a Zone A, a Zone B, or a Zone C SRB payment, a member must be in pay grade E-3 or higher[35] and must reenlist (or extend an existing enlistment) within three months of discharge or release from active duty.[36] With respect to the actual computation of SRB payments, six levels of skill criticality have been authorized for the military services.[37] The bonus for any given member is computed by multiplying his designated skill criticality level, or "multiple," by his monthly basic pay, and multiplying that product by the number of his years, including fractional parts

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[32] No enlisted member of an armed force may receive more than one SRB payment for an enlistment within any one zone. *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶10911(b), (c), and (d). Also see *id*., at ¶10912(b)(4).

[33] That is, the member must be "qualified in a military specialty designated by the Secretary of the [member's] military department ... for award of the SRB." *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶10911(a)(1).

[34] *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶10911(b)(2) [Zone A]; (c)(2) [Zone B]; and (d)(2) [Zone C].

[35] *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶10911(a)(2).

[36] *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶10911(a)(3).

[37] *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶10912 and (b)(1).

thereof, of additional active obligated service.[38] Obligated service in excess of 16 years cannot be used in the computation.[39]

**Current rate of pay authorized**: The maximum selective reenlistment bonus that may currently be paid to qualifying enlisted members is $60,000. Subsection (b) of U.S. Code § 308 stipulates that the initial payment be not less than 50 percent of the total bonus amount, with the remainder to be paid in equal annual installments over the remainder of the reenlistment period.

**Cost**: For the cost of reenlistment bonuses from 1975 to 2004, see Tables II-32 of *Military Compensation Statistics Tables*, volume II of this edition.

[38] *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶10912(b)(1).

[39] That is, while the computation of the amount of an SRB payment is based, among other things, on the number of years involved in a reenlistment (or an extension of an existing enlistment), obligated service in excess of 16 years may not be taken into account in the computation. *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, 10912(b)(2).

**Chapter II.E.2.d.**

## Critical Skills Retention Bonus

**Legislative Authority:** 37 U.S.C. §323.

**Purpose:** To provide an incentive for qualified enlisted and officer personnel with skills designated as critical to remain on active duty, extending the availability of those skills for application in key positions.

**Background:** In order to better ensure an ongoing, adequate number of personnel having skills critical to Armed Forces operations, Congress established the critical skills retention bonus in the National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-157. The skills for which such a bonus is paid are designated as critical by the Secretary of Defense or, in the case of the Coast Guard when it is not acting as a service of the Navy, the Secretary of Transportation. The critical skills retention bonus (CSRB), which applies to both enlisted and officer personnel, is offered to members with designated skills who reenlist, voluntarily extend enlistment, or agree to remain on active duty for a period of at least one year. In the case of officers, such a commitment is in the form of a written agreement to remain on duty for at least one year. Enlisted members reenlist or volunteer to extend their current enlistment for at least one year. The bonus under this provision can be received more than once, but the maximum total amount of the bonuses is $200,000. Members who have completed 25 or more years of active duty, or who would complete that amount of active duty before the end of the bonus period, are not eligible. The bonus may be received in conjunction with another type of incentive bonus.

The CSRB has been applied differently by the services and by types of skill. The Navy has applied it only to surface warfare officers and submarine support officers. In 2002 and 2003, the Air Force offered CSRB contracts of one to four years to officers in a variety of positions. However, since 2003 the Air Force has not applied the CSRB at all. The Army has expanded the range of enlisted skills designated for CSRB. In fiscal year 2003, critical skills in the health professions were included temporarily in the CSRB

program. However, when specific health profession bonuses were raised in 2004, critical skills in the health professions no longer were included under the CSRB program. The bonus authority has been extended annually from its inception in 2001 through 2004.

**Chapter II.E.2.e.**

## MOS Conversion Bonus

**Legislative Authority:** 37 U.S.C. §326.

**Purpose:** To provide an incentive for the transition of enlisted members from well-supplied military occupational specialties into military occupational specialties experiencing a shortage of qualified personnel.

**Background:** In order to improve the supply of personnel in designated military occupational specialties where shortages have occurred, the National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, 117 Stat. 1506, established a new paragraph in 37 U.S.C. Chapter 5. This provision authorizes an incentive bonus for enlisted personnel who convert their military occupational specialties into one of the designated categories. Members sign an agreement committing them to serve for not less than three years in the new specialty. Eligible personnel are those in grade E-6 with fewer than 10 years of active service and those in grade E-5 and below, regardless of time in service. Military occupational specialties from which members may transfer are those considered to be over-manned (having an inventory-to-authorization ratio greater than 102 percent), and specialties are considered to have a shortage if that ratio is below 95 percent. The lump-sum bonus is a maximum of $4,000, which is received in addition to any other bonuses. The initial legislative authority for the bonus extends through the end of calendar year 2006.

**Current Bonus Rate Authorized:** A lump-sum payment not to exceed $4,000.

**Chapter II.E.2.f.**

## Reserve Affiliation, Enlistment and Reenlistment Bonuses, Special Unit Pay, and Educational Assistance

**Legal Authority**: 37 U.S.C. §§308b, 308c, 308d, 308e, 308g, 308h, and 308i and 10 U.S.C. §§16131-16137.

**Purpose**: To provide an incentive to induce persons not in the Armed Forces, or persons formerly in the Armed Forces, to join reserve components of the Armed Forces and to encourage persons already in reserve components to remain in such components.

**Background**: As indicated elsewhere, enlistment and reenlistment bonuses have long been authorized for members of the active duty branches of the Armed Forces, as have educational assistance benefits. See Chapters II.E.2.c., II.E.2.b., IV.B.2., and V.B.2., "Selective Reenlistment Bonus," "Enlistment Bonus," "Voluntary Education and Training," and "Veterans' Educational Assistance," respectively. In the mid- to late-1970s, manning and retention problems in the reserve components of the Armed Forces, and a felt need to maintain a pool of skilled, trained, and readily available personnel to augment active duty forces in times of national emergency, underlay a decision to extend similar bonus and educational assistance authority to the reserve components. Five of the more prominent provisions enacted in this connection are discussed below.

### Reenlistment Bonuses for Members of the Selected Reserve (37 U.S.C. §§308b and 308i)

The Department of Defense Appropriation Authorization Act, 1978, Public Law 95-79, §403(a)(1), 91 Stat. 323, 330-331 (1977), authorized, as a special pay, a reenlistment bonus for members of the Selected Reserve. As originally adopted, reenlistment bonuses were restricted to members of reserve components who had initially enlisted in such components,[1] had completed less than ten years of service as members of

[1] Members who had initially enlisted in a reserve component under the delayed enlistment program of the Armed Forces were specifically excluded from eligibility for the new bonuses.

such components, and had reenlisted or voluntarily extended enlistments for a period of three or six years in either a designated military skill specialty or a designated unit in the Selected Reserve of the Ready Reserve of an armed force. Personnel meeting these entitlement criteria were eligible for an immediate bonus of either $450 or $900--for three- and six-year agreements, respectively--and for further payments of $150 at the end of each year of reserve service completed under such agreements. The total amount payable was thus $900 for a three-year reenlistment or extension and $1,800 for a six-year agreement. The authority to pay such bonuses, adopted on July 30, 1977, and not programmed to become effective until October 1, 1977, was set to terminate on September 30, 1978.

As explained in the relevant Congressional report, the reenlistment bonus authority was adopted as a one-year experimental program to test the effectiveness of such bonuses in "retain[ing] enlisted members in designated priority units in the Selected Reserve."[2] In this connection, Congress was particularly moved by the need to bring some measure of stability and order to the existing reserve enlistment program, noting that "[a]t present, after the initial six-year period of enlistment, individuals can reenlist for periods as short as one year which imposes a discontinuity in the program."[3] In order to overcome this "discontinuity," the bonus was designed to be "available only for reenlistment periods of three ... or six years."[4] Half of the bonus was programmed to be paid "at the time of reenlistment or extension" in order to "increase its attractiveness,"

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[2] House Report No. 95-194 (Committee on Armed Services), p. 91, accompanying H.R. 5970, 95th Congress, 1st Session (1977). Also see House Report No. 95-446 (Committee of Conference), p. 51, and Senate Report No. 95-282 (Committee of Conference), p. 51, accompanying H.R. 5970, 95th Congress, 1st Session (1977).

[3] House Report No. 95-194 (Committee on Armed Services), p. 91, accompanying H.R. 5970, 95th Congress, 1st Session (1977).

[4] House Report No. 95-194 (Committee on Armed Services), p. 91, accompanying H.R. 5970, 95th Congress, 1st Session (1977).

and hence its potential impact.[5] Congress specifically noted that the authority was restricted to personnel having completed less than ten years of service as members of reserve components because "retention has not been a major problem after the ninth or tenth year of service"[6]--presumably because personnel completing that much service are motivated to continue in the reserve program in order to ultimately become eligible for retired pay for non-Regular service (see Chapter III.B.2., "Retired Pay for Non-Regular Service").

The Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §403, 92 Stat. 1611, 1614 (1978), amended the eligibility criteria for receipt of the reenlistment bonus, extended the authority for such payments through September 30, 1980, and, in essence, provided a mechanism for potentially reducing the amount of the bonus to be paid to affected members. Under the amended reenlistment bonus authority, the bonus could be paid to enlisted members of reserve components who had completed less than ten years of total military service and who reenlisted or extended an existing enlistment for either three or six years, thus eliminating the restriction that eligible members must initially have enlisted in a reserve component.[7] On the other hand, to be eligible for the bonus a member was then required to have less than ten years of total military service, not just less than ten years of reserve service. The potential for payment of a lower reenlistment bonus derived from the provision that the amounts payable may "not ... exceed" the previously set amounts--*i.e.*, $450 for a three-year agreement, $900 for a six-year agreement, and $150 at the end of each year of completed service.

As reflected in the House report dealing with the Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, 92 Stat. 1611 (1978), the

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[5] House Report No. 95-194 (Committee on Armed Services), p. 91, accompanying H.R. 5970, 95th Congress, 1st Session (1977).

[6] House Report No. 95-194 (Committee on Armed Services), p. 91, accompanying H.R. 5970, 95th Congress, 1st Session (1977).

[7] Also eliminated was the restriction that eligible members could not have initially enlisted in a reserve component under the delayed enlistment program.

category of personnel eligible for the reenlistment bonus was expanded to include individuals who joined the reserves following service in the active forces in response to certain "dissatisfaction [that had] resulted from eligibility for this bonus being limited to personnel who enlisted initially in the reserve components" and "to permit the resources available to be used in the most effective manner."[8] The authority to pay the bonus, on the other hand, was extended for two additional years in order to allow the test program to be completed and the results evaluated, although Congress did note that "preliminary indications are that the bonus will improve retention."[9] The Department of Defense was given authority to vary the amount of the bonus up to the limits previously authorized to provide "increased flexibility" in administering the program.[10]

The Department of Defense Authorization Act, 1981, Public Law 96-342, §805(b), 94 Stat. 1077, 1095 (1980), further extended the termination date for the reserve reenlistment bonus program--this time for five additional years, to September 30, 1985. The reason for the extension was continuing reserve manning shortfalls.[11]

The Department of Defense Authorization Act, 1986, Public Law 99-145, §643(a), 99 Stat. 583, 652 (1985), again extended the Section 308b reenlistment bonus authority, this time to September 30, 1987. At the same time, the 1986 Authorization Act increased the maximum bonuses payable for reenlistment--from $450 to $1,250 for a three-year agreement and from $900 to $2,500 for a six-year agreement. The 1986 Authorization Act also increased the year-end payment from $150 to a maximum of $416.66 for completion of each year of the period of reenlistment or extension. Here

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[8] House Report No. 95-1118 (Committee on Armed Services), p. 103, accompanying H.R. 10929, 95th Congress, 2d Session (1978). See House Report 95-1402 (Committee of Conference), p. 50, accompanying H.R. 10929, 95th Congress, 2d Session (1978).

[9] House Report No. 95-1118 (Committee on Armed Services), p. 102, accompanying H.R. 10929, 95th Congress, 2d Session (1978).

[10] House Report No. 95-1118 (Committee on Armed Services), p. 103, accompanying H.R. 10929, 95th Congress, 2d Session (1978).

[11] See, *e.g.*, Senate Report No. 96-826 (Committee on Armed Services), pp. 140, 143, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

again, the reason underlying the enhancement of the reserve reenlistment bonus program was a desire to improve upon what was characterized as a "[l]imited incentive ... to join the selected reserve."[12]

The Section 308b reserve reenlistment bonus authority has subsequently been extended in defense authorization acts covering all of the years between 1987 and 2004.[13] The most recent extensions were mandated by the National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201; the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85; the National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261; the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65; the National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398; the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, the National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, and the National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136.

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[12] House Report No. 99-81 (Committee on Armed Services), p. 234, accompanying H.R. 1872, 99th Congress, 1st Session (1985). Also see *id*., pp. 233-234, generally; Senate Report No. 99-41 (Committee on Armed Services), pp. 194-195, accompanying S. 1029, 99th Congress, 1st Session (1985); Senate Report No. 99-118 (Committee of Conference), pp. 432-433, accompanying S. 1160, 99th Congress, 1st Session (1985); and House Report No. 99-235 (Committee of Conference), pp. 432-433, accompanying S. 1160, 99th Congress, 1st Session (1985).

[13] Earlier extensions were as follows: from September 30, 1987 to September 30, 1990 (the only three-year extension in the history of the bonus authority), in the National Defense Authorization Act for Fiscal Years 1988 and 1989, P.L. 100-180. 101 Stat. 1019, 1104; from September 30, 1990 to September 30, 1992 (the first of two two-year extensions in the history of the bonus authority), in the National Defense Authorization Act for Fiscal Years 1990 and 1991, P.L. 101-189, 103 Stat. 1352, 1446; from September 30, 1992 to September 30, 1993, in the National Defense Authorization Act for Fiscal Year 1993, P.L. 102-484, 106 Stat. 2315, 2421; from September 30, 1993 to September 30, 1994, in the National Defense Authorization Act for Fiscal Year 1995 (the second of two two-year extensions), P.L. 103-160, 107 Stat. 1547, 1680; from September 30, 1995 to September 30, 1996, in the National Defense Authorization Act for Fiscal Year 1995, P.L. 103-337, 108 Stat. 22663, 2782; and from September 30, 1996 to September 30, 1997, in the National Defense Authorization Act for Fiscal Year 1996, P.L. 104-106, 110 Stat. 186, 359. With respect to the unusual three-year extension for 1987-90, the House Armed Services Committee noted:

> Section 623 [of H.R. 1748, the House-sponsored Authorization Bill, and the predecessor of Section 626(b) of the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180] would extend the authority to pay enlistment and reenlistment bonuses….to reserve component members until September 30, 1990. The Administration requested….a three-year extension for reserve programs. The committee believes that extensions of….three years offer a reasonable balance between program continuity and congressional oversight.

The extension provided by the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, *id*., was adopted with even less discussion,[14] and there has been similarly little discussion of the reasons underlying the extensions made by the authorization acts for subsequent years.

A like program was established by the Department of Defense Authorization Act, 1986, Public Law 99-145, §644(a)(1), 99 Stat. 583, 652-653 (1985), for former enlisted members of an armed force who enlisted in the Selected Reserve of the Ready Reserve for a period of three or six years in a critical military skill specially designated by the Secretaries of the various military departments concerned. The program, codified at 37 U.S.C. §308i, originally was available to persons who had completed their military service obligations but had less than four years of total military service, who had received an honorable discharge, who were not being released from active service for the purpose of enlisting in a reserve component, and who had not previously been paid a bonus for enlisting, reenlisting, or extending an enlistment in a reserve component. The National Defense Authorization Act for Fiscal Year 1998 extended eligibility for the bonus to members with less than 14 years of total military service. The bonuses payable to individuals with such qualifying prior service are exactly the same as those payable under 37 U.S.C. §308b to members of a reserve component who reenlist or voluntarily extend an enlistment in such a component. Here also, the reason underlying the establishment of the new "prior service enlistment bonus" for former members of an armed force was a desire to improve upon what Congress characterized as a "[l]imited incentive ... to join the selected reserve."[15]

The original termination date for the Section 308i enlistment bonus authority was September 30, 1987, but that authority has since been extended by the same sections of the national defense authorization acts, covering all the years between 1987 and 2004, as those that extended the standard selected reserve reenlistment bonus. As was the case

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[14] House Report No. 101-331 (Committee of Conference), p. 586, and House Report No. 101-121 (Committee on Armed Services), p. 275, both accompanying H.R. 2461, 101st Congress, 1st Session (1989). Senate Report No. 101-81 (Committee on Armed Services), accompanying S. 1352, 101st Congress, 1st Session (1989), did not even mention the two-year extension proposed in Section 630 of the Senate bill.

[15] House Report No. 101-331 (Committee of Conference), p. 586, and House Report No. 101-121 (Committee on Armed Services), p. 275, both accompanying H.R. 2461, 101st Congress, 1st Session (1989).

with the standard selected reserve reenlistment bonus, the authorization act for 1988 and 1989 provided a three-year extension for the prior service bonus through September 30, 1990.

### Enlistment Bonus for Members of the Selected Reserve (37 U.S.C. §308c)

The Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §404(a), 92 Stat. 1611, 1614-1614 (1978), authorized, as a special pay, an enlistment bonus for individuals who enlist in the Selected Reserve of the Ready Reserve. Under this authority, any person who was a graduate of a secondary school, who had never previously served in an armed force, and who enlisted for not less than six years in the Selected Reserve of the Ready Reserve became eligible for an enlistment bonus not to exceed $2,000. Half of the bonus--*i.e.*, up to $1,000--was to be payable upon an individual's completion of initial active duty for training, with the remainder to be paid either in periodic installments or in a lump sum, as determined by the Secretaries of the military departments concerned. The new enlistment bonus authority was adopted out of concern with continuing manning deficiencies in the reserve components of the Armed Forces.[16] It was adopted as an experimental program to test how effective such bonuses might be in increasing enlistments and meeting recruiting goals.

As initially adopted, authority for the enlistment bonus program was to terminate on September 30, 1980. Between the Department of Defense Authorization Act for 1981 and the National Defense Authorization Act for Fiscal Year 2004, the program has been extended continuously by legislation through the years that followed. The earlier extensions--those made through the 1989 legislative session--were all made explicitly because of concern over continuing manning shortfalls.[17] [18] [19]

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[16] See, *e.g.*, House Report No. 95-1118 (Committee on Armed Services), pp. 100-103, and House Report No. 95-1402 (Committee of Conference), p. 50, accompanying H.R. 10929, 95th Congress, 2d Session (1978).

[17] See, *e.g.*, Senate Report No. 96-826 (Committee on Armed Services), pp. 140, 143, accompanying H.R. 6974, 96th Congress, 2d Session (1980), concerning the first extension to September 30, 1995.

In addition to extending the program termination date, the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §612(b)(1), 107 Stat. 1547, 1680 (1993), increased the maximum amount of the enlistment bonus authorized from $2,000 to $5,000 and provided that not more than half the bonus could be paid upon completion of a person's initial active duty for training.[20] The remainder of the bonus may be paid in periodic installments or in a lump sum as determined by the Secretaries of the different services. The National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, 113 Stat. 653, further increased the maximum amount of the bonus, from $5,000 to $8,000 and eliminated the requirement that an individual enlist for at least six years.

**Bonus for Selected Reserve Affiliation Agreement (37 U.S.C. §308e)**

The Department of Defense Authorization Act of 1981, Public Law 96-342, §805(a)(1), 94 Stat. 1077, 1093-1094 (1980), authorized, effective October 1, 1980, a bonus for Selected Reserve affiliation to persons who had served or were serving on active duty and who, upon release therefrom, had or would have a reserve service obligation under 10 U.S.C. §651 or 50 U.S.C. App. §456(d)(1). To be eligible for the bonus, a person must (i) be eligible for reenlistment or for an extension of active duty, (ii) have satisfactorily completed whatever prior enlistment or obligated active duty service he had to perform, (iii) be qualified in a military skill specialty specially designated by the Secretary of Defense for the purposes of the bonus provision, (iv) have a grade for which there is a vacancy in the reserve component of which the individual is to become a

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[18] *e.g.*, House Report No. 99-81 (Committee on Armed Services), pp. 233-234, accompanying H.R. 1872, and Senate Report No. 99-41 (Committee on Armed Services), pp. 194-195, accompanying S. 1029, 99th Congress, 1st Session (1985), concerning the extension to 1987. Also see Senate Report No. 99-118 (Committee of Conference), pp. 432-433, and House Report No. 99-235 (Committee of Conference), pp. 432-433, accompanying S. 1160, 99th Congress, 1st Session (1985).

[19] For the reasons underlying the six most recent extensions--to September 30, 1990, to September 30, 1992, to September 30, 1993, to September 30, 1995, to September 30, 1996, and to September 30, 1997--see footnotes 13, 14, and 15 and accompanying text, above.

[20] See House Report No. 103-200 (Committee on Armed Services), p. 294, and House Report No. 103-357 (Committee of Conference), p. 683, accompanying H.R. 2401, 103d Congress, 1st Session (1993). Cf. Senate Report No. 103-112 (Committee on Armed Services), p. 152, accompanying S. 1298, 103d Congress, 1st Session (1993).

member, (v) not be affiliating in a reserve component to become a reserve, an Army National Guard, or an Air National Guard technician, (vi) enter a written agreement to serve as a member of the Selected Reserve of the Ready Reserve of an armed force for the period of obligated reserve service such person has remaining or will have remaining at the time of his discharge or release from active duty, and (vii) meet all other requirements for becoming a member of the Selected Reserve of the Ready Reserve of the armed force with which the individual is affiliating. The amount of the bonus payable under the program was determined by multiplying $25 by the number of months of reserve obligation the member has remaining at the time he enters the agreement or which he will have remaining upon his release from active duty. The Selected Reserve affiliation bonus authority adopted in the Department of Defense Authorization Act of 1981, Public Law 96-342, *id*., was set to terminate September 30, 1981. The program was adopted on a one-year experimental test basis "to encourage skilled prior active duty service personnel to affiliate early with Selected Reserve units"[21] and thereby to improve the manning posture of the Selected Reserve.[22] The termination date for the Selected Reserve affiliation bonus program was extended to September 30, 1985, by the Department of Defense Authorization Act, 1982, Public Law 97-86, §505, 95 Stat. 1099, 1109 (1981).[23] The termination date was again extended, this time to September 30, 1987, by the Department of Defense Authorization Act, 1986, Public Law 99-145, §645(a)(2), 99 Stat. 583, 654 (1985). The 1986 Authorization Act, Public Law 99-145, id., §645(a)(1), 99 Stat. at 654, also increased the bonus payable under the program by providing that the maximum amount of the bonus was to be determined by multiplying

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[21] Senate Report No. 96-826 (Committee on Armed Services), p. 142, accompanying H.R. 6974, 96th Congress, 2d Session (1980). See House Report No. 96-1222 (Committee of Conference), p. 92, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

[22] For a discussion of the manning problems confronting the Selected Reserve, see House Report No. 96-916 (Committee on Armed Services), pp. 130-132, and Senate Report No. 96-826 (Committee on Armed Services), pp. 139-142, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

[23] See House Report No. 97-311 (Committee of Conference), pp. 113-114, accompanying S. 815, 97th Congress, 1st Session (1981).

$50 times the number of months of reserve obligation the member had remaining, or will have remaining when he is released from active duty.[24]

The termination date for the Section 308e Selected Reserve affiliation bonus authority has since been extended a number of times between the initial extension mandated by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §626(b), 101 Stat. 1019, 1104 (1987) and the extension prescribed by the National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136.

### Enlistment, Reenlistment, and Enlistment Extension Bonuses for Members of the Ready Reserve (37 U.S.C. §§308g and 308h)

The Department of Defense Authorization Act, 1981, Public Law 96-342, §805(a)(1), 94 Stat. 1077, 1092-1093 (1980), authorized the payment of a special bonus to any person who enlisted, reenlisted, or voluntarily extended an enlistment for a period of at least three years in any element of the Ready Reserve other than the Selected Reserve--in short, for enlistment, reenlistment, or extension in the Individual Ready Reserve. This provision was initially codified at 37 U.S.C. §308d. To be eligible for the reenlistment or extension portion of the bonus authorized, a person must have satisfactorily completed his original term of enlistment in the Armed Forces. The Secretary of Defense was expressly authorized to prescribe additional eligibility criteria under the provisions of former 37 U.S.C. §308d(c). The maximum amount of the bonus payable was set at $600, and the authority was programmed to terminate September 30, 1981. The new authority was granted because the Individual Ready Reserve, "the primary source of trained individuals for replacement and augmentation in emergencies," was "up to 500,000 below mobilization requirements for the Army alone," and it was felt a special incentive would be helpful in reducing the noted shortages.[25] To meet the most

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[24] See House Report No. 99-81 (Committee on Armed Services), pp. 234-235, accompanying H.R. 1872, 99th Congress, 1st Session (1985). Also see Senate Report No. 99-41 (Committee on Armed Services), pp. 194-195, accompanying S. 1029, Senate Report No. 99-118 (Committee of Conference), p. 433, accompanying S. 1160, and House Report No. 99-235 (Committee of Conference), p. 433, accompanying S. 1160, 99th Congress, 1st Session (1985).

[25] Senate Report No. 96-826 (Committee on Armed Services), pp. 140-141, accompanying H.R. 6974, 96th Congress, 2d Session (1980). Also see House Report No. 96-916 (Committee on Armed Services), pp. 132-

significant shortage, Congress noted that the new authority, which was adopted on a one-year experimental basis, should be used only for "individuals who have or will be trained in combat skills."[26] The bonus authority of former 37 U.S.C. §308d for enlistments, reenlistments, and extensions in the Individual Ready Reserve was not extended and accordingly terminated on September 30, 1981.[27]

The enlistment and reenlistment bonus program for members of the Individual Ready Reserve as initially codified at 37 U.S.C. §308d was effectively revived by the Department of Defense Authorization Act, 1984, Public Law 98-94, 97 Stat. 614 (1983). In place of former 37 U.S.C. §308d,[28] Congress, in the 1984 Authorization Act, established two different bonus programs. Under the first, codified at 37 U.S.C. §308g, Congress provided for bonuses in the maximum amount of $1,000 to be paid to an "eligible person" who "enlists in a combat or combat support skill" of an element of the Ready Reserve (other than the Selected Reserve) for a period of at least six years. Eligibility for participation in this program was limited to persons who have not previously served in an armed force. Department of Defense Authorization Act, 1984, Public Law 98-94, §1011(a), 97 Stat. at 663. Under the second of the programs, codified at 37 U.S.C. §308h, Congress provided for bonuses in the maximum amount of $900 to be paid to a person who is or has been a member of an armed force and who enlists,

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133, and Senate Report No. 96-826 (Committee on Armed Services), pp. 140-142, accompanying H.R. 6974, 96th Congress, 2d Session (1980), on the manning shortage in the Individual Ready Reserve.

[26] House Report No. 96-1222 (Committee of Conference), p. 92, accompanying H.R. 6974, 96th Congress, 2d Session (1980); see also Senate Report No. 96-826 (Committee on Armed Services), p. 141, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

[27] A new Section 308d of Title 37, United States Code, providing $10 special pay for attendance at inactive-duty training sessions to enlisted members of the Selected Reserve assigned to high priority units that have experienced or may reasonably be expected to experience critical personnel shortages, was added by the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §505(a)(1), 103 Stat. 1352, 1437-1438 (1989), but this provision was in no sense a follow-on to or derivative from former Section 308d. For a discussion of this 37 U.S.C. §308d special unit assignment pay program, see the heading "Special Assignment Pay for Enlisted Members of the Selected Reserve" in this chapter, below.

[28] In reviving enlistment and reenlistment bonuses for members of the Individual Ready Reserve, Congress in fact repealed former 37 U.S.C. §308d in the Department of Defense Authorization Act, 1984, Public Law 98-94, §1011(b)(1), 97 Stat. 614, 664 (1983). See footnote 30 to this chapter, above.

reenlists, or extends an existing enlistment in a combat or combat support skill of an element of the Ready Reserve (other than the Selected Reserve) for a period of at least three years in addition to any other period the person was otherwise obligated to serve. Department of Defense Authorization Act, 1984, Public Law 98-94, §1011(a), 97 Stat. at 663-664. Both programs were to be administered pursuant to regulations prescribed by the Secretary of Defense, and both programs had a termination authorization date of September 30, 1985. As explained by Congress, the purpose underlying adoption of the two programs was to "continue building the size of the pretrained manpower pool" available in periods of national emergency.[29] In authorizing the bonuses in question, Congress underlined its intention that the bonuses be paid only to individuals enlisting in combat or combat support skills "where critical shortages exist."[30]

The Department of Defense Authorization Act, 1986, Public Law 99-145, §646(a), 99 Stat. 583, 654 (1985), extended the program authorization date for both bonuses from September 30, 1985, to September 30, 1987. In addition, the 1986 Authorization Act amended the Section 308h bonus authority by providing that a bonus of not more than $1,500 could be paid to a person qualified for the Section 308h program and who enlists, reenlists, or extends an existing enlistment for a period of six years and a bonus of not more than $750 could be paid to a person who enlists, reenlists, or extends for a period of three years. Congress also authorized the Secretaries of the various military departments to impose, as a condition of receipt of Section 308h bonuses, an agreement of an affected individual to participate in an "annual muster of the reserves, or inactive duty for training." The reason underlying these actions was, generally speaking, a concern with the effectiveness of these and other incentives in motivating individuals to perform reserve service.[31]

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[29] Senate Report No. 98-174 (Committee on Armed Services), p. 196, accompanying S. 675, 98th Congress, 1st Session (1983).

[30] Senate Report No. 98-174 (Committee on Armed Services), p. 197, accompanying S. 675, 98th Congress, 1st Session (1983).

[31] *e.g.*, Senate Report No. 99-41 (Committee on Armed Services), pp. 194-195, accompanying S. 1029, and House Report No. 99-81 (Committee on Armed Services), p. 236, accompanying H.R. 1872, 99th Congress, 1st Session (1985). See House Report No. 99-235 (Committee of Conference), pp. 433-434, and Senate

The termination date for the Section 308g enlistment bonus program for members of the Ready Reserve was extended twice more--first, from September 30, 1987, to September 30, 1990, by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §626(b), 101 Stat. 1019, 1104 (1987), and second, and most recently, from September 30, 1990, to September 30, 1992, by the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §613, 103 Stat. 1352, 1446 (1989).[32] While the termination dates for other reserve bonus programs have since been extended, that for the Section 308g enlistment bonus program has not, with the result that this program has effectively been discontinued.

The termination date for the Section 308h enlistment, reenlistment, and enlistment extension bonus programs for members of the Ready Reserve has since been extended by national defense authorization acts beginning in 1987 and continuing through 2004. The National Defense Authorization Act for 2002, Public Law 107-107, 115 Stat. 1137, changed the description of eligibility requirements for the bonus in 37 U.S.C. §308h. Prior to that legislation, the law had limited eligibility to individuals enlisting, reenlisting, or extending enlistment in a combat or combat support skill. The new legislation stipulated that such an individual must possess a skill or specialty "designated by the Secretary concerned as a critically short wartime skill or critically short wartime specialty." The report of the Senate Armed Services Committee explained that this change expanded bonus eligibility to a new category of personnel:

> This [amendment] would authorize payment to service members serving in combat service support skills as well as combat and combat support skills.[33]

The 2002 legislation changed neither the amounts of the bonus nor the other terms of eligibility prescribed in 37 U.S.C. §308h.

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Report No. 99-118 (Committee of Conference), pp. 433-434, accompanying S. 1160, 99th Congress, 1st Session (1985).

[32] For the reasons underlying these extensions, see footnotes 13, 14, and 15 and associated text, above.

[33] Senate Report 107-062 (Armed Services Committee), accompanying S. 1416, 107th Congress, 1st Session (2001).

### Special Assignment Pay for Enlisted Members of the Selected Reserve (37 U.S.C. §308d)

The National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §505, 103 Stat. 1352, 1437-1438 (1989), added a new special pay program, codified at 37 U.S.C. §308d,[34] for certain enlisted members of the Selected Reserve of the Ready Reserve assigned to certain high priority units. Under this new provision, an enlisted member who performs inactive-duty training for which he receives compensation under 37 U.S.C. §206 and who is assigned to a high priority unit, of the Selected Reserve, that has experienced or may reasonably be expected to experience a critical personnel shortage may be paid an additional amount, not to exceed $10, for each training period. As explained by the Senate Armed Services Committee:

> The Department of Defense requested authority for a two-year test program to pay a special unit assignment pay to enlisted members who are assigned to high priority units when they perform inactive duty for training. The pay may not exceed $10.00 for each period of training. This pay would be in addition to other pay or allowances to which a member would be entitled and is proposed as a test to determine if such payment would encourage higher participation of reservists in high priority units. The committee recommends ... approval of the request.[35]

The paragraph caption used as an introduction to the Senate proposal was "Naval Reserve Fleet Duty Incentive Pay Test."[36] As administered, the Secretary of each military department designates units whose members will receive this special pay.[37]

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[34] As previously indicated, former 37 U.S.C. §308d was repealed by the Department of Defense Authorization Act, 1984, Public Law 98-94, §1011(b)(1), 97 Stat. 614, 664 (1983). See footnotes 30 and 31 and accompanying text to this chapter, above.

[35] Senate Report No. 101-81 (Committee on Armed Services), p. 164, accompanying S. 1352, 101st Congress, 1st Session (1989). Cf., House Report No. 101-331 (Committee of Conference), p. 580, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[36] Senate Report No. 101-81 (Committee on Armed Services), p. 164, accompanying S. 1352, 101st Congress, 1st Session (1989). Cf., House Report No. 101-331 (Committee of Conference), p. 580, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[37] 37 U.S.C. §308d(b).

The original termination date for authority for the test program was September 30, 1991, but the termination date for the program has been extended annually from 1992 through 2004 by subsequent national defense authorization acts, the most recent of which was the National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136.

**Educational Assistance for Members of the Selected Reserve (10 U.S.C. §§16131-16137)**

The Department of Defense Appropriation Authorization Act, 1978, Public Law 95-79, §402, 91 Stat. 323, 328-330 (1977), established what was in essence a targeted educational assistance program for enlisted members of the Selected Reserve. To be eligible for educational assistance under this program, an individual must have graduated from a secondary school, have enlisted for six years in the Selected Reserve of the Ready Reserve of an armed force, and have never served in an armed force before such enlistment. Educational assistance could be provided under this program to a member until the member completed a course of instruction required for the award of a baccalaureate degree, or the equivalent evidence of completion of study, by an accredited institution. As initially authorized, educational assistance could cover 50 percent of educational expenses (tuition, fees, books, laboratory and shop fees) not to exceed $500 in any twelve-month period, or $2,000 in total. The 50 percent limitation on coverage of educational expenses was removed to allow 100 percent coverage by the Department of Defense Authorization Act, 1980, Public Law 96-107, §402, 93 Stat. 803, 808 (1979). The maximum amount of assistance for any twelve-month period was increased from $500 to $1,000, and the total amount of assistance from $2,000 to $4,000, by the Department of Defense Authorization Act, 1981, Public Law 96-342, §906(a)(1), 94 Stat. 1077, 1117 (1980).

As indicated in the statute itself, the purpose underlying provision of educational assistance through the new program was "[t]o encourage enlistments in the Selected Reserve of the Ready Reserve." Former 10 U.S.C. §2131(a) (redesignated 10 U.S.C. §16131(a)) by Section 402(a) of the Department of Defense Appropriation Authorization

Act, 1978, Public Law 95-79, §402, 91 Stat. 323, 328-330 (1977).[38] As explained in the relevant Congressional reports, the program was initially adopted as a test program "to determine the effectiveness of [the provision of educational benefits] in assisting recruiting and retention in the Ready Reserve."[39] As a test program, the authority was originally scheduled to terminate September 30, 1978, but was later extended, first to September 30, 1980, by the Department of Defense Authorization Act, 1979, Public Law 95-485, §402(a), 92 Stat. 1611, 1613 (1978), and later to September 30, 1985, by the Department of Defense Authorization Act, 1981, Public Law 96-342, §906(b), 94 Stat. 1077, 1117 (1980). In the case of the latter extension, the House Committee on Armed Services noted that the program had achieved some success in terms of increased recruitment and retention, citing a six percent increase in the strength of Army Reserve units using the incentives as compared with a less-than-one-percent increase for units not using the incentives.[40]

The targeted educational assistance program established by the Department of Defense Appropriation Authorization Act, 1978, Public Law 95-79, §402, 91 Stat. 323, 328-330 (1977), was substantially amended in 1984 by the Department of Defense Authorization Act, 1985, Public Law 98-525, §705, 98 Stat. 2492, 2564-2567 (1984).[41] Under the 1985 Authorization Act, the educational assistance program for reserve forces personnel became, in effect, an entitlement program. Eligibility was extended to reserve officers, in addition to enlisted personnel, who agreed to serve at least six years in

[38] The current text of 10 U.S.C. §16131(a) has been amended to indicate that the purpose is "[t]o encourage membership in units of the Selected Reserve of the Ready Reserve," and, indeed, eligibility to participate in the program has been extended to reserve officers who are members of the Selected Reserve. See text following footnote 45, below.

[39] House Report No. 95-446 (Committee of Conference), p. 51, and Senate Report No. 95-282 (Committee of Conference), p. 51, accompanying H.R. 5970, 95th Congress, 1st Session (1977). See House Report No. 95-194 (Committee on Armed Services), p. 89- 91, accompanying H.R. 5970, 95th Congress, 1st Session (1977).

[40] House Report No. 96-916 (Committee on Armed Services), p. 131, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

[41] Indeed, the prior program--incorporated in Title 10, United States Code, as Chapter 106--was discontinued effective July 1, 1985, although personnel in the program prior to its termination remain eligible for continued benefits. 10 U.S.C. §2138.

addition to any other period of obligated service they may have had. In addition, the basis for payment of educational assistance was changed, so that a participant in the program was entitled to $140 for each month of "full time pursuit of a program of education," to $105 per month for "three-quarter-time pursuit of a program of education," to $70 per month for "half-time pursuit of a program of education," and to "an appropriately reduced rate" for "less than half-time pursuit of a program of education." A maximum of 36 months of educational assistance is available under the program. Satisfactory participation in required training as a member of the Selected Reserve is stipulated as a condition of entitlement to educational assistance under the program, and various penalties and payback provisions have been added for failure to participate satisfactorily in such training. This program was established as a test program applicable from July 1, 1985, through June 30, 1988.

As explained by the House Armed Services Committee, the reasons for the enhanced program of educational assistance to reserve forces personnel was Congress's "particular concern" with the

> ... recent downturn in recruiting experienced by the Army National Guard and the Army Reserve.... With the growing reliance on the reserve components envisioned by the committee, a special enlistment and reenlistment incentive for the reserve and guard is vital ....
>
> The committee believes that an educational assistance program will help prevent the reoccurrence of recruiting problems and will assist in attracting high-quality personnel into the ... reserve forces, particularly the Army.[42]

Experience with the educational assistance program for members of the Selected Reserve generally proved favorable, and the authority was made permanent by the New GI Bill Continuation Act, Public Law 100-48, §4, 101 Stat. 331 (1987). In approving the permanent extension of authority for educational assistance to members of the Selected Reserve, the House Armed Services Committee summarized the purposes of and

[42] House Report No. 98-691 (Committee on Armed Services), p. 263, accompanying H.R. 5167, 98th Congress, 2d Session (1984). See *id*., generally, at pp. 262-265. Also see House Report No. 99-1080 (Committee of Conference), pp. 306-308, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

experience under the program, as well as with the similar program for active-duty forces, as follows:

## PRIOR LEGISLATION

In 1976 Congress approved legislation (Public Law 94-502) ending educational assistance under the Vietnam-era GI Bill for individuals entering military service on or after January 1, 1977.

Those with post-Vietnam-era service were instead eligible for the Veterans' Educational Assistance Program (VEAP) which, unlike the Vietnam-era benefit, required a contribution by the service member. Under this contributory program, the Government matched the service member's contribution of up to $2,700 on a two-for-one basis (or a Government contribution of up to $5,400), for a maximum educational benefit of $8,100. To make the program more attractive, the Army decided to supplement the basic benefit with substantial "kickers" for enlistment in critical skills, principally the combat arms, under the Army College Fund.

With the exception of the Army College Fund which the Army advertised and marketed widely, VEAP was a dismal failure. Participation rates were low, and many who originally signed up subsequently decided to disenroll. Congress, therefore, decided to rethink the issue and subsequently in Title VII of the Department of Defense Authorization Act, 1985 (Public Law 98-525) approved a three-year test of a new educational assistance program, commonly called the New GI Bill.[43]

## THE NEW GI BILL

The New GI Bill was designed to use educational benefits as a way to attract and retain high quality young men and women in the Nation's Armed Forces--in both the active and reserve components. The structure of the program is as follows:

Active duty personnel:

Applicable to all new entrants onto active duty from July 1, 1985, through June 30, 1988.

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[43] Title VII of the Department of Defense Authorization Act, 1985, Public Law 98-525, §§701-709, 98 Stat. 2492, 2553-2572 (1984), which dealt with, among other things, the educational assistance program for members of the Selected Reserve and was originally titled "Veterans' Educational Assistance Act of 1984," was retitled "Montgomery GI Bill Act of 1984" by Section 2 of the New GI Bill Continuation Act, Public Law 100-48, §2, 101 Stat. 331 (1987). (While formally denominated the Veterans' Educational Assistance Act of 1984, Title VII of the Department of Defense Authorization Act, 1985, Public Law 98-525, §§701-709, 98 Stat. 2492, 2553-2572 (1984), was generally referred to as the "New GI Bill," even before enactment of the New GI Bill Continuation Act.)

Basic benefit of $300 per month for 36 months in exchange for an enlistment of three years or longer (or $250 per month for 36 months for two-year enlistment).

Kicker authority up to $400 per month for critical skills.

Basic benefit paid by the Veterans Administration on a pay-as-you-go basis.[48]

Kickers (and Reserve program) funded by the Department of Defense on accrual basis.

Participants' pay is reduced by $100 per month for first 12 months; service member is in program unless opts out.

Reserve and Guard personnel:

Applicable to all who enlist, reenlist, or extend and enlistment in a reserve component from July 1, 1985, to June 30, 1988.

Entitlement of $140 per month for 36 months in exchange for a six-year commitment in the Selected Reserve.

No member contribution required.

Funded by the Department of Defense on an accrual basis.

Based on the information available to date, the committee is convinced the New GI Bill is a highly successful program. The committee will not restate the wealth of back-up data provided in Part I of the report on H.R. 1085 [which was enacted as the New GI Bill Continuation Act, Public Law 100-48, 101 Stat. 331 (1987)] filed by the Committee on Veterans' Affairs. Participation rates by service members have far exceeded even the most optimistic predictions when this legislation was formulated two and half [sic] years ago. Witnesses before the committee have uniformly endorsed the continuation of the New GI Bill as a vital tool to maintaining the outstanding recruiting and retention results currently experienced by the services.

The Army's success during fiscal year 1986, the first year of experience under the New GI Bill, illustrates the importance of a viable educational assistance program. In fiscal year 1986, the active Army--the service that has traditionally experienced the greatest difficulty in meeting its recruiting goals--recruited 91 percent high school graduates, with only four percent in Mental Category IV, the lowest Mental Category eligible for enlistment. In the Army Reserve, Mental Category I-IIIA recruits, the cream of the crop in recruiting, increased 24 percent and six-year enlistments increased 28 percent during the first year of the New GI Bill in comparison to the previous year.

The committee believes the test program has been an unqualified success and, therefore, recommends that the June 30, 1988, expiration date for the New GI Bill be eliminated, thus making the program permanent.[44]

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[44] House Report No. 100-22, Part 2 (Committee on Armed Services), pp. 2-3, accompanying H.R. 1085, 100th Congress, 1st Session (1987). As indicated in the report of the House Committee on Armed Services, quoted above, a more extensive discussion of the purposes of the New GI Bill and the experience

The National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §642, 103 Stat. 1352, 1456-1458 (1989), prospectively amended the Montgomery GI Bill (as the "New GI Bill" became designated), effective September 30, 1990, to permit persons eligible to participate in the educational assistance program for members of the Selected Reserve to receive benefits for vocational and technical training. Before the amendment in question, members of the Selected Reserve had been eligible for educational benefits only for "pursuit of a program of education at an institution of higher learning," which had ruled out vocational-technical education and training. The House Committee on Armed Services, indicating that it "believe[d] ... that inclusion of vocational-technical training has considerable merit as a recruiting incentive" for membership in the Selected Reserve, recommended this expansion of the educational assistance program for reserves,[45] and the Senate, in Conference, agreed to the House proposal.[46] [47]

The Veterans' Benefits Act of 1992, Public Law 102-568, §301(b), 106 Stat. 4320, 4326 (1992), amended the benefits rate structure so that a participant in the program was entitled to $190 for each month of "full time pursuit of a program of education," to $143 per month for "three-quarter-time pursuit of a program of education,"

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thereunder antedating enactment of the New GI Bill Continuation Act, Public Law 100-48, 101 Stat. 331 (1987), is found in the report of the House Committee on Veterans' Affairs, House Report No. 100-22, Part 1 (Committee on Veterans' Affairs), accompanying H.R. 1085, 100th Congress, 1st Session (1987). See, in particular, House Report No. 100-22, Part 1, *id*., pp. 2-11.

[45]House Report No. 101-121 (Committee on Armed Services), p. 281, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[46]House Report No. 101-331 (Committee of Conference), p. 589, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[47] At the same time as it included vocational-technical training benefits in the educational assistance program for members of the Selected Reserve, the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §644, 103 Stat. 1352, 1458 (1989), required the Secretary of Defense to submit a report to Congress "not later than March 15, 1990," on the "desirability and the practicability of requiring members of the reserve components, as a condition of participating in the educational assistance program ... [for members of the Selected Reserve], to sustain a reduction in pay in the same manner as applies to members of the Armed Forces on active duty who participate in the educational assistance program" under the Montgomery GI Bill Act of 1984. See text of House Report No. 100-22, Part 2 (Committee on Armed Services), pp. 2-3, accompanying H.R. 1085, 100th Congress, 1st Session (1987), quoted in the text accompanying footnote 49, above, for a brief description of the "reduction in pay" members of the active-duty forces "sustain" to participate in the New GI Bill.

to $95 per month for "half-time pursuit of a program of education," and to "an appropriately reduced rate" for "less than half-time pursuit of a program of education."[48] Under earlier amendments to the program enacted in the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §337(b), 105 Stat. 75, 90-91 (1991), as itself subsequently amended by the Veterans Reconciliation Act of 1993, enacted as Title XII of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, §12009(b), 107 Stat. 312, 416 (1993), the Secretary of the Department of Veterans Affairs is authorized to make annual cost-of-living adjustments to the basic benefits to keep pace with inflation. In 2003 the rate of full-time educational benefits authorized for members or former members entitled to benefits under the Montgomery GI Bill--Selected Reserve was $272 per month.

The National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §1076, 110 Stat. 186, 450-451 (1996), provided authority to increase the educational assistance to members of the Selected Reserve having skills or specialties "in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel" by a maximum of $350 per month. As administered, the Secretaries of the military departments designate the skills, specialties, and units eligible for this higher rate of educational assistance.[49]

**Cost**: For the cost of the reserve bonuses, special pays, and assistance programs described in this chapter from the time of their establishment to 1995, see Tables II-33 of *Military Compensation Statistics Tables*, volume II of this edition.

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[48] Codified at 10 U.S.C. §16131(b)(1)(D).

[49] Codified at 10 U.S.C. §16131(j). See House Report No. 104-131 (Committee on National Security), p. 220, accompanying H.R. 1530, 104th Congress, 1st Session (1995); House Report No. 104-406 (Committee of Conference), p. 855, accompanying H.R. 1530, 104th Congress, 1st Session (1995); and House Report No. 104-450 (Committee of Conference), p. 845, accompanying S. 1124, 104th Congress, 2d Session (1996).

**Chapter II.E.2.g.**

## Special Duty Assignment Pay and Proficiency Pay

**Legislative Authority**: 37 U.S.C. §307.

**Purpose**: To provide an additional monthly payment both as a retention incentive to enlisted personnel required to perform extremely demanding duties or duties demanding an unusual degree of responsibility and as an inducement to persuade qualified personnel to volunteer for such duties.

**Background**: The practice of paying military personnel in different career fields differently is well established in the history of military compensation. The Navy long employed an occupational system of enlisted "ratings," each with its own rate of pay. Job-related "transient additions to pay" were also common. The Army paid "specialist pay" to enlisted personnel in selected skills until 1942.

The Defense Advisory Committee on Professional and Technical Compensation (the so-called "Cordiner Committee") coined the term "proficiency pay," and its 1957 recommendations led to the establishment of such a pay in the Act of May 20, 1958 (Uniformed Services Pay Act of 1958), Public Law 85-422, §1(8), 72 Stat. 122, 125-126 (1958). The Cordiner Committee's original recommendation concerning the structure of the proposed pay contemplated the advancement of an affected enlisted member of the Armed Forces to a higher pay grade without a concomitant promotion in military rank. While the 1958 Act permitted the Secretaries of the various military departments to choose such a "proficiency pay grade" method for compensating members "designated as ... specially proficient in a military skill," it also permitted the Secretaries to make a special payment of as much as $150 a month to such members, this pay being in addition to any other pays and allowances to which affected members were entitled. The latter method was the method chosen by all the services, and for as long as the "proficiency pay" program formally existed, it was the only one of the two technically permitted methods officially sanctioned by the *Department of Defense Military Pay and*

*Allowances Entitlements Manual*, the predecessor of the current *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R. The proficiency pay grade method was in fact never used.

Until enactment of the Department of Defense Authorization Act, 1985, Public Law 98-525, §623(b)(1), 98 Stat. 2492, 2541-2542 (1984), two different types of proficiency pay, each with its own objectives, were authorized: shortage specialty proficiency pay and special duty assignment proficiency pay.[1] The former was designed to retain personnel serving in critical military skill specialties experiencing retention problems; special duty assignment proficiency pay was designed to encourage qualified personnel to undertake duties, outside their normal career fields, requiring volunteers and for which there was a manning shortage.

Shortage specialty pay was the most important category of the proficiency pay program until the Selective Reenlistment Bonus (SRB) was created and later proved to be an effective incentive for reenlistment and improved career force manning.[2] When the SRB program was initially implemented, the Secretary of Defense determined that, starting in fiscal year 1975, shortage specialty pay would be reduced to about one-quarter of the 1974 level. Except for residual termination payments, it was paid only to Navy personnel with nuclear power training and saturation diving specialties and to Air Force personnel in two medical technician skills.

Until the proficiency pay program was altered by the 1985 authorization act, special duty assignment proficiency pay was the major proficiency pay sub-program,

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[1] A third type of proficiency pay--"Superior Performance (Proficiency Pay)"--was authorized until 1976. This pay was designed to reward personnel who demonstrated outstanding effectiveness in skills or duties that were not eligible for either shortage specialty or special duty assignment proficiency pay. Congress removed part of the superior performance pay funds from fiscal year 1975 service budgets, with the result that payments were curtailed. The superior performance pay subprogram was suspended completely after fiscal year 1975; no funds for it were requested in the fiscal year 1976 budget or at any time since.

[2] For a discussion of the Selective Reenlistment Bonus program, see Chapter II.E.2.c., "Selective Reenlistment Bonus," above.

both in terms of the number of people involved and the cost. Special duty assignment proficiency pay was paid to personnel performing such voluntary duties as recruiters, drill instructors, or reenlistment NCOs, in amounts ranging from $30 to $150 a month.

The Department of Defense Authorization Act, 1985, Public Law 98-525, §623(b)(1), 98 Stat. 2492, 2541-2542 (1984), replaced the existing proficiency pay authority with a new program specifically limited to special duty assignments. While effectively continuing the preceding "special duty assignment proficiency pay" program, the word "proficiency" was dropped from the program title. Under the revised "special duty assignment pay" program, an enlisted member could be paid "special duty assignment pay" at a "monthly rate not to exceed $275" when required to perform "extremely difficult" duties or duties "involving an unusual degree of responsibility in a military skill." The amended authority was administered by the Secretaries of the different military departments, and they were required to designate the skills for which the new pay was authorized and the criteria for determining which members were eligible for special duty assignment pay in each skill. Regulations relating to the administration of the program were specifically placed under the jurisdiction of the Secretary of Defense.

The effect of thus restating the "special duty assignment pay" authority of the pre-1985 authorization act era was to increase the amount of special pay that could be paid to an individual member. Nevertheless, the House-Senate Conference Committee noted that "these enhanced benefits [should] be accommodated within the amounts [already requested] for special pays for fiscal year 1985."[3]

The amendment to the existing "proficiency pay" program came about as a result of a floor amendment put forward by Senator Tower, which was added to the Senate-sponsored version of the 1985 Defense Authorization Bill, S. 2723, 98th Congress, 2d Session (1984), and subsequently to the resulting authorization act. As Senator Tower stated the purpose of his amendment:

[3] House Report No. 98-1080 (Committee of Conference), p. 298, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

> ... I am offering an amendment to give the services increased authority to better target certain special pays for enlisted members....
>
> ... [M]y amendment would replace the existing authority of proficiency pay with a new authority for the services to pay special pay of up to $275 a month to enlisted members who are required to perform extremely demanding duties or duties demanding an unusual degree of responsibility. For example, the Navy assigns petty officers as surface nuclear propulsion plant operators. The responsibility placed upon these young men is tremendous and far exceeds that expected of most midlevel enlisted personnel. This new authority would permit the Secretaries of the military departments to discretely target limited manpower dollars to those people qualified to perform the unusually demanding duties, thereby increasing the likelihood of retaining these personnel on active duty.
>
> ... It simply would permit the service more flexibility to target retention [to] the very, very critically needed personnel, particularly in the nuclear engineering field where it is very difficult to retain these people when the compensation they could get in the private sector would be enormously greater.[4]

The National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §619(a), 110 Stat. 186, 363 (1996), authorized an increase in the rate of special duty assignment pay for members serving as military recruiters to a maximum of $375 per month. This increase was authorized, effective January 1, 1996,[5] [6] out of concern for the "financial hardships" experienced by members assigned to recruiting duties.[7]

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[4] 130 *Cong. Rec*. 16138-16139 (1984) (daily ed., 130 *Cong. Rec*. S7143-S7144 (June 13, 1984)) (statement of Senator Tower).

[5] National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §619(b), 110 Stat. 186, 363 (1996). See 10 U.S.C. §307 note.

[6] Although the increase was authorized by the 1996 Department of Defense Authorization Act for pay periods beginning January 1, 1996, the Department of Defense implemented the pay for all "production recruiters" beginning April 1, 1996. Memorandum of Assistant Secretary of Defense for Force Management Policy dated March 19, 1996; *cf*. DoD Instruction 1304.27. (The National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, 110 Stat. 186 (1996), was not enacted until February 10, 1996.)

[7] House Report No. 104-131 (Committee on National Security), p. 231, accompanying H.R. 1530, and Senate Report No. 104-112 (Committee on Armed Services), p. 256, accompanying S. 1026, 104th Congress, 1st Session (1995). Cf. House Report No. 104-406 (Committee of Conference), pp. 816-817, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), p. 807, accompanying S. 1124, 104th Congress, 2d Session (1996)

The old "proficiency pay" program terminated and the new "special duty assignment pay" program became effective on October 1, 1984.[8] The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-156, added an entitlement of enlisted National Guard and other reserves not on active duty to receive special duty assignment pay under this program when those individuals are performing duty that would qualify an active member for such pay. Under this provision, members of the reserve component entitled to compensation for inactive-duty training are authorized to receive additional compensation amounting to 1/30 of the monthly special pay prescribed for active-duty members for each drill period performed during a month. The same authorization act raised the maximum monthly amount of special duty assignment pay from $275, which had been the maximum since 1985, to $600. The legislation eliminated the special provision for a higher maximum for members serving as recruiters, effectively setting a uniform ceiling for all members.

**Current rates of pay authorized**: Special duty assignment pay is authorized for enlisted members at a rate not to exceed $600 per month.

**Cost**: For the cost of special duty assignment pay and proficiency pay from the time of their establishment to 2004, see Tables II-34 of *Military Compensation Statistics Tables*, volume II of this edition.

[8] Department of Defense Authorization Act, 1985, Public Law 98-525, §623(c), 98 Stat. 2492, 2542 (1984). See 37 U.S.C. §307 note.

**Chapter II.E.2.h.**

## Assignment Incentive Pay

**Legislative Authority:** 37 U.S.C. 307a.

**Purpose:** To provide an additional monetary incentive in the assignment process to encourage members to volunteer for difficult-to-fill or less desirable assignments, assignment locations, or certain assignment periods.

**Background:** Factors such as geographic location, type of job, and length of assignment make some assignments in the Armed Forces less desirable than others. The natural dynamics of the distribution process make certain assignments more difficult to fill, in spite of efforts to fill all assignments regardless of desirability. Monetary and other incentives sometimes have failed to achieve the needed redistribution.

The National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, 116 Stat. 2569, provided for a new type of special pay, called assignment incentive pay (AIP), to be offered to volunteers for duty in hard-to-fill positions specifically designated by the Secretary concerned. The amount of such pay is determined by the Secretary concerned and is specified in a written agreement between the individual and the Secretary. The agreement stipulates the amount, duty station, and length of assignment. The amount designated for a given position may change over time and may vary by assignment or assignment situation. The amount, which may not exceed $1,500 per month, is payable in addition to any other pay and allowances to which the member is entitled. The initial legislation established a new subparagraph 307a in 37 USC.

**Chapter II.E.2.i.**

## Hardship Duty Pay

**Legislative Authority**: 37 U.S.C. §305.

**Purpose**: To provide additional pay to personnel for performing duty designated by the Secretary of Defense as hardship duty, regardless if outside the United States, in recognition of the greater-than-normal rigors of such designated duty.

**Background**: The practice of paying something extra to military personnel serving outside the contiguous United States on account of such service originated in the extensive deployment of United States "beyond the seas" during the Spanish-American War. The Act of May 26, 1900, ch. 586, 31 Stat. 205, 211 (1900), provided for a special additional pay for Army personnel serving in Puerto Rico, Cuba, the Philippine Islands, Hawaii, or Alaska. Under the act, Army officers serving in any of the enumerated places became entitled to an additional 10 percent of their "pay proper," while Army enlisted personnel became entitled to an additional 20 percent. The Act of March 2, 1901, ch. 803, 31 Stat. 895, 903 (1901), extended this foreign duty pay[1] entitlement for Army personnel to service anywhere outside the United States and contiguous territories. The Act of March 3, 1901, ch. 852, 31 Stat. 1107, 1108 (1901), authorized similar additional pay for Navy officers and Marine Corps personnel. Although Hawaii, Puerto Rico, Panama, and the Canal Zone were thereafter from time to time excluded as foreign duty pay localities, the basic structure of the pay remained unchanged until repealed by the Act of June 10, 1922 (Joint Services Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §15, 42 Stat. 625, 632 (1922).[2] Foreign duty pay was not authorized from 1922 to 1942.

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[1] Although denominated "special pay while on duty at certain places" under the law in effect immediately prior to enactment of the National Defense Authorization Act for Fiscal Year 1998, this special pay has been known by several different names over the years. To minimize the possibility of confusion, and to simplify the form of reference, it is referred to in this chapter by its most widely known name, "foreign duty pay" up to the discussion of the pay determined by the National Defense Authorization Act for Fiscal Year 1998. Thereafter, it is referred to by its current statutory nomenclature, hardship duty pay.

[2] Because "double time" was linked to service in certain foreign localities, it has sometimes been thought of as a foreign duty pay of sorts. In fact, it was no such thing. Under "double time," enlisted personnel were

The Act of March 7, 1942, ch. 166 [Public Law 490, 77th Congress], §18, 56 Stat. 143, 148 (1942), revived foreign duty pay as a wartime measure and for the first time included Navy enlisted personnel within its scope. The act provided for commissioned officers to receive an additional 10 percent of base pay, and for warrant officers, enlisted personnel, and "nurses (female)" to receive an additional 20 percent, for service at any place outside the contiguous United States. A few months later, the Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §2, 56 Stat. 359, 360 (1942), enacted these foreign duty pay provisions into permanent law.

In 1948, at the request of the Secretary of Defense, the Advisory Commission on Service Pay, sometimes referred to as the Hook Commission, undertook the first comprehensive study of military compensation since 1908. In reviewing military compensation generally, and foreign duty pay in particular, the Hook Commission recommended that this latter pay be abolished for officers but continued, albeit in a modified form, for enlisted personnel. In support of this recommendation, the Commission stated:

> The Commission has concluded that sea duty for naval personnel, as well as oversea duty for the Army and Air Force, although probably involving more inconvenience than military activity ashore or at home, is a part of their normal career. As such, it does not parallel the highly unusual foreign assignment in industry or the Federal Civil Service for which an incentive premium is offered. Even here, the top administrator receives relatively little extra pay for an oversea position. Officers, especially, do not deserve extra pay for this type of duty, since the pay recommended for them is apportioned to their relative responsibility as executives and administrators, regardless of their site of operation. Additional compensation is unnecessary and undesirable for work which should be expected as a normal incident in a chosen career. Unusual expenses incurred by virtue of foreign or sea duty may be reimbursable under the Post and Duty Allowance recommended by the Commission.

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permitted to count for retirement purposes twice the actual length of service performed by them in Puerto Rico and Hawaii before April 23, 1904, and in China, Cuba, the Philippines, Guam, Alaska, and Panama before August 24, 1912. As such, "double time" did not involve payment of any additional monies to personnel serving in the affected localities; rather, "double time", as a pay construct, was used "in computing length of service for retirement." See, *e.g.*, Act of May 26, 1900, ch. 586, 31 Stat. 205, 209 (1900).

> For enlisted personnel, the Commission proposes a flat rate increase, as in keeping with accepted industry practice for disagreeable or unpleasant work and as a morale factor. A percentage of pay increase for these duties bears no relation to the inconvenience felt by the individual nor is the unpleasantness in proportion to the grade or rating.[3]

Congress adopted the major portion of the Hook Commission's reasoning and recommendations concerning foreign duty pay in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §206, 63 Stat. 802, 811 (1949).[4] [5] The Act eliminated foreign duty pay authorization for officers entirely. In addition, it changed the way the entitlement was computed for enlisted personnel, establishing rates ranging from $8 for the lowest enlisted grade to $22.50 for the top enlisted grade. When set in 1949, these rates approximated 10 percent of enlisted basic pay. Because rates were not adjusted for the ensuing 48 years, over time foreign duty pay acquired a pronounced "token" quality. In recommending adoption of the foreign duty pay provisions of the Career Compensation Act of 1949, ch. 681, *id*., the House Committee on Armed Services stated:

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[3] "*Career Compensation for the Uniformed Forces,* a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," pp. 28-29, December 1948. (In recommending against continuation of foreign duty pay for officers, the Commission noted, as indicated in the quoted material above, that "[u]nusual expenses incurred by virtue of foreign or sea duty may be reimbursable under the Post and Duty Allowance recommended by the Commission." *id*., p. 29. *Cf. id*., pp. 36-38 for the Commission's discussion and recommendation of a "Post and Duty Allowance." Despite the Hook Commission's recognition of the possibility of higher costs or expenses incurred by personnel assigned to sea or foreign duty, including officers, Congress, in acting on the Commission's recommendations, did not adopt any special allowance program--whether denominated a "Post and Duty Allowance" or otherwise--to assist affected personnel to defray such costs or expenses.)

[4] But see the parenthetical to footnote 3 to this chapter, above.

[5] Section 206 of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §206, 63 Stat. 802, 811 (1949), which dealt with foreign duty pay, also covered sea pay. After enactment of the Career Compensation Act of 1949, ch. 681, *id*., the sea and foreign duty pay provisions thereof were classified to 37 U.S.C. §237. See 37 U.S.C. §237 (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the sea and foreign duty pay provisions were codified at 37 U.S.C. §305. The Department of Defense Appropriation Authorization Act, 1979, Public Law 95-485, §804, 92 Stat. 1611, 1620-1621 (1978), removed the sea pay provisions from 37 U.S.C. §305 and established a new "career sea pay" program, codified at 37 U.S.C. §305a. Under this latter program, special rates of pay were established for career sea duty, and these rates were substantially in excess of the rates applicable to foreign duty. For an explanation of the career sea pay program, and the reasons for its adoption, see Chapter II.D.3.d. hereof, "Special Pay for Career Sea Duty," above.

The committee is in complete agreement with the Hook Commission that sea and foreign duty is part of the normal career of all members of the uniformed services. It especially recognizes that officers should not be compensated with special pay for overseas assignments which must be anticipated as part of an average career in the services.

> On the other hand, the committee also agrees with the Hook Commission that some small remuneration should be granted to enlisted personnel who serve at sea or in foreign stations because of the morale factor involved. In view of the pay increases provided in the bill, the committee is of the opinion that the sums provided for sea and foreign duty for enlisted personnel are sufficient.[6]

In 1963 the Department of Defense proposed that foreign duty pay be eliminated--along with sea duty pay, which was at the time also governed by 37 U.S.C. §305.[7] While Congress rejected the proposal, it did, in the Uniformed Services Pay Act of 1963, Public Law 88-132, §12(a), 77 Stat. 210, 217 (1963), change the structure of the pay. Under this restructuring, enlisted members serving outside the contiguous United States were not automatically entitled to foreign duty pay. Instead, the Secretary of Defense was to designate the areas for which the pay was authorized. Congress indicated that factors such as undesirable climate, lack of normal community facilities, and accessibility of location are criteria that should be used in making such designations. Because of differences in climate, amenities, or accessibility, some parts of a "foreign country" were commonly designated for foreign duty pay while other parts of the same country were not. The law specified that foreign duty pay was not to be paid to an individual for duty in a state, Puerto Rico, the Virgin Islands, a foreign country, or a possession of a foreign country of which that individual was a resident. The amounts payable to enlisted personnel for under the original legislation for foreign duty pay, which were retained until the passage of the National Defense Authorization Act for Fiscal Year 1998, were as follows:

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[6] House Report No. 779 (Committee on Armed Services), p. 16, accompanying H.R. 5007, 81st Congress, 1st Session (1949). Also see Senate Report No. 733 (Committee on Armed Services), p. 19, accompanying H.R. 5007, 81st Congress, 1st Session (1949).

[7] See footnote 5 to this chapter, above.

| Pay Grade | Foreign Duty Pay |
|---|---|
| E-9 | $22.50 |
| E-8 | $22.50 |
| E-7 | $22.50 |
| E-6 | $20.00 |
| E-5 | $16.00 |
| E-4 | $13.00 |
| E-3 | $9.00 |
| E-2 | $8.00 |
| E-1 | $8.00 |

At the time the legislative authority for foreign duty pay was replaced by an expanded pay authority in the National Defense Authorization Act for Fiscal Year 1998, locations in the following countries, states, or regions were designated for foreign duty pay: Afghanistan, Alaska, Algeria, Bahamas, Antarctica, Ascension Island, Australia, Azores, Bahrain, Bangladesh, Belgium, Belize, Bolivia, Brazil, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Ceylon, Chad, Chagos Archipelago, China, Colombia, Congo, Costa Rica, Crete, Cuba, Cyprus, Czechoslovakia, Djibouti, Dominican Republic, Ecuador, Egypt, Eleuthera Island, El Salvador, Eniwetok, Ethiopia, Finland, Gabon, the former German Democratic Republic, Ghana, Greece, Greenland, Grenada, Guam, Guatemala, Guinea, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Johnston Island, Jordan, Kenya, Korea, Kosrae Island, Kuwait, Kwajalein, Laos, Lebanon, Liberia, Mahe Island, Malagasy Republic (Madagascar), Malawi, Malaysia, Mali, Malta, Mariana Islands, Mauritius, Mexico, Midway Islands, Morocco, Mozambique, Namibia, Nepal, Netherlands Antilles, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Phoenix Islands, Poland, Ponape, Puerto Rico, Qatar, Romania, Rwanda, Saipan, Sicily, Samoa, Sardinia, Saudi Arabia, Scotland, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sudan, Suriname, Sweden, Syria, Taiwan, Tanzania, Thailand, Togo, Truk Atoll, Tunisia, Turkey, Turks and Caicos Islands, Uganda, United Arab Emirates, former U.S.S.R., Venezuela, Vietnam, Wake Island, Yemen, former Yugoslavia, Zaire, Zambia, and Zimbabwe.

The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1789, made significant changes in the scope of 37 U.S.C. §305. The act

eliminated the "token" quality of special payment for this type of duty by prescribing a maximum monthly payment of $300 for members on duty in places designated as hardship duty locations. No differentiation by grade was prescribed. The act eliminated the restriction of eligibility for such pay to enlisted members by applying the pay simply to "a member of the uniformed service who is entitled to basic pay," and it lifted the prohibition on paying hardship duty location pay for duty in areas where the member was a resident and the prohibition on receiving this pay together with sea pay during the same service period. The legislation also changed the nomenclature of the special pay, replacing "foreign duty pay" with "hardship duty location pay," in keeping with the new stipulation that designated duty locations could be either within or outside the United States. The National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, 112 Stat. 2035, made another change of nomenclature, from "hardship duty location pay" to "hardship duty pay."

As a result of the expanded statutory authority provided in the National Defense Authorization Acts for Fiscal Years 1998 and 1999, as of September 2004 hardship duty pay was paid to members of the uniformed services assigned to Joint Task Force Full Accounting, Central Identification Lab-Hawaii, and the Defense Prisoner of War/Missing Personnel Office, for performance of hardship duty in remote, isolated areas to investigate or recover the remains of U.S. service members lost in past wars. Hardship duty pay also is being authorized to members in countries and other jurisdictions of the world in designated hardship duty locations (places where living conditions are substantially below that which members generally experience in the United States. As of September 2004, hardship duty pay also was being paid to members whose service in Iraq was extended beyond 12 months. In 2004 these were the areas designated for hardship duty pay:

Afghanistan, Alaska (certain areas), Albania, Angola, Antarctica region, Antigua, Arctic Circle region, Armenia, Ascension Island, Australia, Azores, Bahamas, Bangladesh, Barbados, Belarus, Belize, Benin, Bolivia, Botswana, Brazil, Brunei, Bulgaria, Burkina Faso, Burma, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chagos Archipelago, China, Colombia, Congo, Cook Islands, Costa Rica, Cuba, Cyprus, Djibouti, Dominican Republic, East Timor, Ecuador, Egypt,

El Salvador, Eritrea, Estonia, Ethiopia, Fiji, Gabon, Gambia, Georgia, Ghana, Greece, Greenland, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Israel, Ivory Coast, Jamaica, Johnston Island, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Mauritius, Mexico, Micronesia, Moldova, Mongolia, Mozambique, Namibia, Nepal, Paraguay, Peru, Philippines, Poland, Puerto Rico, Qatar, Romania, Russia, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Soloman Islands, Spain, Sri Lanka, Suriname, Syria, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Venezuela, Vietnam, Western Sahara, Yemen, Zambia, and Zimbabwe.

**Cost**: For the cost of foreign duty/hardship pay from 1972 to 1998, see Table II-35 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter II.E.2.j.**

## Overseas Duty Extension Pay

**Legislative Authority**: 37 U.S.C. §314.

**Purpose**: To provide an incentive for enlisted personnel in certain critical skill classifications to extend tours of duty overseas for the convenience of the government.

**Background**: The Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §5(a)(1) and (b)(1), 94 Stat. 3359, 3366-3367 (1980), added two new provisions to deal with critical skills shortage problems the a were experiencing with certain enlisted members assigned to tours of duty overseas. The first of the two provisions, which authorized a special pay for enlisted members of the Armed Forces in certain critical skill specialties who agreed to extend tours of duty overseas for at least a year, is codified, as amended, at 37 U.S.C. §314.[1] [2] The second, which authorized certain "rest and recuperative absence" benefits (more fully described below), is codified at 10 U.S.C. §705.[3] [4] The provisions in question were adopted to provide incentives to "assist in alleviating a problem of manning skills in which the majority of the skill requirements are in overseas areas."[5] Congress went on to note that the skill shortages were significant enough "[i]n many instances ... [to] result ... in members being required to be reassigned overseas after less than 24 months in the United States" and that this increased frequency

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[1] Though denominated "Special pay: qualified enlisted members extending duty at designated locations overseas," the pay is referred to herein as "overseas duty extension pay."

[2] While most of the provisions of Title 37, United States Code, apply generally to members of the uniformed services, the overseas duty extension pay provisions of 37 U.S.C. §314 apply only to members of the Armed Forces, and even then, only to enlisted members.

[3] The short-form reference to the benefits made available in 10 U.S.C. §705--in short, the section heading--is "Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas".

[4] As was true with respect to overseas duty extension pay, the rest and recuperative absence provisions of 10 U.S.C. §705 apply only to enlisted members of the Armed Forces. See footnote 2 to this chapter, above.

[5] House Report No. 96-1230 (Committee on Armed Services), pp. 6-7, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

of overseas assignment was "cited by many NCOs as their reason for leaving the service."[6]

To address this problem, the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, id., §5(a)(1), 94 Stat. at 3366, authorized the payment of overseas duty extension pay, at a rate not to exceed $50 per month "for duty performed during the period of the extension," to enlisted members of the Armed Forces who, after completion of tours of duty overseas in certain critical skill specialties,[7] agreed to extend such tours for at least one full year. The "rest and recuperative absence" provisions of the Military Pay and Allowances Benefits Act, Public Law 96-579, id., §5(b)(1), 94 Stat. at 3366-3367, incorporated the same eligibility criteria and authorized one of two "benefits" to eligible members--either a period of "rest and recuperative absence" of not more than 30 days or a similar absence not to exceed 15 days but with the provision of round-trip transportation, at government expense, between the overseas duty station involved and the "nearest port" in the United States.[8] A person granted rest and recuperation under 10 U.S.C. §705 with respect to a given overseas duty extension agreement could not receive overseas duty extension pay under 37 U.S.C. §314 for the same extension. On the other hand, if a given member were granted a request for rest and recuperation under 10 U.S.C. §705, any period of absence within the amount allowed by the provision in question was not to be charged against leave the member would otherwise be entitled to. Before granting a member's request for "rest and recuperative absence," the Secretary of the

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[6] House Report No. 96-1230 (Committee on Armed Services), p. 7, accompanying H.R. 7626, 96th Congress, 2d Session (1980). Also see Senate Report No. 96-1051 (Committee on Armed Services), pp. 5-6, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

[7] The skills affected are to be specially designated by the Secretaries of the various Armed Forces in keeping with the purposes underlying the authorization of the special pay.

[8] As initially proposed, the "rest and recuperative absence" provisions would have allowed a third alternative benefit--namely, the provision of round-trip transportation, again at Government expense, between a member's duty station and the United States for both the affected member and his dependents, but with no additional leave authorized. This benefit was deleted, however, because of the Senate's concern that, if anything, it would provide an incentive for enlisted personnel to take their dependents on overseas tours of duty, whereas there was, in fact, at least in the contemplation of the Senate, a "need for positive incentives to reduce the large number of dependents overseas." Senate Report No. 96-1051 (Committee on Armed Services), p. 6, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

appropriate department is required to make a special determination that the member's absence under the program will "not adversely affect combat or unit readiness."

As reflected in Congressional Budget Office estimates, the provision of the overseas duty extension incentives in question was expected to result in a net cost saving to the government of $21.6 million in fiscal year 1981, resulting mainly from lower costs associated with fewer permanent change of station (PCS) moves, leave, and travel that year, but would have a positive cost of $3.0 million in fiscal year 1982, resulting from the delayed PCS costs of personnel ending tour extensions.[9] Positive costs were anticipated for years following fiscal year 1982.[10]

The overseas duty extension pay provision of 37 U.S.C. §314 became effective, with respect to periods of extended overseas duty beginning before, on, or after the date of enactment of the Military Pay and Allowances Benefits Act, Public Law 96-579, *id.*,[11] on January 1, 1981. Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id.*, §5(c)(1), 94 Stat. at 3367. See 37 U.S.C. §314 note. The "rest and recuperative absence" provisions of 10 U.S.C. §705 became effective on the date of enactment but applied only to periods of extended duty beginning on or after such date.[12] Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id.*, §5(c)(2). See 10 U.S.C. §705 note.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §641(a), 99 Stat. 583, 652 (1985), increased the maximum rate of special pay for enlisted

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[9] Senate Report No. 96-1051 (Committee on Armed Services), pp. 30-31, accompanying H.R. 7626, 96th Congress, 2d Session (1980). Also see House Report No. 96-1230 (Committee on Armed Services), pp. 42-43, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

[10] Senate Report No. 96-1051 (Committee on Armed Services), pp. 30-31, accompanying H.R. 7626, 96th Congress, 2d Session (1980). Also see House Report No. 96-1230 (Committee on Armed Services), pp. 42-43, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

[11] The date of enactment was December 23, 1980.

[12] See footnote 11, above.

personnel agreeing to extend tours of duty overseas from $50 per month to $80 per month. As explained by the House Committee on Armed Services:

> Qualified enlisted personnel currently are permitted to select either $50 per month special pay during the period of extension, 30 days of nonchargeable leave, or 15 days of nonchargeable leave plus round trip transportation at government expense to and from the continental United States.
>
> The Committee recommends increasing the monthly cash incentive for qualified enlisted personnel to extend their overseas tour from $50 per month to $80 per month as part of its emphasis on initiatives to reduce the number of PCS moves.[13]

The Committee went on to note its "belief that this extension program could and should be offered to more personnel serving overseas."[14]

The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1770, added an annual bonus, not to exceed $2,000, as an alternative to the existing monthly special pay of $80. The choice between the two forms of payment is at the discretion of the relevant Secretary. By agreement with the member, the bonus may be paid in a lump sum or in installments.

**Current rates of pay authorized**: Qualified enlisted members who have agreed to extend their duty tours at designated locations overseas are entitled to special pay at a rate not to exceed $80 per month for each month of their extensions, or an annual bonus not to exceed $2,000.

**Cost**: For the cost of overseas duty extension pay from 1981 to 2004, see Table II-36 of *Military Compensation Statistics Tables*, volume II of this edition.

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[13] House Report No. 99-81 (Committee on Armed Services), p. 233, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

[14] House Report No. 99-81 (Committee on Armed Services), p. 233, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

**Chapter II.E.2.k.**

## Foreign Language Proficiency Pay

**Legislative Authority**: 37 U.S.C. §316. Also see 37 U.S.C. §316a.

**Purpose**: To provide a special incentive for members of the Armed Forces to become proficient, or to increase their proficiency, in foreign languages in order to enhance the foreign language capabilities of the Armed Forces generally.

**Background**: The Department of Defense Authorization Act, 1987, Public Law 99-661, §634(a), 100 Stat. 3816, 3884-3885 (1986), established a new special pay for a member of the Armed Forces "who has been certified by the Secretary concerned within the past 12 months to be proficient in a foreign language identified by the Secretary of Defense as being a language in which it is necessary to have personnel proficient because of national defense considerations."[1] The new special pay is payable, in amounts not to exceed $100 per month, as determined by "the Secretary concerned," to a member of an armed force who either (i) "is qualified in a military specialty requiring ... proficiency" in one of the identified foreign languages, or (ii) "received training ... designed to develop such proficiency," or (iii) "is assigned to military duties requiring such a proficiency," or (iv) "is proficient in a foreign language for which the Department of Defense may have a critical need...." 37 U.S.C. §316(a)(3)(A)-(D). Foreign language proficiency pay may be paid to a qualified member in addition to any other pay or allowance to which the member may be entitled.

Entitlement to foreign language proficiency pay was specifically extended to members of Reserve components engaged in inactive-duty training in the Department of Defense Authorization Act, 1987, Public Law 99-661, §634(a), 100 Stat. 3816, 3884-3885 (1986). 37 U.S.C. §316(c). Under 37 U.S.C. §316(c), members of reserve components of the Armed Forces engaged in such training are entitled to one-thirtieth of

[1] The new pay, denominated "Foreign Language Proficiency Pay" in the Department of Defense Authorization Act, 1987, Public Law 99-661, §634(a), 100 Stat. 3816, 3884-3885 (1986), is payable only to members of the armed forces, not to members of other branches of the uniformed services.

the rate of foreign language proficiency pay authorized by "the Secretary concerned" for active duty personnel for "each regular period of instruction, or appropriate duty" in which the member engages, as well as for "each period of performance of ... other equivalent training, instruction, duty, or appropriate duties."

As explained by the Senate Committee on Armed Services:

> The committee has been advised that there is an urgent need to enhance the foreign language capabilities of the Armed Forces. Currently, the Department of State, the National Security Agency and the Central Intelligence Agency each have a special pay program designed to motivate personnel to maintain and enhance foreign language proficiencies. The need for such proficiency in the Armed Forces is increasing because of the greater cooperation with allies required by our global commitments, because of the need for greater usage of special operations forces, and because of the increasing demands for military intelligence.
>
> In order to meet this need, the committee recommends the authorization of a new special pay for foreign language proficiency....[2]

As noted in the Conference Report on the Department of Defense Authorization Act, 1987, Public Law 99-661, *id.*:

> The conferees intend that this [foreign language proficiency pay] program be designed to --
>
> (1) pay a stipend to those members who develop a proficiency in critical foreign language communication skills that test at or above a utility level established by the Department of Defense; and
> (2) encourage the development of critical foreign language skills by judiciously limiting the specialty pay to members who obtain reading, speaking, and listening skills as a second language.[3]

In a partial exception to the "certification" requirement of 37 U.S.C. §316, *i.e.*, the requirement that, to be eligible for foreign language proficiency pay, an affected member have "been certified by the Secretary concerned within the past 12 months to be

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[2] Senate Report No. 99-331 (Committee on Armed Services), p. 233, accompanying S. 638, 99th Congress, 2d Session (1986). See House Report No. 99-1001 (Committee of Conference), p. 482, accompanying S. 2638, 99th Congress, 2d Session (1986).

[3] House Report No. 99-1001 (Committee of Conference), p. 482, accompanying S. 2638, 99th Congress, 2d Session (1986).

proficient in a language identified ... as being a language in which it is necessary to have personnel proficient because of national defense considerations,"[4] the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §636(a), 105 Stat. 1290, 1382 (1991), provided that a member otherwise entitled to foreign language proficiency pay except for being unable to meet the annual certification requirement because he was "assigned to duty in connection with a contingency operation" could nevertheless continue to draw the incentive special pay during the period he was so assigned and would have an additional 180 days after being released from the "duty in connection with a contingency operation" to complete the required certification.[5] This provision was codified to Section 316a of Title 37, United States Code, 37 U.S.C. §316a. A similar exception had been made for members participating in Operation Desert Storm/Desert Shield by the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §306, 105 Stat. 75, 82 (1991), [6] and

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[4] See text accompanying footnote 1 to this chapter, above.

[5] The National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §631, 105 Stat. 1290, 1380 (1991), as itself subsequently amended, further amended Titles 10 and 37, United States Code, by providing a definition of the term "contingency operation", as follows:

The term "contingency operation" means a military operation that--

(A) is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12306 of this title [Title 10, United States Code], chapter 15 of this title, or any other provision of law during a war or during a national emergency declared by the President or Congress.

The subject provision is presently codified at 10 U.S.C. §101(a)(13), whereas the definition of "contingency operation" codified to Title 37, United States Code, merely provides that for the purposes of the latter title "[t]he term `contingency operation' has the meaning given that term in section 101 of title 10". 37 U.S.C. §101(26).

[6] See House Report No. 102-16, Part 1 (Committee on Armed Services), p. 11, accompanying H.R. 1175, 102d Congress. 1st Session (1991).

the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, *id*., was intended to make that ad hoc exemption permanent.[7]

The National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, 113 Stat. 654, increased the maximum amount of monthly foreign language proficiency pay from $100 to $300. In 2003 the House Armed Services Committee brought the value of this special pay into contemporary perspective with the following statement:

> The committee urges the Secretaries of the military departments to fully utilize the flexibility provided in the critical skills retention bonus to address the need to retain qualified foreign language speakers. The war on terrorism has highlighted the need to attract and retain foreign language speakers, including, but not limited to, critical languages such as Arabic, Korean, Mandarin Chinese, Persian-Farsi, and Russian.[8]

**Current rate of pay authorized**: Foreign language proficiency pay is currently authorized at a rate not to exceed $300 per month, as determined by the "Secretary concerned."

**Cost**: For the cost of foreign language proficiency pay from 1987 to 2004, see Table II-37 of *Military Compensation Statistical Tables*, volume II of this edition.

[7] Senate Report No. 102-113 (Committee on Armed Services), p. 219, accompanying S. 1507, and House Report No. 102-311 (Committee of Conference), p. 552, accompanying H.R. 2100, 102d Congress, 1st Session (1991).

[8] House Report 107-436 (Committee on Armed Services), p. 317, accompanying H.R. 4546, 107th Congress, 2d Session (2002).

**Chapter II.E.2.l.**

## Reserve Officers Pay for Administrative Duty

**Legislative Authority**: Formerly, 37 U.S.C. §309. The legislative authority for this special pay was repealed by the Department of Defense Authorization Act, 1980, Public Law 96-107, §404(a)(1), 93 Stat. 803, 808 (1979).

**Purpose**: To authorize commanding officers of reserve organizations to receive pay for the performance of certain administrative functions required of them in connection with reserve service.

**Background**: The Act of June 4, 1920 (National Defense Act Amendments of 1920), ch. 227 [Public Law 242, 66th Congress], §47, 41 Stat. 759, 783 (1920), provided the first legislative authority for administrative function pay for commanders of National Guard units. This authority, which amended Section 109 of the Act of June 3, 1916 (National Defense Act of 1916), ch. 134 [Public Law 85, 64th Congress], §109, 39 Stat. 166, 209 (1916), provided, among other things, as follows:

> ... Captains commanding organizations shall receive $240 a year in addition to the drill pay herein prescribed. Officers above the grade of captain shall receive not more than $500 a year, and officers below the grade of major, not belonging to organizations, shall receive not more than four-thirtieths of the monthly base pay of their grades for satisfactory performance of their appropriate duties under such regulations as the Secretary of War may prescribe.

This authority was extended to other officers by the Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §14, 42 Stat. 625, 631 (1922):

> ... Hereafter, in addition to pay authorized in section 109, Act of June 3, 1916 [National Defense Act of 1916], as amended by the Act of June 4, 1920, field officers and lieutenants of the National Guard commanding organizations less than a brigade, and having administrative functions, shall receive $240 per year for the faithful performance of the administrative duties connected therewith; and warrant officers of the National Guard shall receive not more than four-thirtieths of the monthly base pay of their grade for satisfactory performance of their appropriate duties, under such regulations as the Secretary of War may prescribe.

The Act of June 3, 1924, ch. 244 [Public Law 186, 68th Congress], §3, 43 Stat. 363, 364 (1924), again amended Section 109 of the Act of June 3, 1916 (National Defense Act of 1916), ch. 134 [Public Law 85, 64th Congress], §109, 39 Stat. 166, 209 (1916), with respect to additional pay for administrative functions:

> ... In addition to pay hereinbefore provided, officers commanding organizations less than a brigade and having administrative functions connected therewith, shall, whether or not such officers belong to such organizations, receive not more than $240 a year for the faithful performance of such administrative functions under such regulations as the Secretary of War may prescribe; and for the purpose of determining how much shall be paid to such officers so performing such functions, the Secretary of War may, from time to time, divide them into classes and fix the amount payable to the officers in each class. Pay under the provisions of this section shall not accrue to any officer during a period when he shall be entitled under any provisions of law to the full rate of his base pay prescribed in section 3 or section 9, as the case may be, of the Pay Readjustment Act of June 10, 1922 [Act of June 10, 1922, ch. 212 [Public Law 235, 67th Congress], §§3 and 9, 42 Stat. 625, 627, 629-630 (1922)].

The Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §14, 56 Stat. 359, 367 (1942), further amended the administrative duty provisions of the law:

> ... In addition to pay herein provided, officers of the National Guard commanding organizations less than a brigade and having administrative functions connected therewith shall, whether or not such officers belong to such organizations, receive not more than $240 a year for the faithful performance of such administrative functions under such regulations as the Secretary of War may prescribe: Provided, That the provisions of this paragraph shall not apply when such persons are on active duty in the Federal service.

In the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §501(c), 63 Stat. 802, 826 (1949), Congress, while adopting what was in many ways a new active duty pay system, again amended the administrative duty pay provisions, mainly in order to make them compatible with the new "career compensation" system:

> In addition to pay provided in subsection (a) of this section [relating to inactive-duty training pay], officers of the National Guard, Air National Guard, National Guard of the United States, the Air National Guard of the United States, Organized Reserve Corps, Naval Reserve, Marine Corps Reserve, Coast

> Guard Reserve, and the Reserve Corps of the Public Health Service, commanding organizations having administrative functions connected therewith shall, whether or not such officers belong to such organizations, be entitled to receive not more than $240 a year for the faithful performance of such administrative functions under such regulations as the Secretary concerned may prescribe; and for the purpose of determining how much shall be paid to such officers so performing such functions, the Secretary concerned may, from time to time, divide them into classes and fix the amount payable to the officers in each class.

In the Act of September 7, 1962, Public Law 87-649, §309, 76 Stat. 451, 468-469 (1962), which enacted Title 37, United States Code, into positive law, Congress again amended the administrative duty pay provisions of the law, this time to provide:

> (a) Under regulations prescribed by the Secretary concerned, an officer of the National Guard or of a Reserve Component of a uniformed service who commands an organization, and has administrative functions connected with it, is entitled to not more than $240 a year for the faithful performance of those functions, in addition to pay to which he is entitled under section 206 of this title [relating to compensation for inactive-duty training].
>
> (b) For the purpose of determining the amounts to be paid to officers performing the functions described in subsection (a) of this section, the Secretary concerned may, from time to time, divide those officers into classes and fix the amount payable to officers in each class.
>
> (c) This section does not apply to an officer who is entitled to basic pay under section 204 of this title [relating to members of the uniformed services on active duty or participating in full-time training, training duty with pay, or other full-time duty].

The authority providing for administrative duty pay was repealed, at the urging of the Department of Defense, in the Department of Defense Authorization Act, 1980, Public Law 96-107, §404(a)(1), 93 Stat. 803, 808-809 (1979). In recommending repeal, the Department of Defense noted:

> The purpose of this legislation is to repeal an antiquated section of Title 37, United States Code. Additional pay for performance of administrative duty historically has been authorized for an officer of the National Guard or of a reserve component of a uniformed service who commands an organization and has administrative functions connected with the position of command. The additional pay provided in 37 U.S.C. §309 was first authorized in 1920. Over the years the administrative burden on officers commanding National Guard and reserve units has been reduced in several ways. First, administrative support is provided by a cadre of permanent active duty personnel. Second, civilian technicians now perform administrative functions. Finally, in some circumstances

> extra paid training periods are authorized. Consequently, it is the opinion of the Department of Defense that the additional pay authorized by 37 U.S.C. §309 no longer can be justified.[1]

In accepting the Department of Defense recommendations, Congress noted:

> The committee bill includes a provision ... proposed by the Department of Defense which would repeal the authority for additional pay for Reserve and National Guard commanders for the performance of administrative duty. In 1916, the payment of administrative duty for administrative chores performed outside of the regular drill time began. The amounts vary from $10 to $20 per month, depending on the size of the unit commanded. For units with under 50 personnel, commanders receive $10 per month, for units with 50-99 personnel, they receive $15, and for units with over 100 personnel, they receive $20.
>
> Since 1916 conditions have changed so that reserve units have more paid drills and therefore commanders can spend more paid drill time for administrative duty. The full-time reserve technician program has been established and increased, thus removing much administrative burden from unit commanders. Active duty assistance to the reserve components has been substantially increased. Given these changing conditions the committee saw fit to approve the administration proposal to repeal the authority for administrative duty pay. The committee provision is expected to save about $2 million annually.[2]

**Current rates of pay authorized**: None. The authority for reserve officers pay for administrative duty was repealed in 1979 by the Department of Defense Authorization Act, 1980, Public Law 96-107, §404(a)(1), 93 Stat. 803, 808-809 (1979). No provision was made for continued receipt of the special pay by persons receiving such pay at the time of repeal.

**Cost**: For the cost of reserve officers' pay for administrative duty from 1972 to 1980, see Table II-38 of *Military Compensation Statistical Tables*, volume II of this edition.

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[1] Senate Report No. 96-197 (Committee on Armed Services), p. 108, accompanying S. 428, 96th Congress, 2d Session (1980).

[2] Senate Report No. 96-197 (Committee on Armed Services), p. 107, accompanying S. 428, 96th Congress, 2d Session (1980).

**Chapter II.E.2.m.**

## High-Deployment Allowance

**Legislative Authority:** 10 U.S.C. §991, 37 U.S.C. §436.

**Purpose:** To ensure that members who are deployed away from permanent duty stations for more than a stipulated number of days per year receive an allowance in recompense for the burden of such deployment.

**Background:** The House Armed Services Committee report accompanying the National Defense Authorization Act for Fiscal Year 2000 noted that the Defense Department lacked a unified system to monitor and record where and when military personnel serve their assignments. (The distribution of assignments across the range of activities of the military branches is known as personnel tempo, PERSTEMPO.) In the 1990s, this lack has affected particularly the ability to quantify deployments made to duty stations other than those to which members are permanently assigned. The report stated:

> It is difficult for DoD to determine the actual time that either military personnel or their units are deployed. This information is important to planning and managing contingency operations. Although all services now have systems to measure PERSTEMPO, each service has different (1) definitions of what constitutes a deployment, (2) policies or guidance for the length of time units or personnel should be deployed, and (3) systems for tracking deployments.
>
> The committee believes that a common definition is essential to present a more accurate evaluation and management of the PERSTEMPO and OPTEMPO problem.[1]

To remedy this situation, in 1999 Congress mandated that the Secretaries of the respective services manage more precisely the PERSTEMPO of active duty and reserve members. The National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, 113 Stat. 637, added two sections to the United States Code addressing the deployment of members away from permanent duty stations. The first addition, 10 U.S.C. §991, established the responsibility of general and flag officers for ensuring that members under their command who are in "high deployment" status (those who have been

[1] House Report No. 106-162 (Committee on Armed Services), p. 384, accompanying H.R. 1401, 106th Congress, 1st Session (1999). (OPTEMPO is a corresponding measure of equipment usage in military operations.)

deployed for a total of 182 or more days out of the previous 365) not remain deployed beyond the threshold number of 220 days out of the previous 365. Exceptions were to be made if such deployment were approved by a general or admiral in the member's chain of command or if the relevant Secretary waived the law for reasons of national security. The law defined "deployment" as occurring when a member "is performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station." The Secretary of the relevant department was charged with recording the deployment activity of each member for the purpose of determining possible high-deployment status.

The second new section, 37 U.S.C. §435 (subsequently renumbered as §436), aimed specifically at improving retention and minimizing the deployment-related personal hardship of Armed Forces members. That section prescribed a per diem allowance of $100 for members deployed a total of more than 250 days out of the previous 365. The allowance was in addition to any other allowance or bonus received. The beginning date for computation of deployment days was October 1, 2000.

The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-136, clarified the conditions under which a reserve member would be considered to be deployed. Such a member would fall into the deployed category if assigned at a location other than the permanently assigned duty site and at least 100 miles from the member's permanent residence, or if assigned at a location other than the permanently assigned duty site and requiring more than three hours of travel to reach the member's permanent residence. The National Defense Authorization Act for Fiscal Year 2001, Public Law 107-107, 115 Stat. 1093, broadened the definition of a reserve member's place of residence to include any housing customarily occupied in off-duty time when the member is at the permanent duty station.

The National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, 117 Stat. 1475, redefined the high-deployment thresholds and the configuration of the allowance. That legislation established one-year and two-year high-deployment thresholds beyond which the responsible officer may not allow a member's deployment to extend. The one-year threshold is 220 days out of the previous 365, and the two-year

threshold is 400 days out of the previous 730. The Secretary of Defense has the authority to lower those amounts. The 2004 law replaced the $100 per diem allowance with a monthly allowance of $1,000, payable for any month in which a member is beyond the high-deployment threshold by at least one day. The thresholds for this payment are not identical to the limits prescribed for managing deployment. To receive the high-deployment monthly allowance, a member must have been deployed for more than 190 consecutive days within the previous 365 days, or for a total of more than 400 days within the previous 730 days. As in the case of the deployment management guidelines, the Secretary of Defense can reduce the threshold numbers at his discretion. In both cases, the law permits the Secretary to lower but not to raise the threshold.

Members of reserve units qualify for the allowance if they are called to active duty for a second deployment of more than 30 days within a calendar year, or if they are called for a second active-duty deployment exceeding 30 days in support of the same contingency operation, regardless of time elapsed since the first call.

**Current rate of pay:** The current monthly allowance for members in high-deployment status is $1,000.

**Chapter III.A.1.**

## Overview of Retired and Retainer Pay, Separation Payments, and Post-Service Benefits

Broadly speaking, the individual chapters that comprise this Section III of *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items--Their Purposes and Legislative Backgrounds* deal with the various items of pay and benefits that accrue to members of the Armed Forces when they retire or are otherwise separated from their respective services. There are a number of pays and benefits that apply specifically to persons who are separated from their services before they become eligible for retirement benefits, and these pays and benefits are set out under Subsection C of this Section III, "Separation Pays and Post-Service Benefits," below. A broader and more comprehensive set of pays and benefits accrues to members who retire from service, whether because of disability or otherwise. Retired and retainer pays are covered in Subsection B of this Section III, "Retirement and Retainer Pays," and benefits available to retired members and their dependents are set out in Subsection D, "Benefits Specially Applicable to Retired Personnel and Their Dependents."

The purposes that underlie and inform the various pays and benefits covered in this Section III include:

* The provision of a socially acceptable level of payments to members and former embers of the Armed Forces during their old age.

* The provision of a retirement system that will enable the Armed Forces to remain generally competitive with private-sector employers and the Federal Civil Service.

* The provision of a pool of experienced military manpower that can be called upon in time of war or national emergency to augment the active-duty forces of the United States, and the establishment of a mechanism whereby persons in this pool can move into and out of the active-duty force smoothly.[1]

[1] For the conditions under which retired members of the Armed Forces may be recalled to active duty, see text accompanying footnotes 48 and 49 to Chapter III.B.1. hereof, "Nondisability Retired and Retainer Pay", and text accompanying footnotes 15 and 16 to Chapter III.B.2., "Retired Pay for Non-Regular Service (Reserve Retirement)", below.

* The provision of a socially acceptable means of keeping the military forces of the United States young and vigorous, thereby insuring promotion opportunities for younger members.

As such, the principles and concepts of military compensation that are exemplified by the system of retired and retainer pays, separation pays, and post-service benefits covered in this Section III are focused on the overall effectiveness of the compensation system in both peace and war; on the achievement of substantial equity for members of the Armed Forces, especially in the sense of establishing a compensation system that is generally competitive with compensation in the private sector; on the interrelationship between the military manpower requirements of the United States and the compensation system considered as a whole; and on the motivation of members and potential members of the Armed Forces.

It should be noted that, while there may be a superficial resemblance between the military retirement system and retirement systems that exist in the private sector, there are in fact substantial differences between the military retirement system and all other retirement systems, including that of federal civil servants. First, retired members of the Armed Forces are subject to recall to active duty; private sector employees and civil servants suffer under no such liabilities. Second, and in that same connection, regular retired members of the Armed Forces are fully subject to the Uniform Code of Military Justice,[2] thus providing sanctions for the enforcement of the recall authority. Third, entitlement to military retirement benefits is an all-or-nothing proposition, turning generally on the completion of a minimum of 20 years of satisfactory federal service; the military retirement system, in marked contrast to private-sector and Civil Service retirement systems, does not provide for the gradual vesting of retirement benefits.

**Cost**: For the cost of retired and separation pays and benefits from 1972 to 2004, see Table III-1 of *Military Compensation Statistical Tables*, volume II of this edition.

[2] The Uniform Code of Military Justice is codified as Chapter 47 of Title 10, United States Code, 10 U.S.C. §§801-946.

## Chapter III.B.1.

### Nondisability Retired and Retainer Pay

**Legislative Authority**: Nondisability retirement and retired and retainer pay authority is set out in various provisions of Title 10, United States Code.[1]

**Purpose**: To establish a nondisability retirement system and authorize the payment of retired pay for service in the Armed Forces of the United States in order to insure that (1) the choice of career service in the Armed Forces is competitive with reasonably available alternatives, (2) promotion opportunities are kept open for young and able members, (3) some measure of economic security is made available to members after retirement from career military service, and (4) a pool of experienced personnel subject to recall to active duty during time of war or national emergency exists.

**Background**: Except for an 1855 statute that provided for the compulsory retirement of certain Navy officers, there was no legislative authority before 1861 that provided for either the voluntary or the involuntary retirement of active-duty members of the Armed Forces from military service. The effect of this lack of authority was described many years later in a Congressional study of Army retirement:

> The unsatisfactory personnel conditions in the Regular Army which prompted these repeated recommendations of the War Department that Congress provide some form of retirement for the Regular Army were emphasized during the extended field service required over the period 1812-1861. While the law provided a pension of one-half pay for disabled officers, there existed no provision for compulsory separation from active service of old and disabled officers; there was no limit to active service save by dismissal or resignation of the officer. Thus, an officer could remain on active duty until death, despite incapacity due to old age, physical disability, etc. In consequence, many junior officers exercised commands in the field beyond their rank, the old and disabled officers who should have exercised these commands being left behind--often on leave--whenever field service was performed.[2]

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[1] Retired pay for non-regular, *i.e.*, reserve, service is dealt with in Chapter III.B.2. hereof, "Retired Pay for Non-Regular Service (Reserve Retirement)".

[2] "Promotion and Retirement: Hearings before the House Military Affairs Committee," Part I, p. 207, 69th Congress, 2d Session (1926).

The Act of February 28, 1855, ch. 127, §1, 10 Stat. 616 (1855), while not a retirement statute as such, permitted the Secretary of the Navy to convene examining boards to determine the capability of officers for "performing promptly and efficiently all their duty both ashore and afloat" and to remove any officer determined not capable of performing such duty from the active list. Officers removed from active duty under this provision were to be placed on a "reserved list" with either leave-of-absence pay (approximately 75 percent of sea-duty pay) or furlough pay (50 percent of leave-of-absence pay), unless it was also determined that the officer was himself to blame for the incapacity, in which case he was to be "dropped from the rolls" without pay. Though the main purpose of the Act of February 28, 1855, ch. 127, *id*., was to remove physically unfit officers from the active list, the following excerpt from a report of the examining board shows that it could also be used to separate officers for non-disability reasons:

An officer may possess a strong mind and a robust frame, yet, if his moral perception of right or wrong be so blunted and debased as to render him unreliable, he could hardly be ranked as the capable officer.[3]

The Act of August 3, 1861, ch. 42, §15 (officers of the Army and Marine Corps) and §21 (officers of the Navy), 12 Stat. 287, 289, 290 (1961), authorized the voluntary retirement, at the discretion of the President, of regular officers of all branches of service after 40 years of duty. This retirement authority was broadened, first by the Act of December 21, 1861, ch. 1, §1, 12 Stat. 329 (1861), to provide for the involuntary nondisability retirement of Navy officers with 45 years of service or at age 62, and later by the Act of July 17, 1862, ch. 200, §12, 12 Stat. 594, 596 (1862), to provide for the similar retirement of Army and Marine Corps officers. While these laws authorized the Army, Navy, and Marine Corps to require the retirement of certain classes of officers, they did not mandate that the services exercise this authority: an officer could be forced to retire after reaching the specified age or length of service, but nothing required relevant authorities to insist that an officer meeting these criteria be retired.

[3] Appendix to the Secretary of the Navy's Annual Report to the President for 1855.

Army and Marine Corps officers retired for age or length of service under the Act of July 17, 1862, ch. 200, §12, 12 Stat. 594, 596 (1862), were entitled to retired pay in an amount equal to their "pay proper" plus four "rations." These rations had a commuted cash value of $36 a month. The inclusion of rations as part of the retired pay entitlement derives from then-current active duty pay practices. The active duty pay scale of the time prescribed but one rate of pay, called "pay proper," for each officer grade. In addition to pay proper, however, each officer was entitled to from four to six rations, depending on his grade, and to one additional "longevity" ration for each five years of service. In other words, rations were an integral part of an officer's "pay" and were used instead of "pay proper" to effect longevity pay increases. The retired pay formula arbitrarily gave each retired officer four longevity rations, regardless of the number the officer was actually receiving as part of his active duty pay at the time of retirement.

Since active duty Navy officers were not paid under the "pay-proper-plus-rations" system applicable to Army and Marine Corps officers, the Act of December 21, 1861, ch. 1, §1, 12 Stat. 329 (1861), which provided involuntary retirement authority for Navy officers, stated their retired pay entitlement in terms of a specified dollar amount for each grade, plus "four rations per day to be commuted at 30 cents each ration." The specified dollar amount being slightly more than the "pay proper" of an Army officer of corresponding grade, a Navy officer's retired pay entitlement was slightly larger than that of his Army counterpart.

The Appropriation Acts of 1871 for the Army and Navy (Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, §24, 16 Stat. 315, 320 (1870), and Act of July 15, 1870 (Navy Appropriation Act of 1871), ch. 295, §3, 16 Stat. 321, 330-332 (1870)) created an active duty salary system for officers and did away with commutations for rations. Since the existing retired pay formula had been based in part on commuted rations, it had to be changed also. Retired pay based on age or years of service was fixed

as 75 percent of base and longevity pay for Army and Marine Corps[4] officers, Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, §24, 16 Stat. 315, 320 (1870), and as 50 percent of sea duty pay for Navy officers, Act of July 15, 1870 (Navy Appropriation Act of 1871), ch. 295, §5, 16 Stat. 321, 333 (1870). The Act of March 13, 1873, ch. 230, §1, 7 Stat. 547 (1873), raised retired pay for Navy officers to 75 percent of sea duty pay. In addition to changing the retired pay formula, the Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, §4, 16 Stat. 315, 317 (1870), authorized the voluntary retirement, again at the discretion of the President, of Army and Marine Corps[5] officers after 30 years of service.

The Act of June 30, 1882, ch. 254, 22 Stat. 117, 118 (1882), made retirement mandatory at age 64 for officers of all branches of service. The existing authority for involuntary but non-mandatory retirement of officers with 45 years of service or at age 62 was not disturbed. The Act of June 30, 1882, ch. 254, *id.*, also gave officers an absolute right to voluntary retirement after 40 years of service. Earlier laws had authorized voluntary retirement at this service point, but had given the President the power to grant or deny such retirement.

The Act of March 3, 1899, ch. 413, §8, 30 Stat. 1004, 1006 (1899), introduced an unusual retirement program for Navy officers, the main purpose of which evidently was to improve promotion opportunities. It permitted officers in the grades of lieutenant commander through captain--today's pay grades O-4 through O-6--to request voluntary retirement regardless of age or length of service. Officers making such requests were placed on a list of "applicants for voluntary retirement." If a specified number of promotion vacancies did not occur through "normal" attrition--death, resignation, age or service retirement, disability retirement--during a fiscal year, the applicants were retired in order of seniority in a number sufficient to create the desired number of vacancies. If

[4] Although the Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, 16 Stat. 315 (1870), dealt only with the Army, Marine Corps officers received the same treatment as Army officers by virtue of a special linkage provision.

[5] See footnote 4 to this chapter, above.

voluntary retirements failed to achieve the specified vacancy level for any grade, the additional numbers needed to meet the requirement were obtained through involuntary retirements. This "promotion flow" retirement program remained in effect until 1915. The Act of May 13, 1908 (Naval Service Appropriation Act of 1909), ch. 166 [Public Law 115, 60th Congress], 35 Stat. 127, 128 (1908), authorized the voluntary retirement of Navy officers after 30 years of service.

The Act of August 29, 1916 (Naval Service Appropriation Act of 1917), ch. 417 [Public Law 241, 64th Congress], 39 Stat. 556, 578-579 (1916), brought two new principles to the non-disability retirement system. First, it established a retirement program integrated with an up-or-out selective promotion plan, and second, it initiated use of the formula that was, until 1980, the basis for determining retired pay entitlements--namely, 2.5 percent of final monthly basic pay for each year of service up to 30, or a maximum of 75 percent of basic pay.[6] The Naval Service Appropriation Act of 1917, ch. 417, *id*., also introduced the practice of rounding years of service in the computation of retired pay entitlements, under which a partial year of six months or more was counted as a whole year, and a partial year of less than six months was not counted. The act permitted the Secretary of the Navy to convene annual selection boards to select officers for promotion to the grades of rear admiral, captain, and commander. A captain who reached age 56 without having been selected for promotion to the next higher grade became ineligible for further consideration for promotion and had to be retired; the corresponding ages for commanders and lieutenant commanders were 50 and 45, respectively. An officer so retired was entitled to retired pay of 2.5 percent of the shore duty pay[7] of his grade for each year of service, not to exceed 75 percent of such pay.

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[6] This formula is still the formula used to determine monthly retired and retainer pay entitlements for all persons who first became members of the uniformed services before September 8, 1980. See discussion of the Department of Defense Authorization Act, 1981, Public Law 96-342, 94 Stat. 1077 (1980), in this chapter, below. (The 2.5 percent times years-of-service formula is subject to adjustment, in the case of enlisted members of the Armed Forces, for "extraordinary heroism." See footnote 51 to this chapter, below.)

[7] See Chapter II.D.3.d., "Special Pay for Career Sea Duty," above, for a discussion of sea and shore duty pay for Navy personnel.

The Act of June 4, 1920 (National Defense Act Amendments of 1920), ch. 227 [Public Law 242, 66th Congress], §24, 41 Stat. 759, 773-774 (1920), adding a new Section 24b to the Act of June 3, 1916 (National Defense Act of 1916), ch. 134 [Public Law 85, 64th Congress], 39 Stat. 166 (1916), provided for the evaluation of Army officers and their separation into two classes-- Classes A and B. An officer identified as "inefficient" was placed in Class B and further evaluated; all officers not so identified were deemed Class A officers. A Class B officer was retired if he had at least 10 years of commissioned service and the evaluation board affirmed his "B" classification and found that it was not due to his own "neglect, misconduct, or avoidable habits." Unless he had been appointed at age 46 or older, a retired Class B officer was entitled to retired pay of 2.5 percent for each of his years of commissioned service, not to exceed 75 percent; if he had been appointed at age 46 or older, he was entitled, in a rare departure from the 2.5 percent-per-year principle, to a 4-percent-per-year multiple in computing retired pay, though the 75 percent ceiling continued to apply. Class A officers were continued in service, subject to future reclassification.

The Act of June 30, 1922 (War Department Appropriation Act of 1923), ch. 253 [Public Law 259, 67th Congress], 42 Stat. 716, 721-722 (1922), required a reduction in the strength of the Army, and the retirement system was used to help effect the reduction. The act provided for a "plucking" board to eliminate officers from the active list. Those chosen for elimination could be retired if they had at least 10 years of commissioned service. Officers "plucked" for retirement after more than 20 years of commissioned service were entitled to retired pay of three percent for each year of such service, not to exceed 75 percent; those retired with between 10 and 20 years of commissioned service had the same entitlement, except that their multiple was 2.5 instead of three percent. The act also authorized retirement in the rank of warrant officer for eliminated officers with less than 10 years of commissioned service but at least 20 years of total service. Affected officers were entitled to two percent of the pay of such rank for each year of service. While the act did not place a 75 percent ceiling on this computation, it appears doubtful that any officer retired under this provision would have had the 38 or more years of service needed to attain a retired pay entitlement in excess of 75 percent.

The Act of June 22, 1926, ch. 649 [Public Law 412, 69th Congress], 44 Stat. 761 (1926), replaced the Navy's age-in-grade promotion program with one based on service-in-grade. Under this act, a captain who had completed 35 years of service without being selected for promotion became ineligible for further consideration and had to be retired; the break points for commanders and lieutenant commanders were 28 years and 21 years, respectively. The Act of May 29, 1934, ch. 367 [Public Law 263, 73d Congress], §1, 48 Stat. 811, 811-812 (1934), provided that the promotion and retirement systems for commissioned officers of the Navy--including those "hereafter enacted"--should thenceforth apply to commissioned officers of the Marine Corps. A second law enacted the same day altered the promotion and retirement provisions affecting Navy junior officers. The Act of May 29, 1934, ch. 368 [Public Law 264, 73d Congress], §4, 48 Stat. 814 (1934), amending the promotion provisions of the Act of March 3, 1931, ch. 397 [Public Law 784, 71st Congress], §3, 46 Stat. 1482, 1483 (1931), extended the selection program for promotion to the grades of lieutenant commander and lieutenant and provided that a lieutenant who had not been selected for promotion after 14 years of service, or a lieutenant (junior grade) who had not been selected after seven years, had to be retired. The Act of July 22, 1935, ch. 402 [Public Law 212, 74th Congress], §3, 49 Stat. 487, 488 (1935), amended this feature by stipulating that lieutenants or lieutenants (junior grade) who had not been selected for promotion by the 14- or 7-year points, respectively, could be retained on the active list as additional numbers in grade until they completed 21 or 14 years of service, respectively, and then retired. Retired pay under all these laws was computed at the standard rate of 2.5 percent per year of service, up to a 75 percent ceiling. The 7-year retirement provision of the Act of May 29, 1934, ch. 368 [Public Law 263, 73d Congress], §1, 48 Stat. 811, 811-812 (1934), is notable as representing the shortest length of service ever fixed for non-disability retired pay eligibility.

The Act of July 31, 1935, ch. 422 [Public Law 225, 74th Congress], §5, 49 Stat. 505, 507 (1935), authorized the voluntary retirement of Army officers after 15 years of service, with retired pay of 2.5 percent for each year of service up to a ceiling of 75 percent. This 15-year authority was intended as a temporary measure to help relieve an

officer "hump" created by a large influx of World War I officers into the Regular Army. Notwithstanding its temporary purpose, the 15-year authority, though it was suspended during World War II, remained in effect until 1948.

The Act of June 23, 1938, ch. 598 [Public Law 703, 75th Congress], 52 Stat. 944 (1938), revised the Navy's officer selection and retirement processes to provide a "merit system for promotion" that became the model for the present promotion and retirement system. The act required that captains, commanders, and lieutenant commanders who had twice failed of selection for promotion to the next higher grade be retired after completion of 30, 28, and 26 years of commissioned service, respectively. Act of June 23, 1938, ch. 598, id., §12(d), 52 Stat. at 949. The act also authorized the voluntary retirement of Navy officers after 20 years of commissioned service. Act of June 23, 1938, ch. 598, *id*., §12(e), 52 Stat. at 950. The "standard" retired pay formula --2.5 percent per year of service--was used for both voluntary and involuntary retirements under the act. Act of June 23, 1938, ch. 598, *id*., §12(b) and (e), 52 Stat. at 949, 950.

The Act of February 21, 1946, ch. 34 [Public Law 305, 79th Congress], §3, 60 Stat. 26, 27 (1946), authorized the Secretary of the Navy to convene boards to consider and recommend officers in the grades of captain or below, in the case of the Navy, or colonel or below, in the case of the Marine Corps, for involuntary retirement or elimination. It also lowered the statutory retirement age for Navy and Marine Corps officers from 64 to 62, Act of February 21, 1946, ch. 34, *id*., §9, 60 Stat. at 28-29, and permitted voluntary retirement after 20 years of active service at least 10 years of which consisted of commissioned service, Act of February 21, 1946, ch. 34, *id*., §6, 60 Stat. at 27, with retired pay to be computed under the "standard" 2.5 percent per year formula, Act of February 21, 1946, ch. 34, *id*., §7, 60 Stat. at 27. The purpose of the act was to provide a means to break up the officer logjam that had arisen out of the large number of World War II accessions who could no longer be effectively employed. The act's "plucking" board authority expired June 30, 1949, but its other retirement provisions became permanent law.

The Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch. 708 [Public Law 810, 80th Congress], §202, 62 Stat. 1081, 1084 (1948), authorized the voluntary retirement of Army and Air Force officers after 20 years of active service at least 10 years of which consisted of commissioned service, with retired pay computed by the standard 2.5 percent formula. This law resulted, for the first time in history, in uniform voluntary retirement authority among the officers of all branches of service.

The Officer Personnel Act of 1947, ch. 512 [Public Law 381, 80th Congress], 61 Stat. 795 (1947), as amended by the Officer Grade Limitation Act of 1954, ch. 180 [Public Law 349, 83d Congress], 68 Stat. 85 (1954), was for nearly 35 years the main authority for the officer promotion and involuntary retirement systems for the Armed Forces. Although it incorporated all the systems in one piece of legislation, the act was a product of separate service planning and policies and its Army and Air Force program was different from that of the Navy and Marine Corps. The principal involuntary retirement provisions of the Officer Personnel Act of 1947, ch. 512, *id*., were:

| **Pay Grade** | **Army and Air Force** | **Navy and Marine Corps** |
|---|---|---|
| O-10, O-9 | Retired after 5 years in grade or 35 years of service, but retirement could be deferred to age 64. | Retired after 5 years in grade and 35 years of service, unless selected for continuation. |
| O-8 | Retired after 5 years in grade or 35 years of service, but retirement could be deferred to age 60. | Retired after 5 years in grade and 35 years of service, unless selected for continuation. |
| O-7 | Retired after 5 years in grade or 30 years of service, but retirement could be deferred to age 60. | Rear Admiral (lower half)-- retired after 5 years in grade and 35 years of service unless selected for continuation; Brigadier General USMC— retired after second failure of selection for promotion. |
| O-6 | Retired after 5 years in grade or 30 years of service. | Retired after 30 years of service if twice failed of selection for promotion or after 31 years if not twice failed. |

| | | |
|---|---|---|
| O-5 | Retired after 28 years of service. | Retired after 26 years of service if twice failed of selection for promotion. |
| O-4, O-3 | When twice passed over for promotion: Retired if with 20 or more years of service; retained to complete 20 years and then retired if within 2 years of 20-year point; eliminated with severence pay if less than 18 years of service. | Retired after 20 years of service if twice failed of selection for promotion; other grades eliminated with severance pay if twice failed of selection for promotion. |

In the Defense Officer Personnel Management Act (DOPMA), adopted December 12, 1980, Public Law 96-513, 94 Stat. 2835 (1980), Congress, after some 30 years of experience with these involuntary retirement and force management provisions, and believing that the apparent differences in the treatment accorded officers in different branches of service did not in fact reflect "actual management needs," set out to provide unified retirement authority in an effort to make the career expectations of members more "clearly defined and uniform ... across the services."[8] The principal provisions of DOPMA relating to involuntary retirement or release from active duty of officers in different pay grades are set out below:

| **Pay Grade** | **Retirement Provisions** |
|---|---|
| O-10, O-9 | Retired at age 62 unless selected by the President for continuation on active duty, in which case retirement could be deferred, but not past age 64. |
| O-8 | Unless specially selected for continuation, retired after five years in grade or upon completion of 35 years of active commissioned service, whichever was later. |
| O-7 | Unless specially selected for continuation or upon a list of officers recommended for promotion, retired after five years in grade or upon completion of 30 years of active commissioned service, whichever was later. |
| O-6 | Unless specially selected for continuation or upon a list of officers recommended for promotion, retired after 30 years of active commissioned service. |

[8] House Report No. 96-1462 (Committee on Armed Services), p. 53, accompanying S. 1918, 96th Congress, 2d Session (1980); also see *id*., pp. 48 and 52.

| | |
|---|---|
| O-5 | Unless specially selected for continuation or upon a list of officers recommended for promotion, retired after 28 years of active commissioned service. |
| O-4, O-3 | If eligible for retirement, retired after having twice failed of selection for promotion to the next higher grade, unless specially selected for continuation on active duty. If not eligible for retirement, continued on active duty if within two years of becoming eligible for retirement and retired when eligible; otherwise, discharged with entitlement to separation pay if eligible therefor, unless specially selected for continuation on active duty. An officer in pay grade O-4 who was selected for continuation could not be continued on active duty beyond completion of 24 years of active commissioned service unless promoted to the next higher grade; a similar officer in pay grade O-3 could not be continued beyond completion of 20 years of active commissioned service unless promoted to the next higher grade. |
| O-2 | If eligible for retirement, retired after having twice failed of selection for promotion to the next higher pay grade; if not eligible for retirement, continued on active duty if within two years of becoming eligible for retirement and retired when eligible, otherwise discharged with entitlement to separation pay if eligible therefor. |
| O-1 | Could at any time be discharged if less than five years of active commissioned service or if found not qualified for promotion to the next higher pay grade. |

In addition to the above, officers in pay grades O-8, O-7, and O-6 who had at least four years in grade and were not on a list recommended for promotion, together with officers in pay grade O-5 who twice failed of selection for promotion to the next higher pay grade, could be considered for selective early retirement and, if selected, were to be retired either immediately or as soon as they became eligible.[9] Officers in pay grades O-8 through O-5 who were selected for continuation on active duty could not be so continued for more than five years or beyond the time they reached age 62, whichever occurred first.[10]

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[9] In adopting this provision, Congress indicated the selective retirement authority was "to be used sparingly and ... primarily as a means of reducing the number of officers in [the affected] grades when necessary to accommodate to such actions as a reduction in officer personnel strengths. These provisions are not intended to be used solely for the purpose of maintaining or improving promotion opportunity or timing." Senate Report No. 96-375 (Committee on Armed Services), p. 7, accompanying S. 1918, 96th Congress, 1st Session (1979). Also see House Report No. 96-1462 (Committee on Armed Services), p. 53, accompanying S. 1918, 96th Congress, 2d Session (1980).

[10] In addition to the changes to the retirement system outlined above, the Defense Officer Personnel Management Act, Public Law 96-513, §112, 94 Stat. 2835, 2876 (1980), established, subject to waiver only

The Warrant Officer Act of 1954, ch. 249 [Public Law 379, 83d Congress], §14, 68 Stat. 157, 162-163 (1954), established separate retirement rules for warrant officers, including commissioned warrant officers. Under the act a warrant officer could be retired at his own request after 20 years of active service and was required to be retired at age 62 or upon completion of 30 years of active service, whichever occurred first. Retired pay for warrant officers under the act was computed at the standard rate of 2.5 percent times years of service, not to exceed 75 percent.

The legislative authority for non-disability retirement for enlisted personnel is of more recent vintage than that for officers. This is in large part due to the fact that the reasons underlying the development and establishment of the earliest forms of non-disability retirement authority were to provide for involuntary retirement of superannuated officers--in order to promote efficiency, to obtain a youthful and vigorous officer force, and to improve promotion opportunities for younger officers--whereas the same objectives could be met, in the case of the enlisted force, by a judicious policy of non-acceptance of applications for reenlistment. It was only after officers obtained voluntary retirement authority--in order to make the choice of career service in the Armed Forces competitive with reasonably available non-military alternatives, to provide a measure of economic security for retired Armed Forces personnel, and to provide a pool of experienced personnel who could be called on in time of war or national emergency to augment the active-duty forces on short notice--that the question of retirement authority for enlisted personnel came to the fore.

The Act of February 14, 1885, ch. 67, 23 Stat. 305 (1885), provided the first enlisted non-disability retirement authority. It authorized the voluntary retirement, at the discretion of the Secretary concerned, of Army and Marine Corps enlisted personnel after 30 years of service. Retired pay for such personnel was fixed at 75 percent of the active duty pay of an affected member, plus an allowance in lieu of quarters, fuel, and light. The

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by the President, a three year time-in-grade requirement for voluntary retirement; it also explicitly provided that retired members of Regular components of the Armed Forces could be recalled to active duty at any time, DOPMA, Public Law 96-513, *id*., §106, 94 Stat. at 2868, which added 10 U.S.C. §688.

30-year retirement privilege was extended to enlisted personnel of the Navy by the Act of March 3, 1899, ch. 413, §17, 30 Stat. 1004, 1008 (1899). The Act of March 2, 1907, ch. 2515 [Public Law 174, 59th Congress], §1, 34 Stat. 1217, 1217-1218 (1907), consolidated the 30-year voluntary retirement authority for the enlisted personnel of all branches of service.

The Act of August 29, 1916 (Naval Service Appropriation Act of 1917), ch. 417 [Public Law 241, 64th Congress], 39 Stat. 556, 587, 589-591 (1916), created the Fleet Naval Reserve to provide a pool of experienced personnel who could be recalled to active duty on short notice in time of war or emergency. While there are technical differences between the Fleet Naval Reserve, now divided into separate entities named the Fleet Reserve and the Fleet Marine Corps Reserve, and the retired list, and though the pay received by Fleet Reserve members is known as "retainer" rather than "retired" pay, transfers to the Fleet Reserve are for practical purposes the same as retirements. The Act of August 29, 1916, ch. 417, *id*., permitted enlisted personnel of the Navy and Marine Corps to voluntarily transfer to the Fleet Reserve or the Fleet Marine Corps Reserve after 16 or more years of active service. Those with between 16 and 20 years of service were entitled to retainer pay equal to one-third of their base and longevity pay. Those with 20 or more years of service were entitled to one-half their base and longevity pay.

The Act of February 28, 1925 (Naval Reserve Act of 1925), ch. 374 [Public Law 512, 68th Congress], §23, 43 Stat. 1080, 1087 (1925), fixed the minimum length of active service required for transfer to the Fleet Reserve or Fleet Marine Corps Reserve at 20 years.[11] [12] The retainer pay formula for 20-year transferees was continued as one-half of base and longevity pay. The Naval Reserve Act of 1938, ch. 690 [Public Law 732, 75th Congress], §203, 52 Stat. 1175, 1178 (1938), authorized a 10 percent increase in retainer

[11] In a saving provision, the 16-year retirement authority for personnel on active duty on July 1, 1925, was preserved. Act of February 28, 1925 (Naval Reserve Act of 1925), ch. 374 [Public Law 512, 68th Congress], §24, 43 Stat. 1080, 1087 (1925).

[12] For parallel provisions affecting the Fleet Marine Corps Reserve, see Act of February 28, 1925 (Naval Reserve Act of 1925), ch. 374 [Public Law 512, 68th Congress], §2, 43 Stat. 1080, 1080-1081 (1925).

pay for personnel whose conduct marks had averaged 95 percent during their terms of active service or who had been credited with extraordinary heroism in the line of duty. The Act of August 10, 1946, ch. 952 [Public Law 720, 79th Congress], §3, 60 Stat. 993, 994 (1946), again changed the retainer pay formula to the standard rate of 2.5 percent times years of service, now up to a maximum of 75 percent, and eliminated the extra 10 percent for good conduct, but not for extraordinary heroism.

The Act of October 6, 1945, ch. 393 [Public Law 190, 79th Congress], §4, 59 Stat. 538, 539 (1945), authorized the voluntary retirement and transfer to the reserve of Army enlisted personnel with at least 20 but not more than 29 years of active service, with monthly retired pay to be computed at 2.5 percent of the last six month's average monthly pay times the number of years of service, up to a maximum of 29 years. As is readily apparent, this formula deviated from the "standard" in two ways--it used an average pay rather than terminal pay as its base, and the highest multiple it allowed was 72.5 percent instead of 75 percent (since only 29 years of service could be used in the computation). The Act of August 10, 1946, ch. 952 [Public Law 952, 79th Congress], §6, 60 Stat. 993, 995-996 (1946), rectified this situation by permitting retirements up to the 30-year point and by providing for the computation of retired pay under the standard formula. It also provided a 10 percent increase in retired pay for extraordinary heroism.

Before adoption of the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, 94 Stat. 1123 (1980), only regular enlisted members of the Army and Air Force could retire, after completion of 20 or more years of active service, with immediate entitlement to retired pay. While Army and Air Force Reserve enlisted members could in fact retire upon completion of 20 years of active service, they were not, under preexisting law, eligible to receive retired pay until they reached 60 years of age, in contrast to retired enlisted members of the Navy and Marine Corps Reserve components, who could retire after 20 years of active service with immediate entitlement to retired pay. To remedy this disparity in treatment, and to insure that there were no unnecessary disincentives to enlisted service in the Army and Air Force Reserve, Congress, in the Military Personnel and Compensation Amendments of 1980, Public Law 96-343,

§9(a)(1) (Army) and (b)(1) (Air Force), 94 Stat. 1123, 1128-1129 (1980), authorized twenty-year retirement, with immediate entitlement to retired pay, for Army and Air Force Reserve enlisted members.[13] [14] [15]

The Department of Defense Authorization Act of 1981, Public Law 96-342, §813(a)(1) and (b)(3)(A), 94 Stat. 1077, 1100-1103 (1981), effected the first major change in the computation of retired or retainer pay entitlements since uniform voluntary retirement authority was adopted for officers of all branches of service in the Army and Air Force Vitalization and Retirement Equalization Act of 1948. Under the 1981 Authorization Act, the retired or retainer pay of any member of an armed force who first became a member on or after the date of enactment of the act[16] is computed on the basis of the member's "monthly retired pay base," or "monthly retainer pay base," as applicable, instead of on the basis of the member's terminal basic pay. In practice, a member's monthly retired or retainer pay base is, in turn, an average of the member's highest three years of basic pay. As noted in the relevant Congressional Report:

> The committee recommends this change because of the high and increasing costs of military retired pay and because of the need to increase pay for military personnel while they serve on active duty instead of after their active duty careers are finished. The use of the highest three years pay instead of just terminal basic pay is the same computation used for Federal Civil Service retirement and has been endorsed by the Interagency Committee, the Defense

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[13] See, *e.g.*, Senate Report No. 96-424 (Committee on Armed Services), pp. 24-26, accompanying H.R. 5168, 96th Congress, 1st Session (1979).

[14] The 20-year retirement authority here in issue for enlisted members of the Army and Air Force Reserve is different from the 20-years-of-satisfactory-federal-service retirement authority for members performing non-Regular service: the present 20-year retirement authority relates to 20 years of active-duty service by enlisted members of the Army and Air Force Reserve. See discussion of retirement authority for members of the Armed Forces performing non-Regular service in Chapter III.B.2., "Retired Pay for Non-Regular Service," immediately following the present chapter.

[15] A regular enlisted member of the Army or Air Force who retires under this authority with less than 30 years of active service becomes a member of the Army or Air Force Reserve, with "such active duty [requirements] as may be prescribed by law," until the total of the member's active and Reserve service equals 30 years.

[16] The Department of Defense Authorization Act, 1981, Public Law 96-342, 94 Stat. 1077 (1980), was enacted September 8, 1980.

Manpower Commission, and the President's Commission on Military Compensation.[17] [18]

Persons who were members of the Armed Forces before the date of enactment were excluded from the new computational method for determining retired or retainer pay entitlements in order to avoid changing the rules after they might have made career decisions on the basis of the preexisting retirement rules and out of concern that such a change could have an adverse effect on the retention of certain critical classes of personnel.

Having adopted a "high three-year average" in an attempt to contain what was generally perceived as rapidly mounting military retirement cost liabilities, Congress next took affirmative steps to get better and more complete information on the future retirement costs associated with the current active duty force. In the Department of Defense Authorization Act, 1984, Public Law 98-94, §925, 97 Stat. 614, 644-648 (1983), Congress established an accrual accounting system for retired pay. This system--implemented as the Department of Defense Military Retirement Fund--gives Congress and the Department of Defense direct and immediate information on the future retirement costs associated with current manpower decisions.[19] Under the accrual accounting system, an additional percentage of the annual appropriation for basic pay for members of the Armed Forces--amounting in 1986 to approximately 51 percent of the basic pay

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[17] Senate Report No. 96-826 (Committee on Armed Services), p. 130, accompanying H.R. 6974, 96th Congress, 2d Session (1980). Also see House Report No. 96-1222 (Committee of Conference), p. 98, and Senate Report No. 96-895 (Committee of Conference), p. 94, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

[18] In accordance with Congress's declared intent "to increase pay for military personnel while they serve on active duty instead of after their active duty careers are finished," the Department of Defense Authorization Act, 1981, Public Law 96-342, §801(b)(1), 94 Stat. 1077, 1090-1091 (1980), also provided an 11.7 percent increase for the cash elements of regular military compensation--namely, basic pay, basic allowance for quarters, and basic allowance for subsistence--effective October 1, 1980, and the Uniformed Services Pay Act of 1981, Public Law 97-60, §101(b)(1)-(3), 95 Stat. 989, 989-992 (1981), provided a further 14.3 percent increase to those same cash elements of military compensation, this time with an effective date of October 1, 1981.

[19] The background and reasons for adoption of the Department of Defense Military Retirement Fund, codified as Chapter 74 of Subtitle A, Part I, Title 10, United States Code, "Armed Forces," 10 U.S.C. §§1461-1467, are discussed in more detail in Appendix I, below.

account for all members of the Armed Forces[20]--is separately appropriated for the Department of Defense Military Retirement Fund in order to defray the future costs of retirement benefits earned during the year covered by the appropriation.

In addition to establishing an accrual accounting system for military retired and retainer pay entitlements, the Department of Defense Authorization Act, 1984, made three other changes to the retirement system that were also expressly intended to contain military retirement costs. The first of the changes, adopted as Section 921 of the 1984 Authorization Act, Public Law 98-94, *id*., §921, 97 Stat. at 640-641, repealed the one-year "look-back" provision of prior law. Under the one-year "look-back" rule, military retirees were permitted to base their retired or retainer pay either on the pay scale in effect on the date of their retirement or on the immediately preceding pay scale as adjusted for changes in the cost of living pursuant to 10 U.S.C. §1401a, whichever was greater. The 1984 Authorization Act eliminated the latter option, basically because of budgetary concerns.[21]

The second change, adopted as Section 922 of the 1984 Authorization Act, Public Law 98-94, *id*., §922, 97 Stat. at 641-642, required that monthly retired or retainer pay entitlements, both as initially computed and as subsequently adjusted pursuant to 10 U.S.C. §1401a, be rounded down to the next lower full dollar. As explained by the Senate Committee on Armed Services:

> The Committee proposal to round down monthly retired [and retainer] pay to the next lower dollar is consistent with the provisions of the Omnibus Reconciliation Acts of 1981 and 1982 which rounded down monthly Social Security benefits and civil service annuities, respectively. Although each [military] retiree would only lose from $.12 to $11.88 per year, the Department of

[20] See, *e.g*., Senate Report No. 99-292 (Committee on Armed Services), p. 3, accompanying S. 2395, 99th Congress, 2d Session (1986) (relating to the legislative proposal ultimately enacted as the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986), but discussing the Department of Defense Military Retirement Fund).

[21] See, *e.g*., House Report 98-352 (Committee of Conference), p. 227, Senate Report No. 99-213 (Committee of Conference), p. 227, and Senate Report No. 98-174 (Committee on Armed Services), pp. 219-220, accompanying S. 675, 98th Congress, 1st Session (1983).

Defense estimates that rounding down would save an estimated $9 million annually through fiscal year 1987.[22]

The third of the changes, adopted as Section 923 of the 1984 Authorization Act, Public Law 98-94, *id*., §923, 97 Stat. at 642-644, terminated the so-called "six-month rounding rule" for computing retired and retainer pay entitlements. Under the "six-month rounding rule," members of the Armed Forces who were eligible to retire and had fractional years of service could, in computing retired or retainer pay entitlements, round their years of service to the next highest whole year for the purpose of computing retirement multipliers if they had six or more months of fractional years of service, whereas members with less than six months of fractional years of service were required to round their years of service down to the next lowest whole year. For several years prior to adoption of the 1984 Authorization Act, Public Law 98-94, *id*., however, budget constraints, as reflected in the Department of Defense Appropriation Acts for 1982 and 1983, had required members with six or more months of fractional years of service to round down to the next lowest whole month, while members with less than six months of fractional years of service lost all credit for any fractional years of service. The 1984 Authorization Act required all members to round to the next lowest whole month for the purpose of determining retirement pay multipliers.[23]

Armed with information gained from the new accrual accounting system, Congress next took action to require a $2.9 billion reduction in non-disability retirement cost accruals for fiscal year 1986. In the Department of Defense Authorization Act, 1986, Public Law 99-145, §667, 99 Stat. 583, 659-661 (1985), Congress required the Department of Defense to produce a report and draft legislation "proposing two separate

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[22] Senate Report No. 98-174 (Committee on Armed Services), p. 219, accompanying S. 675, 98th Congress, 1st Session (1983). Also see House Report No. 98-352 (Committee of Conference), p. 227, and Senate Report No. 98-213 (Committee of Conference), p. 227, accompanying S. 675, 98th Congress, 1st Session (1983).

[23] See House Report No. 98-107 (Committee on Armed Services), p. 213, accompanying H.R. 2969, 98th Congress, 1st Session (1983). Also see House Report No. 98-352 (Committee of Conference), p. 227, Senate Report No. 98-213 (Committee of Conference), p. 227, accompanying S. 675, 98th Congress, 1st Session (1983).

sets of changes" to effect the desired reduction. According to Congressional direction contained in the 1986 Authorization Act, the "proposed changes" should "apply only to individuals who initially become members of the Armed Forces after the effective date of such changes" and should also, "to the maximum extent possible and consistent with military requirements, encourage members who are eligible for retirement to remain on active duty beyond 20 years of service."[24] In response to this mandate, the Secretary of Defense submitted a report and draft legislation to Congress in November 1985.[25]

After reviewing the report and draft legislation submitted by the Secretary of Defense, Congress, in the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986), made certain structural changes to the military retirement system. As Congress stated:

> The uniformed services retirement system has existed essentially unchanged for the last 50 years, and its basic form was established over a century ago. During the past two decades, the uniformed services retirement system has come under increasing scrutiny and attack. By recommending the [current] changes ..., the conferees are attempting to put the issue of structural reform of the uniformed services retirement system to rest for the foreseeable future. The conferees believe that, as a result of these changes, the criticism of the uniformed services retirement system will subside and the concerns of service members regarding the uncertainty of retirement benefits can be assuaged.
>
> The conferees emphasize that the changes to the uniformed services retirement system included in this conference report would apply only to those who first become members of a uniformed service on or after August 1, 1986. No member who had joined a uniformed service before that date--much less any current retiree of a uniformed service--would be affected.

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[24] See, *e.g.*, House Report No. 99-235 (Committee of Conference), pp. 437-438, and Senate Report No. 99-118 (Committee of Conference), pp. 437-438, accompanying S. 1160, 99th Congress, 1st Session (1985). Also see, *e.g.*, House Report No. 99-81 (Committee on Armed Services), pp. 245-250, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

[25] The "report" submitted by the Secretary of Defense in response to the requirement of Section 667 of the Department of Defense Authorization Act, 1986, Public Law 99-145, §667, 99 Stat. 583, 659-661 (1985), is set out in full in House Report No. 99-513 (Committee on Armed Services), pp. 91-126, accompanying H.R. 4420, and in Senate Report No. 99-292 (Committee on Armed Services), pp. 27-62, accompanying S. 2395, 99th Congress, 2d Session (1986).

Most of the features of the current uniformed services retirement system are well known.

(1) An immediate annuity is available to a service member who completes 20 years of service; no benefit is available to a service member who does not complete 20 years of service.

(2) Retired pay equals high-3 average basic pay times a multiplier. (For those becoming members of a uniformed service for the first time before September 7, 1980, [*sic*][26] retired pay is based on final basic pay instead of high-3 average basic pay.) The multiplier equals 2 1/2 percent times years of service and ranges from 50 percent at 20 years of service to 75 percent at 30 or more years of service.

(3) Retired pay is adjusted annually by the increase in the cost of living as measured by the consumer price index (CPI).

The uniformed services retirement system is non-contributory. However, the service member contributes, while on active duty, to the social security system and, thereby, earns eligibility for a social security retirement benefit. The receipt of uniformed services retired pay has no effect on social security retirement benefits and vice versa.

The conferees agreed to change the uniformed services nondisability retirement system as follows:

(1) The formula for the multiplier would remain unchanged--2.5 percent for each year of service up to 30 years of service. However, for members who retire with less than 30 years of service, the multiplier would be reduced by 1 percentage point [from what it otherwise would have been] for each year of service the member retired [with] less than 30 [years of service]. The reduction would be eliminated when the member reached age 62.

(2) The cost-of-living adjustment mechanism would be changed to provide CPI minus 1 for life with a one time restoral in the purchasing power of the annuity at age 62.

With regard to the multiplier, the formula would provide a two-tiered retirement annuity: a reduced annuity between the time the member retires from the uniformed service and the normal retirement age and an unreduced annuity thereafter.

For example, a member who retires with twenty years of service would receive retired pay based on a multiplier of 40 percent from retirement until age 62 and retired pay based on a multiplier of 50 percent thereafter. For a member

[26] Should read "before September 8, 1980." See, *e.g.*, 10 U.S.C. §1406.

who retires with 30 years of service, no reduction in the multiplier would be made and retired pay would be based on the maximum multiplier of 75 percent.[27]

Thus, under the "Redux" system of uniformed services retirement effected by the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986), new and generally lower percentage multipliers are used in determining the initial retired or retainer pay entitlement of persons who first became members of the uniformed services on or after August 1, 1986--except for members who do not retire until they reach age 62 or who retire with 30 or more years of creditable service. As indicated in the language of the House-Senate Conference Report previously quoted, the new percentage multipliers in the Redux system are determined by taking the product of a member's years of "creditable service" times two and one-half percent and reducing that factor, stated as a percentage, by one percentage point for each full year of service by which the member retires with less than thirty years of "creditable service," and reducing by a further one-twelfth of a percentage point for each month by which the member's years of "creditable service" are less than a full year.[28] Thus, for example, a member less than 62 years of age who retired with twenty-five years and four months of "creditable service" would have a percentage multiplier of fifty-eight and two-thirds percent--determined by multiplying twenty-five and four-twelfths by two and one-half percent and subtracting from that total, stated as a percentage, four and eight-twelfths percentage points. The percentage multiplier, as thus determined for a particular individual, is then applied to the member's "monthly retired or retainer pay base" to determine the member's initial retired or retainer pay entitlement.[29] When the member reaches age 62, the percentage multiplier is then

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[27] House Report No. 99-659 (Committee of Conference), pp. 29-31, accompanying H.R. 4420, 99th Congress, 2d Session (1986). For a discussion of the concerns that led to the above-highlighted amendments to the uniformed services retirement system, see Senate Report No. 99-292 (Committee on Armed Services), pp. 2-5, accompanying S. 2395, 99th Congress, 2d Session (1986). Also see House Report No. 99-513 (Committee on Armed Services), pp. 21-27, accompanying H.R. 4420, 99th Congress, 2d Session (1986).

[28] For the purpose of making the computation in question, the phrase "creditable service" refers to the number of years of service creditable to a member in computing the member's retired or retainer pay.

[29] As is true for members of the uniformed services who first became members before August 1, 1986, the initial retired or retainer pay entitlement of an individual who first became a member of a uniformed service on or after August 1, 1986, is adjusted from time to time to compensate for the effects of increases in the general consumer price level, although the adjustment mechanism that applies to such a member is

adjusted back to what it would have been but for the reduction--in the case of the above example, back to sixty-three and one-third percent--to determine the member's final or permanent retired pay entitlement.[30] As is true for persons who first became members of a uniformed service before August 1, 1986, persons who first became members on or after that date may under no circumstances have a percentage multiplier that exceeds seventy-five percent.

The following table shows the different percentage multipliers that would be applied under the Redux system to the "monthly retired or retainer pay base" of a member of a uniformed service who first became a member of such a service on or after August 1, 1986, in order to determine the member's initial retired or retainer pay entitlement:[31]

| | | New Multiplier | |
|---|---|---|---|
| **Years of Service** | **Old Multiplier** | **Before Age 62** | **After Age 62** |
| 20 | 50.0 | 40.0 | 50.0 |
| 21 | 52.5 | 43.5 | 52.5 |
| 22 | 55.0 | 47.0 | 55.0 |
| 23 | 57.5 | 50.5 | 57.5 |
| 24 | 60.0 | 54.0 | 60.0 |
| 25 | 62.5 | 57.5 | 62.5 |
| 26 | 65.0 | 61.0 | 65.0 |

different from, and lower than, that applicable to an individual who first became a member of a uniformed service before the critical date. See Chapter III.B.4. hereof, below, "Adjustments to Retired and Retainer Pay."

[30] Subject, of course, to future adjustments under 10 U.S.C. §1401a for changes in the consumer price level. See Chapter III.B.4., "Adjustments to Retired and Retainer Pay," below.

[31] The multipliers in question apply only to a member of a uniformed service who first became a member of such a service on or after August 1, 1986, and who subsequently becomes, or will become, entitled to non-disability retired or retainer pay. The multipliers have no application to a member of a uniformed service who first became a member of such a service on or after August 1, 1986, and who subsequently becomes, or will become, entitled to disability retired pay. See Chapter III.B.3., "Disability Retired Pay," below. The only way in which a member of the uniformed service who first became a member of such a service on or after August 1, 1986, and who subsequently becomes, or will become, entitled either to disability retired pay or to retired pay for non-Regular (Reserve) service is affected is through the process by which disability retired pay and retired pay for non-Regular service is adjusted to compensate for the effects of inflation due to increases in the Consumer Price Index. See Chapter III.B.4., "Adjustments to Retired and Retainer Pay," below. (Multipliers are shown only for integral numbers of
years of creditable service. Further adjustments are required to determine multipliers applicable to persons who retire with partial years of creditable service.)

| | | | |
|---|---|---|---|
| 27 | 67.5 | 64.5 | 67.5 |
| 28 | 70.0 | 68.0 | 70.0 |
| 29 | 72.5 | 71.5 | 72.5 |
| 30 | 75.0 | 75.0 | 75.0 |

The relationship between the establishment of the Department of Defense Military Retirement Fund and the proposal and adoption of the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986), was explained by Congress as follows:

> In the past [prior to adoption of the accrual accounting system for military retired and retainer pay in the Department of Defense Military Retirement Fund], appropriations were paid each year to cover the military retired pay actually paid to retirees in that year.
>
> Consequently, when structural changes to the retirement system were proposed, assuming that changes would not apply to individuals already retired (whose retired pay accounted for almost the entire retired pay budget in the near term) and would apply only marginally to those on active duty or who were nearing retirement, no significant change in the cost of the system would be achieved for 10 or 20 years in the future. Any offsetting improvements, such as earlier vesting or a lump sum early withdrawal option, would, in fact, result in higher costs in the near term, thus further reducing the prospects for action on systematic reforms.
>
> Beginning in fiscal year 1985, however, a revised accounting system for military retirement was implemented; a new retirement fund was established outside of the defense budget. The Department of Defense is required to set aside in the fund a percentage of its military payroll sufficient to pay for the projected retirement benefits earned in that year based on the benefits for the group of individuals who join the military that year (but who will retire in the future).
>
> In other words, until fiscal year 1985, the Department of Defense had to pay for retirement benefits earned in the past but due in the present; now the department must pay for retirement benefits as they are earned. The new method of budgeting for military retirement is similar to the "normal cost" calculations made by private sector employers.
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> . . .
>
> A permanent change to the military retirement system carries with it a change to the accrual charge. In other words, a reduction in future benefits means that less money needs to be set aside to pay for benefits for those affected by the change. . . .

> In summary, under the accrual accounting system, a change to the military retirement system that decreased the value of military retired pay for new entrants would immediately decrease budget authority and outlays; such a change would also decrease federal budget authority but would have no effect on overall federal outlays (or the deficit). The only changes that would affect federal outlays in the near-term were changes in the structure of military retirement annuities for those members already retired (including changes in the cost-of-living adjustment), and, to a substantially lesser extent, changes in the structure of benefits for those on active duty who are near retirement at the time of the change.[32]

In other words, adoption of the accrual accounting system for military retired and retainer pay in the Department of Defense Military Retirement Fund made it possible for Congress to reduce apparent defense appropriations for the current year without affecting the retired or retainer pay entitlements of any current retiree or any member of the Armed Forces who had first become a member before August 1, 1986--the effective date of the retirement reform provisions contained in the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986). Given the imperatives to reduce the federal budget deficit in general and Department of Defense appropriations in particular, Congress achieved such reductions by the relatively painless expedient of changing the military retirement system in a way that would affect only persons who first became members of a uniformed service on or after August 1, 1986: the reduction in appropriations was immediate, but the effect of such reductions insofar as the non-disability retired or retainer pay entitlements of particular individuals are concerned would not be felt until the year 2006.

Despite the immediate budgetary benefit of the new system of retirement calculation, in the 1990s Congress concluded that the system had a negative effect on recruitment and retention. A Naval Reserve report summarized the situation thus:

> The perception of an inadequate retirement program consistently surfaces as a primary cause of our recruiting and retention problems. Survey results, combined with feedback gathered by leaders from all the Services, convinced Congress…. that long-term retention is not well served by the REDUX retirement plan.[33]

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[32] House Report No. 99-513 (Committee on Armed Services), pp. 25-27, accompanying H.R. 4420 (subsequently enacted as the Military Retirement Reform Act of 1986), 99th Congress, 2d Session (1986)).

[33] Naval Reserve Facility, Marquette, Wisconsin, "The Importance of DIEMS Date in Determining Your Military Retirement System and Eligibility for the $30K."

In response, in 1999 the Senate Armed Services Committee made the following recommendation:

> The committee recommends a provision that would afford service members who entered the uniformed services on or after August 1, 1986 the option to elect to retire under the pre-1986 military retirement plan or to accept a one-time $30,000 lump sum bonus and to remain under the "Redux" retirement plan. Service members would be permitted to select between the two retirement programs within 180 days of completing 15 years of service. Service members who elect to accept the lump sum bonus would be obligated to serve the remaining five years to become retirement eligible. Those who do not complete the required service would be required to repay a prorated amount based on the unserved amount of the obligation…. The committee believes that the provision fulfills the request of the Joint Chiefs by permitting those subject to the `Redux' retirement system to transfer to the pre-1986 retirement plan. However, those who would prefer to receive a cash bonus may elect to remain under the `Redux' retirement system. The committee believes these options are both cost effective and provide the necessary incentives for mid-career personnel to remain on active duty. [34]

Accordingly, the National Defense Authorization Act for Fiscal Year 2000 provided a set of expanded retirement options for members completing 15 years of active duty. Upon reaching the 15-year service anniversary, a member can choose to have retirement calculated according to the "high-three" formula previously used only for members who entered service between 1980 and 1986. Alternatively, the member can enter the Redux retirement system designated for those entering active service after August 1, 1986. The lower multipliers of that system are counterbalanced by a Career Status Bonus of $30,000, payable to those who execute a written agreement to complete their eligibility for retirement by remaining on continuous active duty for at least five more years. Having gone into effect in 2001, the Career Status Bonus provision makes the choice of retirement systems available to all members who have entered service after August 1, 1986 when those members reach their 15-year service anniversary.

The National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), adopted early retirement authority--for members with between 15 and 20 years of service--as a "temporary additional force

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<http://www.cnsrf.navy.mil/marquette/30k15yearstatusbonus.htm>

[34] Senate Report 106-050 (Armed Services Committee), accompanying S. 1059, 106th Congress, 1st Session (1999).

management tool with which to effect the drawdown of military forces through 1995." National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, id., §4403(a), 106 Stat. at 2702.[35] Under the subject authority, the secretaries of the military departments are authorized to accept applications of members of the Army, the Navy, the Marine Corps, and the Air Force having at least 15 but less than 20 years of service for voluntary early retirement.[36] This early retirement authority is applicable during the "active force drawdown period," which as originally enacted, was defined to be the period beginning on the date of enactment of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, *id*., *i.e*., October 23, 1992, and ending on October 1, 1995.[37] The National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §561(a), 107 Stat. 1547, 1667 (1993), subsequently extended the termination date for the "active force drawdown period" to October 1, 1999. A member whose application for early retirement is accepted is entitled to retired or retainer pay effectively computed by multiplying the member's "retired or retainer pay base" by an adjusted "retired or retainer pay multiplier."[38] The adjusted "retired or retainer pay multiplier" of a member seeking early retirement is determined by multiplying 2.5 percent times the member's years and months of creditable service (counting 1/12th of a year for each month of creditable service in excess of the number of whole years of service) and then subtracting from that result, stated as a percentage, 1/12th of one percent for each full

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[35] See 10 U.S.C. §1293 note for the full text of the early retirement authority adopted by the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992).

[36] As initially enacted, the early retirement authority did not extend to members of the Coast Guard or to the commissioned officer corps of the National Oceanic and Atmospheric Administration or the Public Health Service. Early retirement authority was, however, subsequently extended to members of the Coast Guard with at least 15 but less than 20 years of service by the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §542(d), 108 Stat. 2663, 2769 (1994), and to members of the commissioned officer corps of the National Oceanic and Atmospheric Administration by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §566(c), 110 Stat. 186, 328 (1996).

[37] National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403(i), 106 Stat. 2315, 2704 (1992). See 10 U.S.C. §1293 note.

[38] National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403(e), 106 Stat. 2315, 2703 (1992). See 10 U.S.C. §1293 note.

month by which the member's total months of active service at retirement are less than 240.[39]

In support of the early retirement authority granted by the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992),[40] the Senate Armed Services Committee, which sponsored the proposal, noted:

> The committee anticipates that the active component strength levels of some of the military services in the current DOD Base Force Plan, which total to an active duty strength level of 1,626,300 by the end of fiscal year 1997, are likely to be reduced substantially. The committee expects such a reduction will result from the Defense Department's own revisions to its current Base Force Plan as a result of budget decisions, a more efficient allocation of roles and missions among the military services, a more efficient active/reserve force mix, and other economies and efficiencies that are discussed elsewhere in this report.[41]
>
> In order to cope with the active duty strength reductions that are currently planned by the DOD, the Congress provided authorities to the military services to assist them in implementing the planned reductions prudently. These authorities included separation benefits that the military services could offer to career personnel to induce them to voluntarily separate from active duty.

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[39] A member's normal, or unadjusted, "retired or retainer pay multiplier" is determined under 10 U.S.C. §1409 in one of two ways, depending on when the member first became a member of the Armed Forces. If the member first became a member before August 1, 1986, the "retired or retainer pay multiplier" is determined by multiplying the member's years and months of creditable service (with each full month of creditable service in excess of a full year counted as 1/12th of a year) by 2.5, with that result being stated as a percentage figure, whereas if the member first became a member after July 31, 1986, the "retired or retainer pay multiplier" is computed as above but one percentage point is subtracted for each full year that the member's years of creditable service are less than 30 (plus 1/12th of a percentage point for each month that the member's months of service in addition to his years of service are less than 12). See text accompanying footnotes 28-31 hereof, above. Since the "active force drawdown period," as extended by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §561(a), 107 Stat. 1547, 1667 (1993), ends on October 1, 1999, all members seeking to take advantage of the early voluntary nondisability retirement authority provisions of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), see 10 U.S.C. §1293 note, are necessarily members who first came on active duty before August 1, 1986, and would accordingly have their "retired or retainer pay multipliers" determined as set out above. For a member retiring with exactly 15 years of creditable service, for example, the member's retired or retainer pay entitlement would then be five percent less than what it otherwise would have been but for the adjustment required by National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403(e), 106 Stat. 2315, 2703 (1992). See 10 U.S.C. §1293 note.

[40] See 10 U.S.C. §1293 note.

[41] Senate Report No. 102-352 (Committee on Armed Services), accompanying S. 3114, 102d Congress, 2d Session (1992).

> The committee notes that these authorities have been effective in helping the military services reduce strength in the six to 15-years-of-service element of the career inventory. At the same time, the committee notes that the military services do not have an effective tool to reduce active duty strength in the 15 to 20-year element of the career inventory.
>
> In view of the committee's expectation that the active duty strengths in the current Base Force Plan will be reduced substantially, and in view of the absence of an effective tool that the military services can use to reduce the 15 to 20-year element of the personnel inventory, the committee believes that existing transition provisions should be augmented....
>
> Therefore the committee recommends...
>
> Section 534 [of the Senate bill, S. 3114, 102d Congress, 2d Session (1992)] would authorize active duty personnel who have 15 but less than 20 years of service to apply for and be approved for early retirement. The committee expects the military services to use this authority selectively to trim surpluses in the 15 to 20-year element of the personnel inventory.[42]

The Senate proposal was amended in conference, with the Conference Committee noting:

> The amendment would clarify that the purpose in providing this authority is to give the Department of Defense a temporary, additional force management tool to effect the reduction in military personnel through fiscal year 1995. The amendment would clarify that the Secretaries of the military departments may prescribe appropriate regulations or policies regarding the criteria for eligibility and approval of applications under this section [H.R. 5006, §4403, 102d Congress, 2d Session (1992)]. These criteria may include, but are not limited to, such factors as grade, skill, and years of service. The amendment would provide that the retired pay of a member who retires under this section would be reduced by one percent for each year of service less than 20 years.[43]

In extending the "active force drawdown period" from October 1, 1995, to October 1, 1999, the House-Senate Conference Committee noted as follows:

> The Senate amendment contained a provision ... that would extend through fiscal year 1998 certain temporary authorities which provide tools to the military services for managing personnel reductions, and which provide a

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[42] Senate Report No. 102-352 (Committee on Armed Services), pp. 201-202, accompanying S. 3114, 102d Congress, 2d Session (1992).

[43] House Report No. 102-966 (Committee of Conference), p. 886, accompanying H.R. 5006, 102d Congress, 2d Session (1992).

safety net of benefits for separating military personnel during the defense drawdown.

...

The House ... [proposes to] extend these transition authorities through 1999. The conferees believe that by providing the Department of Defense with these authorities for the foreseeable length of the drawdown, they will encourage DOD to develop and implement coherent, integrated, long-term drawdown plans that will minimize the uncertainties and personnel turbulence associated with such a drawdown.[44]

* * * * *

In summary, as of the date of publication of this sixth edition of the *Military Compensation Background Papers*, three basically similar but slightly different non-disability, active-duty retirement systems were in effect for members of the uniformed services. The retirement system that applies to a particular individual depends on when that individual first became a member of a uniformed service and, for members who joined after August 1, 1986, on the acceptance or rejection of the Career Status Bonus upon completion of 15 years of active service. The three systems are similar in that the retired or retainer pay entitlements of members of the uniformed services are, under each of the three systems, determined by applying a percentage multiplier to a number that is in some way related to a member's basic pay at the time of retirement. The percentage multiplier for a particular member of a uniformed service is, in turn, determined by reference to the number of years of service with which the member may be credited in computing retired or retainer pay.

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[44] House Report No. 103-357 (Committee of Conference), p. 678, accompanying H.R. 2401, 103d Congress, 1st Session (1993). (In support of its original proposal to extend the temporary retirement authority through 1998, the Senate Armed Services Committee had noted:

The committee believes that these authorities [including the temporary retirement authority adopted in the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), see 10 U.S.C. §1293 note], which have been used effectively by the military services to make reductions in personnel strength on a prudent, humane basis since they were enacted, will continue to be required as further personnel strength reductions are made over the next several years.

Senate Report No. 103-112 (Committee on Armed Services), p. 145, accompanying S. 1298, 103d Congress, 1st Session (1993)).

Under the first system, which applies to persons who first became members of a uniformed service before September 8, 1980, a member's initial retired or retainer pay entitlement is determined by multiplying that member's terminal basic pay by a percentage factor computed as the product of the number of years of service with which the member may be credited for computing retired or retainer pay multiplied by 2 1/2 percent. The second of the three systems applies to all members of the uniformed services who first became members after September 7, 1980, but before August 1, 1986 and to those who have become members after August 1, 1986 and have rejected the Career Status Bonus option upon completing their 15th year of active service. The second system determines the initial retired or retainer pay entitlement of a member by multiplying that member's "monthly retired or retainer pay base" by a percentage factor computed in the same fashion as applies in the case of the first retirement system. However, in this case the member's "monthly retired or retainer pay base" is equal to the member's "high three year" average monthly basic pay. The third of the retirement systems applies to members of the uniformed services who first became members on or after August 1, 1986 and have accepted the Career Status Bonus upon completion of their 15th year of active service. Under this system, the initial retired or retainer pay entitlement of a member is determined by multiplying that member's "monthly retired or retainer pay base" by a percentage factor computed as the product of the member's years of creditable service and 2 1/2 percent, stated as a percentage, and reduced by one percentage point for each full year of service by which the member retires with less than 30 years of creditable service, and by a further one-twelfth of a percentage point for each month by which the member's years of creditable service are less than a full year. After a member subject to this third system reaches age 62, the "percentage factor" is recomputed by simply eliminating the percentage-point reduction described in the preceding sentence.

The three different retirement systems currently in effect for members of the Armed Forces may be conveniently summarized as follows:

| **Short Form Reference** | **Final Basic Pay** | *High-Three Year Average* | *Military Retirement Reform Act of 1986 (Redux)* |
|---|---|---|---|
| Applies to: | Persons in service before September 8, 1980 | Persons joining service from September 8, 1980, through July 31, 1986 and persons joining after July 31, 1986 opting not to accept 15-Year Career Status Bonus | Persons joining service after July 31, 1986 and accepting 15-Year Career Status Bonus with additional 5-year service obligation |
| Basis of Computation (Retired or Retainer Pay Base): | Final rate of monthly basic pay | Average monthly basic pay for highest 36 months of basic pay | Average monthly basic pay for highest 36 months of basic pay |
| Multiplier: | 2.5 percent per year of service | 2.5 percent per year of service | 2.5 percent per year of service less 1.0 percentage point for each year of service less than 30 (restored at age 62) |
| Cost-of-Living Adjustment Mechanism: | Full CPI-W | Full CPI-W | CPI-W minus 1 percent (one-time catch up at age 62) |
| Additional Benefit | | | $30,000 Career Status Bonus payable at 15-year anniversary upon assumption of 5-year obligation to remain on continuous active duty |

* * * * *

The primary concern of the retirement legislation so far discussed has been with regular and reserve forces personnel who serve on active duty with the regular components of the Armed Forces for a minimum of 20 years. Title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch. 708 [Public Law 810, 80th Congress], §§301-313, 62 Stat. 1081, 1087-1091 (1948) (which, despite the

limitations implicit in the name of the act, covered the reserve components of all branches of service) created a retirement system for reserve personnel who do not undertake a 20-year active duty career. This retirement authority was adopted in an attempt to provide incentives to induce reserve forces personnel to remain in reserve components of the Armed Forces for a minimum of 20 years of "satisfactory federal service."[45] The reserve retirement system remains basically unchanged from the way it was enacted in 1948.

To qualify for retired pay for non-regular service, a member must complete at least 20 years of "satisfactory federal service," the last eight years of which must be in a reserve component. Each one-year period in which the member earns 50 or more retirement credit "points" counts as a year of satisfactory federal service. Points are earned at the rate of 15 a year for reserve membership, plus an additional point for each day of active duty or active duty for training and for each attendance at a drill or prescribed period of equivalent instruction.[46] Entitlement to retired pay for reserve service begins at age 60 under the act because that was, at the time of enactment, the minimum age at which federal civil service employees could voluntarily retire. Retired pay is computed by first converting the member's cumulative point total into service at the rate of one day for each point, subject to a maximum of 60 days' credit for inactive-duty training for any one year. The basic pay for the member's grade is then multiplied by 2.5 percent of the years of service credited through the point conversion process, up to a ceiling of 75 percent. Years of service are not rounded in this computation; the percentage multiple reflects the precise number of the member's years, months, and days of service. The Department of Defense Authorization Act, 1981, Public Law 96-342, 94 Stat. 1077 (1980), previously discussed in connection with retired or retainer pay for other than non-regular service, provides that retired pay for non-regular service will, for

[45] For a discussion of "satisfactory federal service" and how it differs from active duty service, see the immediately following paragraph as well as Chapter III.B.2., "Retired Pay for Non-Regular Service," below.

[46] A member's attendance at drills, periods of instruction or appropriate duty, or participation in other prescribed periods of equivalent training is commonly referred to as "inactive-duty training." See 10 U.S.C. §101(d)(7). Cf. 37 U.S.C. §206(a).

personnel first joining an armed force after the date of enactment of that act,[47] be based on the average basic pay for the member's retired grade using the pay tables in effect for the three years prior to the member's becoming eligible for retired pay at age 60, and not on actual pay received by the member.[48]

* * * * *

Until the beginning of fiscal year 1985, military retired pay was financed on a pay-as-you-go basis. Funds were appropriated by Congress each year to cover the costs of retired pay for the current retired population and charged to the Department of Defense operating budget. No "fund" existed from which retired pay obligations were met. It was long recognized that this procedure did not adequately recognize the future retired pay costs associated with the current active duty force and thus led at different times to various proposals for normal costing in management and budget processes and even to consideration of a funded retirement system. The Department of Defense Authorization Act, 1984, Public Law 98-94, §925, 97 Stat. 614, 644-648 (1983), dealt with this deficiency by establishing the Department of Defense Military Retirement Fund.[49] As previously indicated, this fund, the details of which are discussed more fully in Appendix A hereto, established the underpinnings of an accrual accounting system for military retirement. Under this accrual accounting system, funds are appropriated for the Department of Defense every year by Congress and transferred to the Military Retirement Fund in an amount sufficient to defray the expected retirement costs associated with the current active duty force. By this expedient, Congress and the Department of Defense are fully apprised of the total costs--present as well as future--of manpower decisions made for each year.

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[47] *i.e.*, September 8, 1980;see footnote 16 to this chapter, above.

[48] The background and legislative history of retired pay for non-Regular (Reserve) service are set out in greater detail in Chapter III.B.2., "Retired Pay for Non-Regular Service," below.

[49] See footnote 19 to this chapter, above.

Members on the retired rolls of regular and reserve components of the Armed Forces who have completed at least 20 years of active service are explicitly subject to recall to active duty at any time in order to augment active duty forces. 10 U.S.C. §688(a). Under the Defense Officer Personnel Management Act, Public Law 96-513, §106, 94 Stat. 2835, 2868 (1980), effectively amending prior 10 U.S.C. §3504(a) and 8504(a), such members may be ordered to active duty by the secretaries of the affected military departments under regulations prescribed by the Secretary of Defense and assigned to any duties deemed "necessary in the interests of national defense."[50] While this new provision merely "restated" the existing authority with respect to Army and Air Force personnel, it specifically included Navy and Marine Corps personnel for the first time.[51]

* * * * *

Under the provisions of 38 U.S.C. §§5304-5305, a member or former member of the Armed Forces may receive a pension or compensation from the Department of Veterans Affairs for disabilities compensable by that department at the same time he receives retired or retainer pay, including disability retired pay, based on service as a member of the Armed Forces only if he files a "waiver" of that portion of his retired or retainer pay (including disability retired pay) entitlement equal to the amount of pension or compensation to which he is entitled from the Department of Veterans Affairs.[52]

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[50] See, *e.g.*, Senate Report No. 96-375 (Committee on Armed Services), p. 26, and House Report No. 96-1462 (Committee on Armed Services), pp. 80-81, accompanying S. 1918, 96th Congress, 2d Session (1980).

[51] See, *e.g.*, Senate Report No. 96-375 (Committee on Armed Services), p. 26, and House Report No. 96-1462 (Committee on Armed Services), pp. 80-81, accompanying S. 1918, 96th Congress, 2d Session (1980).

[52] This is significant primarily because of the preferential income tax treatment accorded receipt of pension or disability compensation from the Department of Veterans Affairs. See footnote 16 to Chapter III.B.3. hereof, below, "Disability Retired Pay," as well as the text of the paragraph to which it is appended.

**Summary:** The more significant statutes relating to non-disability retirement and retired pay are displayed in capsulized form on the pages following the cost figures on the following page.[53] [54]

## SUMMARY OF SIGNIFICANT STATUTES RELATING TO NONDISABILITY RETIREMENT AND RETIRED PAY

| Enactment | Action |
|---|---|
| Act of February 28, 1855, ch. 127, 10 Stat. 616 (1855) | Authorized involuntary removal of Navy officers due to disability and other reasons. |
| Act of August 3, 1861, ch. 42, 12 Stat. 287 (1861) | Authorized voluntary retirement of all officers of all services after 40 years of service. |
| Act of December 21, 1861, ch. 1, 12 Stat. 329 (1861) | Permitted involuntary retirement of Navy officers after 45 years of service or at age 62. |
| Act of July 17, 1862, ch. 200, 12 Stat. 594 (1862) | Permitted involuntary retirement of Army and Marine Corps officers after 45 years of service or at age 62. |
| Act of July 15, 1870, ch. 294, 16 Stat. 315 (1870) | Authorized voluntary retirement of Army and Marine Corps officers after 30 years of service. |
| Act of June 30, 1882, ch. 254, 22 Stat. 118 (1882) | Made retirement mandatory at age 64 for officers of all services. |
| Act of February 14, 1885, ch. 67, 23 Stat. 305 (1885) | Authorized voluntary retirement of Army and Marine Corps enlisted personnel after 30 years of service. |

[53] Under special provisions of Title 10, United States Code, the retired or retainer pay of an enlisted member of an armed force credited with extraordinary heroism in the line of duty by the Secretary of his or her military department may be increased an additional 10 percent over what it would otherwise have been, subject to a maximum of 75 percent of the member's retired or retainer pay base. 10 U.S.C. §3991(a)(2) (Army), §6330(c)(3) (Navy and Marine Corps), and §8991(a)(2) (Air Force). An enlisted member of the Coast Guard who has been cited for extraordinary heroism in the line of duty is similarly entitled to an increase of 10 percent in retired pay.

[54] Although not a retirement provision per se, 38 U.S.C. §§1560-1562 provide that members or former members of the Armed Forces whose names are enrolled on the "Army, Navy, Air Force, and Coast Guard Medal of Honor Roll" as a result of having "served on active duty in the Armed Forces of the United States and ... [having] been awarded a medal of honor for distinguishing such person conspicuously by gallantry and intrepidity at the risk of such person's life above and beyond the call of duty while so serving" is entitled to a "special pension" administered by the Department of Veterans Affairs in the amount of $600 per month "in addition to all other payments [to which the person may be entitled] under laws of the United States." See in particular 38 U.S.C. §1562(a) and (b).

| | |
|---|---|
| Act of March 3, 1899, ch. 413, 30 Stat. 1004 (1899) | Authorized voluntary retirement of Navy enlisted personnel after 30 years of service. |
| Act of May 13, 1908, ch. 166 [Public Law 115, 60th Congress], 35 Stat. 501 (1908) | Authorized voluntary retirement of Navy officers after 30 years of service. |
| Act of August 29, 1916, ch. 417 [Public Law 241, 64th Congress], 39 Stat. 556, 558 (1916) | Created Fleet Naval Reserve; authorized voluntary transfer of Navy and Marine Corps enlisted personnel to Fleet Reserve after 16 years of active service. |
| Act of August 29, 1916, ch. 417 [Public Law 241, 64th Congress], 39 Stat. 556, 579 (1916) | Established "up-or-out" promotion system based on age-in-grade and integrated involuntary retirement system; first to use "standard" retired pay formula of 2.5 percent times years of service, up to maximum of 75 percent. |
| Act of June 4, 1920, ch. 227 [Public Law 242, 66th Congress], 41 Stat. 773 (1920) | Provided for classification of Army officers and authorized involuntary retirement of those designated "Class B". |
| Act of June 30, 1922, ch. 253 [Public Law 259, 67th Congress], 42 Stat. 716, 721 (1922) | Authorized involuntary retirement of Army officers chosen for elimination from active list by board of officers. |
| Act of February 28, 1925, ch. 374 [Public Law 512, 68th Congress], 43 Stat. 1080 (1925) | Raised from 16 to 20 years minimum length of active service required by Navy and Marine Corps enlisted personnel for eligibility for transfer to Fleet Reserve. |
| Act of June 22, 1926, ch. 649 [Public Law 412, 69th Congress], 44 Stat. 761 (1926) | Changed integrated Navy officer promotion /involuntary retirement system from age-in -grade to service-in- grade program. |
| Act of May 29, 1934, ch. 367 [Public Law 263, 73d Congress], 48 Stat. 811 (1934) | Made Marine Corps officers subject to Navy rather than Army retirement laws; brought them under Navy's promotion/ involuntary retirement system. |
| Act of July 31, 1935, ch. 422 [Public Law 225, 74th Congress], 49 Stat. 505 (1935) | Authorized voluntary retirement of Army officers after 15 years of active service. |
| Armed Forces Retirement Act of 1945, ch. 393 [Public Law 190, 79th Congress], 59 Stat. 53 (1945) | Authorized voluntary retirement of Army enlisted personnel after 20 years of active service. |
| Act of February 21, 1946, ch. 34 [Public Law 305, 79th Congress], 60 Stat. 26, 27 (1946). | Authorized voluntary retirement of Navy and Marine Corps officers after 20 years of active service including 10 years of commissioned service; lowered from 64 to 62 mandatory retirement age for such officers; temporarily authorized their involuntary retirement if chosen for elimination from active list by board of officers. |

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|---|---|
| National Security Act of 1947, ch. 343 [Public Law 253, 80th Congress], 61 Stat. 495 (1947) | Created Department of the Air Force; made Army retirement laws applicable to Air Force personnel. |
| Officer Personnel Act of 1947, ch. 512 [Public Law 381, 80th Congress], 61 Stat, 795 (1947) | Established integrated promotion/ involuntary retirement system for officers of all services. |
| Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch 708 [Public Law 810, 80th Congress], 62 Stat. 1081 (1948) | Established retirement system for career personnel of Reserve and National Guard; authorized voluntary retirement of Army and Air Force officers after 20 years of active service, including 10 years of commissioned service; repealed 15-year voluntary retirement authority. |
| Warrant Officer Act of 1954, ch. 249 [Public Law 379, 83d Congress], 68 Stat. 157 (1954) | Established specific retirement system for warrant officers of all services. |
| Act of May 20, 1958 (Armed Forces Pay Act of 1958), Public Law 85-422, 72 Stat. 122 (1958) | Suspended "recomputation" method that by-and-large had been used to make post-retirement adjustments to retired pay since origin of military retirement system. |
| Uniformed Services Pay Act of 1963, Public Law 88-132, 77 Stat. 210 (1963) | Replaced recomputation method of retired pay adjustments with an adjustment procedure based on increases in cost of living. |
| Department of Defense Authorization Act, 1981, Public Law 96-342, 94 Stat. 1077, 1100 (1980) | Replaced use of terminal basic pay with monthly retired or retainer pay base (average of highest three years of basic pay) for determining retired or retainer pay entitlements. |
| Department of Defense Authorization Act, 1984, Public Law 98-94, 97 Stat. 614, 644-648 (1983) | Established Department of Defense Military Retirement Fund, under which military retirement costs were placed on an accrual accounting basis. |
| Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986) | Established new--and lower--retired pay multipliers for persons who first became members of the uniformed services after July 31, 1986. (The lower multipliers apply to all such retirees until they reach age 62, at which time the normal 2 1/2 percent per year multiplier for each year of qualifying service is restored.) Changed method for making adjustments to retired pay for persons who first became members of the uniformed services after July 31, 1986. |

| | |
|---|---|
| National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, 113 Stat. 662 | Established a retirement system option for members who joined after August 1, 1986 and reach 15 years of active service: accept the lower retired pay multipliers of the post-1986 Redux system with a one-time Career Status Bonus of $30,000 and an additional 5-year service obligation, or be covered by the "high-three" system in effect for members who joined between 1981 and 1986. |

**Cost**: For the cost of nondisability retired and retainer pay from 1972 to 2004, see Table III-2 of *Military Compensation Statistical Tables*, volume II of this edition.

**Chapter III.B.2.**

## Retired Pay for Non-Regular Service (Reserve Retirement)

**Legislative Authority**: Chapter 1223, Title 10, United States Code, 10 U.S.C. §§12731-12739.

**Purpose**: To establish a non-disability retirement system and authorize the payment of retired pay for service in the reserve components of the Armed Forces in order to provide an incentive for qualified personnel to retain membership and continue training in such components and thereby to provide a pool of skilled, trained, and readily available manpower to augment active duty forces in times of national emergency.

**Background**: Title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch. 708 [Public Law 810, 80th Congress], Title III, §§301-313, 62 Stat. 1081, 1087-1091 (1948), created a non-disability retirement program for reserve personnel. The House Armed Services Committee outlined the purpose of the program in these terms:

> The underlying purpose in writing this policy as to Reserve components into law is that the retirement benefits will furnish an incentive that will hold men in the Reserve components for a longer period of time. Almost every witness who testified on this feature of the bill stressed that the most desirable type of Reserve was a reserve of men with accumulated training. It was also pointed out that the direct monetary emoluments payable to Reserve officers and men were so small that in many instances as the men grew older, became married, and took on family obligations, unless an additional incentive were offered them, they would drop their Reserve training. The reason for this policy is that we now realize that in the chaotic, explosive, and small world in which we live we must have a relatively large group of Reserves, well trained, and able to render help at once in the event of an emergency. We are hoping that the provisions offered in this bill, which to many of us seem liberal, will be an incentive well worth working for. The result should be longer periods of service by Reserves and a larger and better-trained force on M-day, should we be so unfortunate as to have another M-day.[1]

[1] House Report No. 816 (Committee on Armed Services), p. 11, accompanying H.R. 2744, 80th Congress, 1st Session (1947).

Until 1993, the reserve retirement system remained basically unchanged from that enacted in 1948.[2] To qualify for retired pay under the system, a person[3] had to complete at least 20 years of "satisfactory Federal service" as a member of the Armed Forces, the last eight years of which had to be in a reserve component. Each anniversary year in which a member earns 50 or more retirement credit points constitutes a year of satisfactory federal service. Retirement credit points are, in effect, divided into two classes. One "active duty" point is earned for each day of active duty or active duty training;[4] one "inactive-duty" point is earned for attendance at a unit training assembly. Section 206 of title 37, United States Code, specifies that compensation for each regular period of instruction or period of appropriate duty shall be a minimum of at least 2 hours. However, Department of Defense policy[5] specifies that for periods of inactive duty that are performed with pay, the minimum period of duty shall be 4 hours. If the inactive duty is performed without pay, the minimum period of duty shall be 2 hours. Within these restrictions, a member may perform two drills, or unit training assemblies or periods of equivalent instruction or training in a single calendar day, with two points awarded for the performance of "multiple drills." Additionally, 15 inactive duty points per year are awarded for reserve membership. Inactive duty points may also be earned for completion of accredited correspondence courses.

> There is no limit, other than the calendar, on the number of active duty points that may be earned in a year. However, there is a limit on the number of inactive duty points that may be credited in a year for computing retired pay. Prior to enactment of the National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, 110 Stat. 2517, more than 60 inactive-duty points could be credited for computing reserve retired pay. The National Defense Authorization Act for Fiscal Year 1997 increased the maximum number of points per year. For

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[2] Subtitle C of the Reserve Officer Personnel Management Act, adopted as Title XVI of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, Title XVI, 108 Stat. 2663, 2921 *et seq*. (1994), substantially reorganized the provisions of prior law relating to reserve retirement but did little substantively to the structure of the reserve retirement system considered as a whole.

[3] Unlike entitlement to other military retired pay, the holding of a military status is not a condition of eligibility for reserve retired pay.

[4] Normally, members of a troop program unit attend at least 15 days of annual training each fiscal year.

[5] DoD Instruction 1215.19, "Uniform Reserve, Training and Retirement Category Administration," December 12, 2000.

each anniversary year that closed before September 23, 1996, the maximum number of creditable inactive duty points remained sixty, but for anniversary years that closed on or after September 23, 1996 the maximum number of points that could be credited in computing retired pay was increased to 75. The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-163, again increased the maximum number of points that could be credited in computing retired pay. For anniversary dates that close on or after October 30, 2000, the maximum number of inactive duty points that may be credited for computing retired pay is 90. The law does not require an actual point accounting for service prior to July 1, 1949; each year of membership in a reserve component before that date automatically counts as a year of satisfactory federal service, and members are arbitrarily awarded 50 inactive-duty points for each such year in the computation of creditable service for retirement purposes.

For persons who first became members of an armed force before September 8, 1980 (the effective date of the Department of Defense Authorization Act, 1981, Public Law 96-342, §813(a)(1), 94 Stat. 1077, 1100-1101 (1980)),[6] reserve retired pay for any particular member is computed by (1) dividing the member's cumulative active and inactive point total by 360 to convert the points into years of service and any fraction thereof; (2) taking the monthly basic pay rate for the member's grade and length of service at the time he becomes entitled to retired pay at age 60; (3) multiplying that rate by 2.5 percent of the years of service credited to him through the point conversion process; and (4) subtracting any excess over 75 percent. As compared with retired pay for other than reserve service, this formula produces one year of service credit for each 360 points. Hence, a reserve member who serves on active duty for an entire year, and therefore earns 365 or 366 points on a day-for-day basis, receives slightly more than one year of service credit for that year. Also, reserve members who perform the maximum permissible two drill periods during one day may earn a point for each drill. The monthly basic pay rate used in the formula allows longevity credit for all service that may be counted for basic pay purposes, including years of reserve membership where the "satisfactory Federal service" standard is not met, and all service on the reserve retired list before retired pay entitlement commences. Years of service are not rounded in the

[6] The Department of Defense Authorization Act, 1981, Public Law 96-342, 94 Stat. 1077 (1980), was enacted and became effective on September 8, 1980.

reserve retired pay calculation: the percentage multiple reflects the precise amount of a member's years, months, and days of service.

For a person who first became a member of an armed force on or after September 8, 1980,[7] the formula is essentially the same, but instead of using the monthly basic pay of the member's grade and length of service at the time the member became eligible for retired pay at age 60, the 1981 Authorization Act, Public Law 96-342, *id*., requires the use of an average of the monthly basic pay to which the member would have been entitled had he been on active duty for the last three years he was a member of a reserve component of an armed force.[8] 10 U.S.C. §1407(b) and (d)(1);[9] see 10 U.S.C. §12739. Neither pay received for active duty training nor reserve compensation received under Section 206 of Title 37, United States Code, 37 U.S.C. §206, is relevant in determining Reserve retired pay entitlements.

> Entitlement to reserve retired pay begins at age 60. 10 U.S.C. §12731(a)(1). Entitlement evidently was set at this age because, at the time the pay was established by the Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch. 708 [Public Law 810, 80th Congress], 62 Stat. 1081 (1948), age 60 was the minimum age at which federal civil service employees could voluntarily retire, although there is no explicit expression of Congressional intent in this regard. Indeed, the only reference in the legislative history to the issue of when retired pay for reserve service should commence is in a colloquy between a member of the House Armed Services Committee and Mr. Melvin J. Maas, the then-President of the Federation of Reserve Officer Associations:

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[7] See footnote 5 to this chapter, above.

[8] That is, in computing reserve retired pay under the Department of Defense Authorization Act, 1981, Public Law 96-342, 94 Stat. 1077 (1980), not only is the use of an average of monthly basic pay required, but the basic pay rates to be averaged for a specific individual are the pay rates in effect for the last three years the individual in question was a member of an armed force. This contrasts with the prior practice under which the reserve retired pay of a particular individual was calculated on the basis of the pay rates in effect at the time the individual became entitled to retired pay. See, *e.g*., footnote 2 to Formula 3 of 10 U.S.C. §1401. (The practical effect of this change is to freeze the reserve retired pay entitlement of any affected member who will separate from a reserve component of an armed force before reaching age 60.)

[9] See, *e.g*., Senate Report No. 96-826 (Committee on Armed Services), p. 130; House Report No. 96-1222 (Committee of Conference), p. 98 and Senate Report No. 96-895 (Committee of Conference), p. 94, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

Mr. VAN ZANDT: Colonel, why is it that you establish the age of 60 and the retirement of 20 years?

Mr. MAAS: Well, that was put in by the services, and I think I understand their reason. As some of you gentlemen know, I introduced similar legislation several times when I was a Member of this body. I had no age restriction in it. However, I believe that there must be a minimum age limit, and I do not disagree with 60. Otherwise, the Reservist could qualify by the time he was 40 or 41 for retirement and he would get maybe $50, $60, or $75 a month. We would in effect be subsidizing him as against others in civil employment, and I don't think it would be desirable. Furthermore, the cost would be prohibitive.

All we are seeking really to do is to partially compensate this individual in his later years for the great sacrifices he made during his earning capacity. I think 60 is a reasonable age. There are many who feel that it ought to be 55. If and when civil service is brought down to 55 or a straight 30 years, then I think this should be. In the meantime, I have no quarrel with the age 60 in it.

Mr. VAN ZANDT: How would the suggestion of 55 years of age and 30 years of service be? What is your reaction to that?

Mr. MAAS: The question is a good one, because in the Navy you can retire now with your Regular emoluments after 20 years regardless of any age. There is no restriction on the age at which a Regular in the Navy can retire, and I assume there won't be in the Army if title I and title II of this bill are approved and the bill is passed. At the present time I see no great question of moment in it. I think we would probably prefer 55 because it might take more people out of active competition for employment. If a reservist had a modest retirement from this source, plus what he might have accumulated, he might be willing to quit active competitive employment at 55 and make a few more jobs for younger men, when the time comes, which we certainly will face.[10]

In addition to completing 20 years of satisfactory federal service and reaching age 60, the Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch. 708, *id*., required that each person who was a member of a reserve component before August 16, 1945, must have served on active duty for some period between April 6, 1917, and November 11, 1918, or between September 9, 1940, and January 1, 1947, to

[10] Subcommittee Hearings on H.R. 2744 to Provide for the Selection for Elimination and Retirement of Officers of the Regular Army, for the Equalization of Retirement Benefits for Members of the Army of the United States, and for Other Purposes: Hearings on H.R. 2744 before Subcommittee No. 7, Retirement, House Committee on Armed Services, printed in Hearings before the Committee on Armed Services of the House of Representatives on Sundry Legislation Affecting the Naval and Military Establishments, p. 3363, 80th Congress, 1st Session (1947).

qualify for reserve retired pay. This requirement reflected the Congressional view that a person who was a reservist during World War I or II should have performed active duty during the period if his reserve membership were to carry out its intended purpose.

There have been a number of modifications to the reserve retirement system since 1948, but the purpose of these modifications has been more remedial than substantive. The first of the amendatory actions, the Act of August 21, 1958, Public Law 85-704, 72 Stat. 702 (1958), allowed a person who was a member of the reserve before August 16, 1945, to fulfill the active-duty-in-time-of-war reserve retired pay eligibility requirement through active service during the Korean conflict, from June 27, 1950, through July 27, 1953.

The Act of August 25, 1959, Public Law 86-197, 73 Stat. 425 (1959), allowed credit in the reserve retired pay system for continuous service in the federally recognized National Guard between June 15, 1933, and the date of a member's appointment or enlistment in the National Guard of the United States.[11] The Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch. 708 [Public Law 810, 80th Congress], Title III, §§301-313, 62 Stat. 1081, 1087-1091 (1948), authorized credit for National Guard service before the date of enactment but, on the theory that membership in the National Guard constituted "state" service, whereas membership in the National Guard of the United States represented "federal" service once the new reserve component had been established, allowed credit only for service in the National Guard of the United States after June 14, 1933. There had, however, been an administrative delay in enrolling members of the National Guard into the National Guard of the United States, and the effect of the Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch. 708, *id*., was to penalize members whose enrollments had been delayed through no fault of their own. The Act of August 25, 1959, Public Law 86-197, *id*., effectively made sure that members whose enrollments had been delayed did not suffer as a result.

[11] The National Guard of the United States was created as a reserve component of the Army on June 15, 1933.

The Act of August 25, 1959, Public Law 86-197, 73 Stat. 425 (1959), also authorized credit for service as a naval aviation cadet between 1935 and 1942. The Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch. 708 [Public Law 810, 80th Congress], Title III, 62 Stat. 1081, 1087-1091 (1948), defined creditable service as that performed "in the status of a commissioned officer, warrant officer, flight officer, or enlisted personnel." Under the Navy's aviation cadet law of 1935, until it was amended in 1942, naval aviation cadets did not fit into any of these categories. They remained designated as aviation cadets for three years following flight training, after which they became eligible for appointment as commissioned officers. The Act of August 25, 1959, Public Law 86-197, 73 Stat. 425 (1959), thus remedied the—presumably unintentional--omission of Naval aviation cadets from the category of persons entitled to credit for periods of active service between 1935 and 1942.

The Act of October 14, 1966, Public Law 89-652, §1, 80 Stat. 902 (1966), recognized the complexity and error-prone nature of the reserve retirement point system by requiring that each person who completed 20 years of satisfactory federal service be notified of his or her retired pay eligibility within one year after completing that service. Once such notification was given, or after retired pay was awarded, the person's eligibility could not be revoked on the basis of error, miscalculation, misinformation, or administrative determination of years of service, unless such eligibility determination had been based on fraud or misrepresentation of the person concerned. (The amount of the pay may be adjusted on the basis of corrected information, but retired pay eligibility remains in force even if the person would not otherwise be eligible.)

The Act of August 13, 1968, Public Law 90-485, §2, 82 Stat. 751, 754 (1968), makes the uniform retirement date rule inapplicable to reserve retired pay. The Uniform Retirement Date Act, 5 U.S.C. §8301 as added by Section 8301 of the Act of September 6, 1966, Public Law 89-554, §1 (§8301), 80 Stat. 378, 557 (1966), provides generally that retirement authorized by statute is not effective until the first day of the month following the month in which retirement would otherwise occur. Thus, until reserve retired pay was exempted from the rule, a person who reached age 60 and was otherwise qualified to

receive such pay was subject to a delay of up to 30 days before he actually became entitled to pay. The loss of a few days of retired pay was not a particularly serious matter, but if, as had happened, an affected person died between his 60th birthday and the first of the next month, his family was not eligible for military survivor benefits, including the Retired Serviceman's Family Protection Plan and the Survivor Benefit Plan. See Chapter IV.C.2., "Survivor Benefit Plan," below. The Act of August 13, 1968, Public Law 90-485, *id*., by making the Uniform Retirement Date Act inapplicable to reserve retirements, remedied this and similar anomalies.

The Uniformed Services Survivors' Benefits Amendments of 1978, Public Law 95-397, §202, 92 Stat. 843, 844-845 (1978), extended coverage under the Survivor Benefit Plan to members of reserve components who would be eligible for reserve retired pay except for being under 60 years of age.[12] Under prior law, the survivors of a member of a reserve component who died after having become eligible for reserve retired pay through having completed twenty years of satisfactory service but before becoming entitled to such pay at age 60 were not eligible for any benefits under the Survivor Benefit Plan, and Congress felt such survivors should be eligible for the same protection available to members entitled to retired or retainer pay for other than non-Regular service.[13]

Effective October 1, 1984, appropriations are made every year to fund future retired pay entitlements of reserve forces personnel in the Ready Reserve. Such appropriations are paid into the Department of Defense Military Retirement Fund pursuant to provisions of the Department of Defense Authorization Act, 1984, Public Law 98-94, §925(a)(1), 97 Stat. 614, 644-648 (1983). Apart from providing an accrual accounting system for reserve retirement and establishing a fund to defray future

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[12] Survivor Benefit Plan--frequently referred to as SBP--coverage is optional for members of reserve components. For reservists electing coverage, the reserve retired pay to which they would otherwise be entitled at age 60 is actuarially reduced so that they bear a portion of the cost of the coverage. (For a description of the SBP program, see Chapter IV.C.2., "Survivor Benefit Plan," below.)

[13] *e.g.*, Senate Report No. 95-1138 (Committee on Armed Services), pp. 3-6, accompanying H.R. 3702, 95th Congress, 2d Session (1978).

retirement costs associated with service in the Ready Reserve, neither the Military Retirement Fund per se nor its establishment has any effect on retirement entitlements of reserve forces personnel or on how reserve forces personnel accumulate retirement credit. See discussion of the Department of Defense Military Retirement Fund in Appendix I hereof. Also see 10 U.S.C. §§1461-1467 (codifying provisions relating to the Department of Defense Military Retirement Fund) generally and 10 U.S.C. §1466(a)(2) in particular (relating to the amount required to be paid into the Military Retirement Fund on account of compensation paid to reserves).

The National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, 106 Stat. 2315 (1992), adopted two provisions intended as inducements to members of the Selected Reserves of the Armed Forces to apply for transfer to the retired reserve. Section 4416(b) of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, *id*., §4416(b), 106 Stat. at 2715, provided that a member of the Selected Reserve less than 60 years of age but with 20 or more years of reserve-retirement-creditable service who applied for transfer to the retired reserve would be eligible for an annual payment for a period up to five years[14] computed by multiplying the product of 12 and the monthly basic pay the member would be entitled to if serving on active duty by a percentage factor computed by adding five percent plus one-half of one percent for each year of retirement-creditable service, up to a maximum of ten percent. Section 4417(a) of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, *id*., §4417(a), 106 Stat. at 2716, added new temporary special retirement authority--originally codified at 10 U.S.C. §1331a (since redesignated as 10 U.S.C. §12731a)--under which a member of the Selected Reserve of an armed force with more than 15 but less than 20 years of reserve-retirement-creditable service could be transferred to the retired reserve with entitlement to retired pay for non-regular service to commence when the member reached age 60.

[14] Or until the member reached 60 years of age, whichever first occurred.

In support of the special retirement authorities adopted by the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, *id.*, the Senate Armed Services noted as follows:

> The Defense Department has proposed reducing National Guard and Reserve personnel strength by over 250,000 by the end of fiscal year 1995.... [T]he committee notes that DOD had made no plans for the transition of personnel who would be affected by the proposed reduction.... The committee believes that such a plan is essential.
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> [One provision of the Senate bill] would allow Selected Reservists who have 20 years of credit for reserve retirement and who are in a Selected Reserve unit to apply for reassignment from the Selected Reserve to the Retired Reserve in order to draw an immediate, reduced retirement annuity.
>
> Under current rules, Selected Reservists who have completed at least 20 years of service creditable for reserve retirement are eligible to draw their reserve retirement annuity at age 60. This rule tends to entice Selected Reservists to remain in the Selected Reserve well after they accumulate 20 years of credit for reserve retirement. Consequently, there is a relatively rich supply of these individuals in the Selected Reserve. This provision would provide an incentive for some of these people to voluntarily leave the Selected Reserve and reduce the pressure on involuntary removals as the reserve components build down.
>
> The reduced retirement annuity under this provision would be paid over a five-year period or up until an individual reaches age 60, whichever is shorter. The annuity would be five percent plus .5 percent for each full year of service past 20 years that an individual has completed multiplied by the annual basic pay to which the individual would be entitled if on active duty. The percent multiplier would be capped at 10 percent.
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> . . .
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> [The second provision] would allow Selected Reservists who have at least 15 but less than 20 years of credit for reserve retirement to apply for assignment from the Selected Reserve to the Retired Reserve. Such personnel would be eligible for reserve retirement pay at age 60 based on the number of years of reserve retirement credit they have accrued.... As in the Selected Reserve population with over 20 years of service for reserve retirement, there is a rich supply of personnel with 15 to 20 years of credit for reserve retirement.
>
> The retirement provisions (an immediate annuity for those with over 20 years, and the 15 year retirement authority) will aid the National Guard and reserve components in encouraging the voluntary retirement of Selected

> Reservists who become surplus to requirements, and facilitate the realignment of personnel among remaining billets as Guard and reserve units are downsized to maintain a better balance between youth and experience.[15]

As originally enacted, both programs were to be applicable from the time of enactment of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, *id*., until October 1, 1995, but that date was subsequently extended to October 1, 1999, by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §561(f)(2)(A)(ii) (special five-year annuity authority) and §561(f)(4) (early retirement authority), 107 Stat. 1547, 1667-1668 (1993).

The National Defense Authorization Act for Fiscal Year 1995, P.L. 103-337, §517 (108 §tat. 2754), October 5, 1994, added a new temporary authority to facilitate the reduction of the Selected Reserve. This provision amended 10 U.S.C. §12731a(c) (since redesignated as 10 U.S.C. §12731a(c)) to provide early qualification for retired pay for a member who had completed 15 or more years of qualifying service as computed under 10 U.S.C. §1331 (since redesignated as 10 U.S.C. §12731) and no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of a physical disability. However, notification of eligibility for retired pay may not be made if the disability is the result of the member's intentional misconduct, willful neglect, willful failure to comply with standards and qualifications for retention, or was incurred during a period of unauthorized absence.

The National Defense Authorization Act for Fiscal Year 1995, P.L. 103-337, §636 (108 §tat. 279) added a second temporary authority to facilitate the reduction of the Selected Reserve by amending 10 U.S.C. §1331 (since redesignated as 10 U.S.C. §12731) to temporarily reduce the minimum required reserve service for eligibility for retired pay for non-regular service from eight years to six years.

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[15] Senate Report No. 102-352 (Committee on Armed Services), pp. 203-204, accompanying S. 3114, 102d Congress, 2d Session (1992). See House Report No. 102-966 (Committee of Conference), pp. 889-890, accompanying H.R. 5006, 102d Congress, 2d Session (1992).

All of these temporary authorities were again extended until to October 1, 2001, by the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, §561, 112 Stat. 2025 (1998).

> The National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, §653(b)(1), 113 Stat. 666, added 10 U.S.C. §12731b to make permanent the authority to provide early notification of eligibility for retired pay for members who no longer meet the qualifications for membership in the Selected Reserve solely because of physical disability. Like the temporary provision, this new provision requires that the member have completed at least fifteen years of qualifying service as computed under 10 U.S.C. 12731. This provision also precludes providing notification to the member if the disability is the result of the member's intentional misconduct, willful neglect, willful failure to comply with standards and qualifications for retention, or was incurred during a period of unauthorized absence.

The National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, §631, 116 Stat. 2571, amended 10 U.S.C. §12731 to permanently reduce the years of reserve service required for eligibility for retired pay for non-regular service from eight years to six years except in the case of members who completed at least 20 years of qualifying service as computed under 10 U.S.C. 12732 before October 5, 1994. In which case the reserve service requirement remained eight years.

The requirement to perform a minimum number of years of reserve service to become eligible for retired pay for non-regular service was repealed by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, §501 (f), for members who complete 20 years of qualifying service (as computed under 10 U.S.C. 12732) 180 days on or after the date of enactment of the Act.

The National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, §517, 115 Stat. 1094, amended 10 U.S.C. §10154, §14513, §14514, §14515 and added §12244 and §12108 to permit reserve component members who have reached the maximum years of service or age and have qualified for a reserve retirement to be transferred to the retired reserve without the requirement for formal application or request. The member has the option of requesting that he or she not be transferred to the

retired reserve, but rather transferred to another appropriate reserve status as provided in law or discharged.

The National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, §632, 116 Stat. 2572, amended 10 U.S.C. §12739 to authorize a 10 percent increase in reserve retired pay, but not to exceed 75 percent, for a enlisted member who has been credited with extraordinary heroism in the line of duty as determined by the Secretary concerned. To qualify for the increase in retired pay, the highest grade satisfactorily held in the armed forces by the person at any time was an enlisted grade.

Like members on the retired rolls of regular components of the Armed Forces, reserves who have completed at least 20 years of active service are explicitly subject to recall to active duty at any time in order to augment active duty forces. 10 U.S.C. §688(a). Under the Defense Officer Personnel Management Act, Public Law 96-513, §106, 94 Stat. 2835, 2868 (1980), such members may be ordered to active duty by the Secretaries of the affected military departments under regulations prescribed by the Secretary of Defense and assigned to any duties deemed "necessary in the interests of national defense."[16] While this new provision merely "restated" the existing authority with respect to Army and Air Force personnel, it specifically included Navy and Marine Corps personnel for the first time.[17]

> The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-164, provided for a member to elect a reserve retirement at age sixty after becoming entitled to retired pay under chapters 65, 367, 571, or 867 of title 10, United States Code, for regular service. To be eligible for conversion from regular retirement to retirement from active reserve service, the member must have served in active status in a reserve component after having become entitled to retired pay for active duty service. If the member qualifies, entitlement to regular retired or retainer pay ceases and the member is transferred to the appropriate reserve retirement category. The effective date of the election is

[16] See, *e.g.*, Senate Report No. 96-375 (Committee on Armed Services), p. 26, and House Report No. 96-1462 (Committee on Armed Services), pp. 80-81, accompanying S. 1918, 96th Congress, 2d Session (1980).

[17] See, *e.g.*, Senate Report No. 96-375 (Committee on Armed Services), p. 26, and House Report No. 96-1462 (Committee on Armed Services), pp. 80-81, accompanying S. 1918, 96th Congress, 2d Session (1980).

the date on which the person reaches sixty years of age or later, depending on the date the Secretary concerned receives the request from the member.

**Cost**: For the cost of retired pay for non-regular service from 1972 to 1995, see Table III-3 of *Military Compensation Statistical Tables*, volume II of this edition.

**Chapter III.B.3.**

## Disability Retired Pay

**Legislative Authority**: Chapter 61, Title 10, United States Code, 10 U.S.C. §§1201-1221.

**Purpose**: To authorize a continuing payment to members separated from active service in the uniformed services of the United States because of physical disability, both in order to assure such members that, if they are ever disabled in the service of their country, they will not be left to cope with the effects of such disabilities on their own and in recognition of the need to provide some measure of economic security for personnel whose duties necessarily expose them to the hazards of wartime and career military service.

**Background**: The practice of providing for special compensation to be paid to persons disabled while performing military service can be traced to some of the earliest enactments of the Federal Congress.[1] The Act of April 30, 1790, ch. 10, §11, 1 Stat. 119, 121 (1790), for example, allowed the placement of disabled military personnel on "the list of the invalids of the United States." While on this "invalid," or pension, list, officers could receive up to one-half their "pay," and enlisted personnel could receive up to $5 a month for life.

This system continued to be the sole means by which disabled military personnel who left active service could be compensated until 1855. The Act of February 28, 1855, ch. 127, §1, 10 Stat. 616 (1855), was the first law to grant any service involuntary separation authority. It permitted the Secretary of the Navy to convene examining boards to determine the capability of officers for "performing promptly and efficiently all their duty both ashore and afloat" and to remove any officer determined not capable of such

[1] This chapter is concerned mainly with special compensation for members of the Armed Forces separated from active military service upon being found physically unable to perform the duties of their office or grade. As such, it does not address the complementary body of law administered by the Department of Veterans' Affairs providing compensation and other benefits to veterans who suffer a disability as the result of performing military service.

performance. Officers removed from active duty under this authority were to be placed on a "reserved list" with either leave-of-absence pay (approximately 75 percent of sea duty pay) or furlough pay (50 percent of leave-of-absence pay), unless it was also determined that the officer was himself to blame for the incapacity, in which event he was to be dropped from the rolls without pay. The Act of February 28, 1855, ch. 127, *id*., was not limited to separation for physical disability, as this excerpt from a report of the examining board makes clear:

> An officer may possess a strong mind and a robust frame, yet, if his moral perception of right or wrong be so blunted and debased as to render him unreliable, he could hardly be ranked as the capable officer.[2]

At the outbreak of the Civil War, the Navy thus had--at least formally--removal authority, but it was rarely exercised. The Army and Marine Corps, on the other hand, had no such authority at all. While disabled members did have some financial security, the military services needed more forceful authority to purge their active lists of physically unfit members: the choice of staying or leaving rested with the individual. The effect on the military services of this effective lack of removal authority was pointedly described shortly after the outbreak of the Civil War in a Senate debate on a military retirement bill:

> Mr. GRIMES: Mr. President, I think the Senate and the country have been taught a lesson within the past few months on this subject.... [T]he immense destruction of public property at Norfolk was occasioned more on account of the age and the weakness and the inability of the commanding officer, who was upon your active list, to discharge the duties of his position properly, than from any other reason; not that he has not been one of the most gallant and efficient officers of our [naval] service, but the time for his service has passed by, and the Government ought to have furnished a retired list on which he could have retired years ago, reputably and safely to himself and the country....[3]
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> Mr. WILSON: ... Why, sir, take the four regiments of artillery, the most important part of the Army. Four of those colonels ought to be retired. Not one of those colonels to-day, owing to their age or infirmities, or other causes, will be ordered into the field. Two of the four lieutenant colonels are in the same

[2] Appendix to the Secretary of the Navy's Annual Report to the President for 1855.

[3] *Congressional Globe*, 37th Congress, 1st Session 158 (1861) (statement of Senator Grimes).

> condition, and some of the majors. Go to your other regiments and you will find worn out, sick, or disabled officers in high positions. They cannot go into the field at the call of their country. You have to pay them where they are. Age adds to their receipts. They render no service whatever; and the younger officers who are called into the field, captains to command regiments, are to receive the pay of captains to fight the battles of the country, and have no promotion. The truth is, and if you take the Army Register, and examine it carefully, you will find it so, that as you approach towards the head of the Army, your officers are paralyzed by age.[4]

In response to these and similar concerns, Congress, in the Act of August 3, 1861, ch. 42, §16, 12 Stat. 287, 289 (1861), established a military disability retirement system that covered regular officers of all branches of service. The basic principles of this system continued to govern disability retirements until a substantially revised system was introduced in the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §402, 63 Stat. 802, 816-820 (1949). The Act of August 3, 1861, ch. 42, *id*., permitted a board of officers, with powers analogous to a court of inquiry or court-martial, to be convened to determine "the facts as to the nature and occasion of the disability of such officers as appear disabled" and to report whether "the said incapacity result from long and faithful service, from wounds or injury received in the line of duty, from sickness or exposure therein, or from any other incident of service." Act of August 3, 1861, ch. 42, *id*., §17, 12 Stat. at 290.

Army and Marine Corps officers retired for disability under the Act of August 3, 1861, ch. 42, *id*., §22, 12 Stat. at 291, were entitled to retired pay in an amount equal to their "pay proper" plus four "rations." The four "rations" had a commuted cash value of $36 a month.[5] The reason for inclusion of "rations" as part of the disability retired pay entitlement derives from the way active duty pay was administered at the time. The active duty pay scale prescribed but one rate, called "pay proper," for each officer grade. In addition to "pay proper," however, each officer was entitled to from four to six "rations," depending on grade, and to one additional "longevity" ration for each five years of

[4] *Congressional Globe*, 37th Congress, 1st Session 162 (1861) (statement of Senator Wilson).

[5] Four rations per day at 30¢ per ration, 30 days per month.

service. "Rations" were thus an integral part of an officer's "pay" and were used instead of pay proper to effect longevity pay increases. Under the retirement bill passed by the House, a retired officer would have received his pay proper and his longevity pay ("rations"), but not the four to six "rations" allowed for his grade. The Senate amended the bill by completely eliminating "rations" from the retired pay formula and fixing it as "pay proper" alone. A compromise was reached that arbitrarily gave each retired officer four longevity "rations," regardless of the number he was actually receiving as part of his active duty pay at the time of retirement for disability. A result was that all members of the same grade were entitled to the same amount of disability retired pay. But, in terms of percentage of active duty "pay," disability retired pay became progressively less as length of service increased. The entitlement of a colonel, for example, was $131 a month ($95 pay proper plus $36 for rations). This was approximately 70 percent of the active duty "pay" of a colonel with 20 years of service, 67.5 percent of the "pay" of a colonel with 25 years of service, and 65 percent of the "pay" of a colonel with 30 years of service. An Army or Marine Corps officer retired for a disability that did not result from military service was entitled, at the discretion of the Secretary concerned, to either pay proper alone, or to longevity "rations" alone, or he could be "wholly retired" (separated) with one year's pay and allowances.

Since active duty Navy officers were not under the "pay-proper-plus-rations" system, the Act of August 3, 1861, ch. 42, *id*., stated their disability retired pay entitlement in terms of a specified dollar amount for each grade, plus "four rations per day to be commuted at 30 cents each ration." As of the effective date of the 1861 act, the specified dollar amount for a Navy officer was slightly more than the pay proper of an Army officer of corresponding grade; thus, the retired pay entitlement of a Navy officer was slightly larger than that of his Army counterpart. A Navy officer retired for a disability that did not result from military service was entitled to "furlough" pay--that is, to one-half the leave-of-absence pay of his grade, or he could be "wholly retired" with one year's pay and allowances.

The Army's ability to make full use of the disability retirement system was hampered by a provision of the Act of August 3, 1861, ch. 42, *id*., that limited the number of officers on its retired list to seven percent of those on active duty. No limit was ever placed on Navy or Marine Corps retired lists. The seven percent limit was changed to a numerical ceiling of 300 by the Act of July 15, 1870, ch. 294, §5, 16 Stat. 315, 317 (1870), and raised to 400 by the Act of June 18, 1878, ch. 263, §7, 20 Stat. 145, 150 (1878). The Act of March 3, 1883, ch. 93, §1, 22 Stat. 456 (1883), divided the Army retired list into "unlimited" and "limited" categories. But only those retired because they had reached the mandatory retirement age of 64 could be assigned to the unlimited list. Disability retirees, along with those retiring voluntarily, had to go on the limited list and remained subject to the 400-man ceiling. The Act of February 16, 1891, ch. 238, 20 Stat. 763 (1891), reduced the limited list ceiling to 350 but permitted the transfer of disability retirees from the limited to the unlimited list when they reached age 64. The retired list ceiling continued to restrict disability retirements until, under the crushing weight of World War I casualties, the Act of September 17, 1919, ch. 61 [Public Law 49, 66th Congress], 41 Stat. 286, 286-287 (1919), allowed the placement of disability retirees on the unlimited retired list.

The Act of March 2, 1867, ch. 174, §6, 14 Stat. 515, 516 (1867), was the first law to authorize disability retirement for enlisted personnel. It provided that a disabled enlisted member of the Navy or Marine Corps with at least 20 years of service could be paid one-half his active duty pay "in lieu of being provided with a home in the naval asylum." Those with at least 10 years of honorable service were eligible for a pension in "a suitable amount for his relief, and for a specified time" at the discretion of the Secretary of the Navy.[6]

The Appropriation Acts of 1871 for the Army and Navy (Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, §24, 16 Stat. 315, 320 (1870), and Act of July 15, 1870 (Navy Appropriation Act of 1871), ch. 295, §3, 16 Stat. 321, 330-332

[6] This 10-year pension authority for disabled enlisted members of the Navy and Marine Corps survives in current law. 10 U.S.C. §6160.

(1870)) created an active duty salary system for officers and did away with commutations for rations. Since the existing retired pay formula was based in part on commuted rations, it had to be changed also. Disability retired pay was fixed as 75 percent of base and longevity pay for Army and Marine Corps[7] officers, Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, §24, 16 Stat. 315, 320 (1870), and as 50 percent of sea duty pay for Navy officers, Act of July 15, 1870 (Navy Appropriation Act of 1871), ch. 295, §5, 16 Stat. 321, 333 (1870). The Act of March 13, 1873, ch. 230, §1, 7 Stat. 547 (1873), raised retired pay for Navy officers to 75 percent of sea duty pay.

The next substantive change in the disability retirement system occurred in the Act of June 4, 1920, ch. 228 [Public Law 243, 66th Congress], §2, 41 Stat. 812, 834 (1920), which made officers of the naval reserve eligible for disability retirement on the same basis as regular officers. This provision, though it was repealed the following year, embodied a new principle. Until then, disabled non-regular officers had been compensated through the veterans' pension system rather than the military retirement system. Paradoxically, the Act of June 4, 1920 (National Defense Act Amendments of 1920), ch. 227 [Public Law 242, 66th Congress], §32, 41 Stat. 759, 778 (1920), enacted the same day as the Navy Act, provided for the integration of non-regular World War I officers into the regular Army but expressly specified that, if they became disabled, officers so appointed would be eligible only for a pension and not for disability retirement or retired pay. The Act of May 19, 1926, ch. 333 [Public Law 246, 69th Congress], 44 Stat. 564 (1926), amended the Act of June 3, 1916 (National Defense Act of 1916), ch. 134 [Public Law 85, 64th Congress], 39 Stat. 166 (1916), to eliminate this difference in treatment, with the result that non-regular officers who had been integrated into the regular Army became entitled to the same military disability retirement benefits as regular officers.

[7] Although the Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, 16 Stat. 315 (1870), dealt only with the Army, Marine Corps officers received the same treatment as Army officers by virtue of a special linkage provision.

The short-lived Navy Act of 1920 (Act of June 4, 1920, ch. 228 [Public Law 243, 66th Congress], §2, 41 Stat. 812, 834 (1920), *supra*) had been a tentative step in the direction of placing non-regular officers under the military disability retirement system. The Act of May 24, 1928 (Emergency Officers' Retirement Act of 1928), ch. 735 [Public Law 506, 70th Congress], §1, 45 Stat. 735 (1928), took another step in the same direction. It required the establishment of an "emergency officers' retired list" in the Army, Navy, and Marine Corps comprised of officers disabled during World War I, defined under the Act as the period from April 6, 1917, to July 2, 1921. Emergency Officers' Retirement Act of 1928, ch. 735, *id*., §2, 45 Stat. at 736. Officers placed on the list with a disability rating of 30 percent or more were entitled to "retirement" pay of 75 percent of their terminal active duty base and longevity pay. The "emergency officers' retired list" program was a mixture of military retirement and veterans' pension systems. The military services had to make disability determinations and place officers on the emergency retired list. Moreover, the "retirement" pay entitlement of such officers was the same as the "retired" pay entitlement of corresponding regular officers, rather than the disability rate fixed under the pension system. On the other hand, once an officer had been placed on the list, he was certified to the Veterans' Bureau[8] and paid from funds appropriated for that agency. Furthermore, an officer on the emergency officers' retired list did not hold a "retired status"--that is, he was not subject to recall nor eligible for such benefits as medical care or commissary and exchange privileges. Over half the officers on the list lost their eligibility and were removed as a result of depression measures, particularly the Act of March 20, 1933, ch. 3 [Public Law 2, 73d Congress], §10, 48 Stat. 9, 10 (1933),[9] which designated November 11, 1918, in place of July 2, 1921, as the end of the World War I eligibility period.

The Emergency Officers' Retirement Act of 1928, ch. 735, *id*., covered only a specific class of non-regular officers, those disabled in World War I. Other disabled non-regular officers remained wholly under the veterans' pension system until a state of

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[8] The predecessor organization of the Veterans' Administration, now the Department of Veterans Affairs. See footnote 10 to this chapter, below.

[9] Although untitled, the Act of March 20, 1933, ch. 3 [Public Law 2, 73d Congress], 48 Stat. 9 (1933), carried the catchline, "An Act to Maintain the Credit of the United States".

national emergency was declared and a buildup of military forces was begun preceding the entry of the United States into World War II. The Act of April 3, 1939, ch. 35 [Public Law 18, 76th Congress], §5, 53 Stat. 555, 557 (1939), provided that the same disability benefits as were available to members of the regular Army would be available to non-regular members. Executive Order No. 8099 of April 28, 1939, assigned responsibility for the administration and payment of such benefits to the Veterans' Administration.[10] Accordingly, non-regular officers who were retired for disability under the 1939 act were not placed on the Army retired list nor given a "retired status"; rather, they were handled exactly like "emergency" officers. This procedure continued until the enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949).

The Naval Aviation Personnel Act of 1940, ch. 694 [Public Law 775, 76th Congress], §4, 54 Stat. 864 (1940), entitled disabled non-regular Navy and Marine Corps officers to the same disability benefits provided for regular officers. Despite the similarity of this provision to that of the Act of April 3, 1939, ch. 35 [Public Law 18, 76th Congress], §5, 53 Stat. 555, 557 (1939), for non-regular members of the Army, no executive order was issued assigning responsibility for it to the Veterans' Administration, as had been the case with the Army provision. Hence, disabled reserve officers of the Navy and Marine Corps were retired and placed on the retired list in the same manner as regular officers. They had the status of retired officers, remained subject to recall to active duty, and were paid from Navy and Marine Corps appropriations.

[10] The Veterans' Administration was redesignated as the Department of Veterans Affairs by the Department of Veterans Affairs Act, Public Law 100-527, 102 Stat. 2635 (1988). Pursuant to that act, from and after March 15, 1989, all references in any federal law, executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Veterans' Administration is statutorily deemed to refer to the Department of Veterans' Affairs. Department of Veterans' Affairs Act, Public Law 100-527, §10, 102 Stat. at 2640-2641; also see 38 U.S.C. §201 note. (Some references to the "Veterans' Administration," the "VA," and the "Veterans' Bureau" have been retained in the present chapter, largely for historical reasons. It should be understood, however, that the federal agency currently charged with authority for administering the laws and regulations formerly administered by the Veterans' Administration is the Department of Veterans' Affairs.)

The Act of June 30, 1941, ch. 263 [Public Law 140, 77th Congress], §2, 55 Stat. 394 (1941), was the first legislation to extend disability retirement to Army enlisted personnel. The Act of June 30, 1941, ch. 263, *id*., §3, 55 Stat. at 394-395, allowed soldiers with 20 or more years of service to be retired for disability, with pay equal to 75 percent of their average monthly pay for the six months immediately prior to retirement. (The six-months' average pay base for computing this form of disability retired pay is worthy of note: as far as can be determined, Army enlisted personnel were the only category of military personnel to whom an average-pay formula was ever applied for the purpose of determining any kind of retired or retainer pay entitlements before enactment of the Department of Defense Authorization Act, 1981, Public Law 96-342, §813, 94 Stat. 1077, 1100-1110 (1980), which adopted a three-year average of monthly basic pay as the "monthly retired or retainer pay base" used in making retired or retainer pay entitlement computations for individual service members.)[11]

The 1941 law was the last significant modification to the disability retirement system before its 1949 revision. At this point, the compensation authorized for disabled military personnel had evolved into the systems set out below:

| **Categories of Personnel** | **Army and Air Force** | **Navy and Marine Corps** |
|---|---|---|
| Regular Officers | Military Disability Retired Pay - 75% of Base and Longevity Pay | Military Disability Retired Pay--75% of Base and Longevity Pay |
| Non-Regular Officers | Veteran's Administration "Retirement" Pay--75% of 6-months' Average Base and Longevity Pay | Same as Regular Officers |
| Enlisted Personnel, 20 or more years' of service | Military Disability Retired Pay - 75% of 6 months' Average Base and Longevity Pay | Military Disability Retired Pay--50% of Base and Longevity Pay |

[11] See discussion of "military retired pay base" and "military retainer pay base" in Chapter III.B.1., "Nondisability Retired and Retainer Pay," above.

| | | |
|---|---|---|
| Enlisted Personnel, less than 20 years' service | Veteran's Administration Disability Compensation based on degree of disability | Veteran's Administration Disability Compensation based on degree of disability |

**Note:** Any member entitled to military retired pay could waive all or part of such pay and elect in its place any VA disability compensation based on degree of disability to which the member was entitled.

Allegations of unfairness, inequity, and inefficiency in the existing disability retirement system became so extensive following World War II that a special subcommittee of the House Armed Services Committee, chaired by Representative Elston of Ohio, was impaneled to investigate them.[12] The principal complaints against the system were:

> (1) the award of wholly tax-exempt retired pay of 75 percent of active duty pay to any officer retired for disability, regardless of its severity, was unduly generous and costly;
>
> (2) the system, especially the Army "emergency officer" procedure, discriminated against non-regular officers as compared with regulars;
>
> (3) the system discriminated against enlisted personnel as compared with officers; and
>
> (4) the fact that retirement authority was limited to permanent disability tended to burden the active list with personnel retained solely for medical observation and evaluation of the permanency of a disability.

The recommendations of the Elston Committee and the Advisory Commission on Service Pay (the so-called Hook Commission), which met at about the same time, led to the revised disability retirement system adopted under the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §402, 63 Stat. 802, 816-820 (1949), in which most of the criticized features of the previous system were changed. Under the new system, all disabilities had to be rated under the standard schedule of rating disabilities in use by the Veterans' Administration, and the resultant ratings became a

[12] Investigation of Disability Retirement Systems in the Armed Services: Hearings before the Legal Subcommittee of the House Armed Services Committee Pursuant to H. Res. 141 and H. Res. 447, 80th Congress, 2d Session (1948).

factor in the determination of actual disability retired pay entitlements and their taxability. The new system covered officer and enlisted personnel of both the regular and reserve components, and it authorized temporary as well as permanent disability retirements. The disability retirement system in effect today remains basically unchanged from that adopted in 1949.[13]

The present system provides that a member with at least eight years of service who is unfit to perform the duties of his office or grade because of a permanent disability that is stable in degree may be retired (1) if the disability is not the result of intentional misconduct or willful neglect and was not incurred during a period of unauthorized absence and (2) the disability is rated at 30 percent or more or the member has at least 20 years of service. For personnel with less than eight years of service, the disability retired pay eligibility criteria appear to be somewhat more complex but in fact are not. For such personnel, the law provides that, to be eligible for disability retired pay, their disability must have been either (i) "the proximate result of performing active duty," (ii) "incurred in line of duty in time of war or national emergency," or (iii) "incurred in line of duty after September 14, 1978." Since "a state of national emergency" existed from 1950 until September 14, 1978, when all such "states of national emergency" were "terminated" pursuant to the National Emergencies Act, Public Law 94-412, §101, 90 Stat. 1255 (1976), the only effective requirements prior to September 15, 1978, for military personnel with less than eight years of service--in addition to the permanency of

[13] Among the few changes made to the military disability retirement system since 1949 is a change that affects mainly members of the reserve components of the Armed Forces. Before enactment of the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §604(d), 100 Stat. 3816, 3876 (1986), members of the Armed Forces on active duty for 30 days or less--primarily members of reserve components of the Armed Forces--were entitled to disability retired pay benefits only for disabilities resulting from injuries. The 1987 Authorization Act eliminated the requirement that members on active duty for 30 days or less have been disabled by injury as a condition of entitlement to disability retired pay, so that affected persons disabled by illness or disease are now entitled to disability retired pay as well as persons disabled by injury. As explained by Congress, this action was taken in furtherance of efforts begun with the Department of Defense Authorization Act, 1984, Public Law 98-94, §924, 97 Stat. 614, 644 (1983), "to remove the statutory distinctions between members of the active and reserve components who are disabled or killed as a result of injury, illness, or disease in the performance of their military duties or while traveling to or from those military duties." House Report No. 99-718 (Committee on Armed Services), p. 203, accompanying H.R. 4428, 99th Congress, 2d Session (1986). Cf. Senate Report No. 99-331 (Committee on Armed Services), pp. 239-240, and House Report No. 99-1001 (Committee of Conference), p. 477, accompanying S. 2638, 99th Congress, 2d Session (1986).

disability and non-misconduct/non-negligence requirements--were that the disability must have been either the "proximate result of performing active duty" or have been "incurred in line of duty." For disabilities incurred after September 14, 1978, the law itself, as amended by the Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, §117, 94 Stat. 2835, 2878 (1980), provides that, to come within the disability retired pay entitlement provisions, the disability need only have been "incurred in line of duty."[14] See generally, 10 U.S.C. §1201. Thus, the system at present operates, and has since 1950, in exactly the same manner for members with eight or more years of service as it does for those with less service.

As to the amount of disability retired pay to which a disabled member may become entitled, a person who first became a member of a uniformed service on or before September 7, 1980, who is permanently retired for disability is entitled, at his election, to retired pay computed by multiplying his terminal monthly basic pay by either his percentage of disability or by 2.5 percent of the number of his years of service, up to a 75 percent ceiling, whereas the retired pay of a person who first became a member after that date is determined by the use of the member's "retired pay base" or "retainer pay base," as defined in 10 U.S.C. §1407(b), in place of terminal monthly basic pay. See 10 U.S.C.

[14] In taking into account the National Emergencies Act, Public Law 94-412, §101, 90 Stat. 1255 (1976), Congress originally provided, in the Act of September 19, 1978, Public Law 95-377, §3, 92 Stat. 719 (1978), that so as long as a member with less than eight years of service incurred a disability in the line of duty between September 15, 1978, and September 30, 1979, he would be eligible for disability retired pay. Shortly before the expiration of this period, the Department of Defense recommended that such authority be made permanent for personnel with less than eight years of service, in order not to "worsen ... the competitive position of the Armed Forces in attracting and retaining the numbers and quality of members essential to the proper functioning of the forces" in the context of an "All Volunteer" service. Departmental recommendation, as printed in Senate Report No. 96-424 (Committee on Armed Services), p. 7, accompanying H.R. 5168, 96th Congress, 1st Session (1979). In response to this recommendation, Congress, on September 8, 1980, in the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §10(c), 94 Stat. 1123, 1129 (1980), extended the authority to September 30, 1982, conditioned on the ~~President~~'s promulgation of an executive order making such extension effective. Thus, despite the lapse of the authority on September 30, 1979, military personnel disabled in line of duty any time after September 15, 1978, and before October 1, 1982, were, under the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, *id*., entitled to disability retired pay if otherwise eligible therefor. In the Defense Officer Personnel Management Act, Public Law 96-513, §117, 94 Stat. 2835, 2878 (1980), adopted December 12, 1980, Congress made the authority permanent by extending disability retired pay authority to members whose disability was incurred in line of duty at any time after September 14, 1978.

§1401(a) (Formula No. 1 (relating to the computation of disability retired pay entitlements)).[15]

For persons who were members of the Armed Forces on September 24, 1975, or who were receiving disability retired pay on or before that date, or who at any time thereafter receive such pay because of a combat-related injury (including conditions simulating combat), or who would be entitled to receive disability compensation from the Department of Veterans Affairs upon application for such pay, retired pay computed on the basis of percentage of disability is wholly exempt from federal income taxation. See Section 104(a)(4) and (b) of the Internal Revenue code of 1986, 26 U.S.C. §104(a)(4) and (b), and Section 1.104-1(e)(1) of the Internal Revenue Service's Income Tax Regulations adopted thereunder, 26 C.F.R. §1.104-1(e)(1). Disability retired pay computed on the basis of years of service for such a person is, however, subject to federal income taxation to the extent that it exceeds the pay such person would have received had his pay been computed only on the basis of percentage of disability. See, *e.g.*, Section 104(a)(4) of the Internal Revenue Code of 1986, 26 U.S.C. §104(a)(4), and Sections 1.104-1(e)(1) and 1.105-4(a)(3)(i)(A) of the Income Tax Regulations thereunder, 26 C.F.R. §§1.104-1(e)(1) and 1.105-4(a)(3)(i)(A). For persons not covered by the previously specified eligibility criteria--that is, primarily persons who became members of the Armed Forces after September 24, 1975, and who do not receive disability retired pay because of a combat-related injury or who are not eligible for disability compensation administered by the Department of Veterans Affairs--amounts received as disability retired pay are, under amendments to the Internal Revenue Code of 1954 made by the Tax Reform Act of 1976, Public Law 94-455, §505(b), 90 Stat. 1520, 1567 (1976), fully subject to federal income taxation. See Section 104(b) of the Internal Revenue Code of 1986, 26 U.S.C. §104(b), for a fuller explication of the applicable rules for excluding disability retired pay from

[15] Abstracting from some minor complicating factors, a member's "retired" or "retainer pay base" equals average basic pay for the 36 month period the member earned the highest rate of monthly basic pay. See discussion of "military retired pay base" and "military retainer pay base" in Chapter III.B.1., "Nondisability Retired and Retainer Pay," above, for a fuller explanation of the niceties of "retired" and "retainer pay bases."

income subject to taxation.[16] [17] A disabled member with less than 30 percent disability and less than 20 years' service is entitled to disability severance pay, instead of disability retired pay, with the entitlement computed as the product of two months' basic pay and the member's years of service, up to a maximum of 12 years. 10 U.S.C. §§1203 and 1212.[18]

A member whose qualification for permanent disability retirement is prevented only because the degree of his disability cannot be positively determined can, if accepted medical principles indicate that the disability may be permanent, be placed on the temporary disability retired list ("TDRL") pursuant to the provisions of 10 U.S.C. §1202.[19] A member on TDRL has the same retired pay entitlement as a member

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[16] That is, before 1975, all Department of Defense disability retired pay was tax exempt, and the same was true for Veterans' Administration disability compensation. In 1975, because of what was perceived as abuses of the tax-exemption provisions relating to military disability retired pay--including allegations that retirees were regularly determined to have some form of disability whether in fact they had any disability or not--the Department of Defense rule was changed so that only the percentage of disability retired pay that is attributable to "combat-related injuries" (defined to include injuries or sickness caused by an "instrumentality of war" and incurred (i) as a direct result of armed conflict, or (ii) while engaged in "extrahazardous" service, or (iii) under conditions simulating war) or that a member could have obtained as disability compensation from the Department of Veterans Affairs is exempt from taxation. Disability compensation awarded by the Department of Veterans Affairs remains wholly tax exempt. (In a related vein, once the Department of Defense determines the percentage of disability for disability retired pay purposes, that percentage is fixed for ever. As far as disability compensation administered by the Department of Veterans Affairs is concerned, however, the percentage of disability determination is not final but may be changed as a veteran's physical condition either improves or deteriorates over time.)

[17] See, *e.g.*, House Report No. 94-658 (Committee on Ways and Means), pp. 152-153, and Senate Report No. 94-938 (Committee on Finance), pp. 138-140, accompanying H.R. 10612, 94th Congress, 2d Session (1976).

[18] For a more complete discussion of disability severance pay, see Chapter III.C.2., "Disability Severance Pay," below.

[19] Before 1985, a member who had a disability that was determined to be permanent even though the degree of disability could not be determined because it was not stable in nature was nevertheless required to be placed on permanent disability retired status. The Department of Defense Authorization Act, 1986, Public Law 99-145, §513, 99 Stat. 583, 627-628 (1985), changed this result to "permit a permanently disabled service member to be placed on the temporary disability retired list if the disability, though permanent in character, were not stable in degree." House Report No. 99-81 (Committee on Armed Services), p. 211, accompanying H.R. 1872, 99th Congress, 1st Session (1985) (emphasis in original). As explained in the House Report, "[l]iterally construed, current law would not permit the same result." *id.* (The 1986 Authorization Act also changed preexisting law to "permit retirement or separation of a service member directly from the temporary disability retired list without the administrative fiction--required by current law--of reappointment or reenlistment on active duty" before retirement or separation. *id.*) Also see House Report No. 99-235 (Committee of Conference), p. 422, and Senate Report No. 99-118 (Committee

permanently retired for disability, except that there is a 50 percent floor as well as a 75 percent ceiling on temporary disability retired pay. A member on the TDRL must be physically examined at least once every 18 months to determine whether there has been a change in his disability and whether the disability is permanent in nature. A final determination on permanency must be made within five years of the member's placement on TDRL. If a periodic or final physical examination shows that a member's disability is permanent and stable and is rated as 30 percent or more, or if he has at least 20 years of service,[20] the member is permanently retired in a disability status. If it is determined that the member's disability is permanent but is rated as less than 30 percent and he has less than 20 years of service,[21] the member is removed from TDRL, separated from the service, and given disability severance pay.[22] If it is determined that he is physically fit to perform his duties, the member must be removed from TDRL, with a concomitant cessation of disability retired pay, after which, with his consent, he may be reappointed or reenlisted on the active list or permanently separated without entitlement to either disability, retired, or severance pays.

Until 2004, under the provisions of 38 U.S.C. §§5304-5305 a member or former member of the Armed Forces could receive a disability-based pension or

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of Conference), p. 422, accompanying S. 1160, 99th Congress, 1st Session (1985). See 10 U.S.C. §1202 concerning the "temporary disability retired list."

[20] Section 1201(3) of Title 10, United States Code, 10 U.S.C. §1201(3), specifically requires that a member have either 20 years of service or a disability rating of at least 30 percent to be eligible for disability retired pay. The 20-year requirement would appear to rule out the possibility that members of the Armed Forces with at least 15 but less than 20 years of service who have a disability rating of less than 30 percent may be eligible for disability retirement pursuant to the provisions of Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), as amended by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §561(a), 107 Stat. 1547, 1667 (1993), set out as a note under 10 U.S.C. §1293, which provides temporary early retirement authority during the "active force drawdown period," *i.e*., October 23, 1992, to October 1, 1999, for members of the Armed Forces with at least 15 but less than 20 years of service. As a practical matter, however, the Secretaries of the military departments would appear to have sufficient discretionary authority under the early retirement program authorized by Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), as amended, see Section 4403(d) of the act in particular, to grant regular retirement to members with at least 15 but less than 20 years of service who have a disability rating of less than 30 percent.

[21] But see the last sentence of footnote 20 hereof, above.

[22] See footnote 19, above.

> compensation from the Department of Veterans Affairs at the same time he received retired or retainer pay based on service as a member of the Armed Forces, only if he filed a "waiver" of that portion of his retired or retainer pay (including disability retired pay) entitlement equal to the amount of pension or compensation to which he was entitled from the Department of Veterans Affairs.[23] The provision of this "offset" effectively banned the concurrent receipt of disability retired pay and veterans compensation for the same disability.

In the late 1990s, the fairness of this limitation on concurrent receipt came under close scrutiny by Congress, and abolition of the limitation gained strong political support. The National Defense Authorization Act for Fiscal Year 2000 added a new section to Chapter 71 of 10 U.S.C., providing for special retirement compensation from the Defense Department to retirees with disabilities rated at 70 percent or higher. The National Defense Authorization Act for 2002 reduced the minimum disability rating of this provision from 70 to 60 percent. Under both laws, compensation was computed on a sliding scale commensurate with the Department of Veterans' Affairs scale that awarded higher payments to individuals with greater rates of disability. The authorization act for 2002 also provided authority for concurrent receipt, but that authority was contingent on passage of legislation that would provide means to offset the additional expenditure that concurrent receipt would entail over the ensuing ten years. Because no such legislation was forthcoming, the special compensations prescribed in legislation beginning in 2000 left most disabled veterans substantially short of concurrent receipt, for which strong advocacy continued. In 2003 Senator Nelson of Nebraska expressed the rationale for advocacy of full concurrent receipt:

> Military retirement pay and VA [Department of Veterans' Affairs] disability compensation were earned and awarded for different purposes. The military retired pay is awarded for a career of service in the armed services. Disability compensation is awarded to veterans to compensate for a disability incurred in the line of military duty…. Each year for several years legislation has been introduced in both the House and the Senate to repeal this inequitable prohibition.[24]

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[23] See footnote 16, above, as well as the text of the paragraph to which it is appended.

[24] U.S. Senate Armed Services Committee, Subcommittee on Personnel, hearing on disabled veterans, March 27, 2003.

Despite strong support for this position in Congress and among veterans' groups, the Bush Administration opposed the removal of the concurrent receipt restrictions because of the additional expenditures that such a change would entail. President Bush threatened to veto the National Defense Authorization Act for Fiscal Year 2003 if the House-Senate conference adopted the Senate's proposed application of concurrent receipt to virtually all disabled retirees. In a compromise response, the National Defense Authorization Act for Fiscal Year 2003 limited the application of concurrent receipt to a narrower category, the "combat-related disabled uniformed services retiree." Individuals determined to fall into that category (which required at least a 60 percent disability rating) became eligible to receive special compensation from the Defense Department in the amounts stipulated as disabled veterans' benefits in Chapter 11 of U.S.C. 38. This provision would normally mean restitution of the entire "waived" portion of the individual's retirement entitlement, which the legislation in fact stipulates as the maximum amount that can be received as special compensation (combat-related special compensation, CRSC) by the combat-related disabled uniform services retiree.

The National Defense Authorization Act for Fiscal Year 2004 extended the scope of concurrent receipt in both eligibility and benefits. Section 641 of that legislation provided for all disabled retirees with disability ratings of 50 percent or more to have their offsets (the amount subtracted from military retirement because of disability benefits) reduced gradually between 2004 and 2013, reaching zero at the end date. Purple Heart recipients became eligible immediately for full military retirement and disability benefits. Section 642 of the 2004 authorization bill also extended to all retirees with combat-related disabilities the combat-related special compensation for which retirees with more than 60 percent combat-related disability had become eligible in 2003. That legislation also clarified eligibility between the two most recent programs: individuals receiving compensation based on combat-related disabilities are ineligible for the ten-year gradual reduction of offsets, and individuals receiving reduced offsets are ineligible for combat-related disability compensation.

The following table shows the amounts of additional monthly compensation to be received by disability retirees in 2004, the starting point of phased-in concurrent receipt

for retirees with 50 percent or greater disability. In each of the succeeding years through 2013, the amount of the monthly offset will decrease (hence monthly retirement compensation will increase) by an additional 10 percent of the difference between the previous year's monthly offset decrease and the individual's original monthly offset amount. For example, a retiree with 50 percent disability, nominal retirement eligibility of $2,000, and an offset of $1,000 would receive $100 of additional retired pay per month in 2004 by virtue of the $100 offset reduction stipulated for individuals in the 50 percent category. Thus the individual's total monthly retirement payment would increase from $1,000 to $1,100. In 2005, that amount would increase by $90, which is 10 percent of $900 (the difference between the total offset monthly amount, $1,000, and the previous year's monthly offset decrease, $100), reducing the pre-2004 monthly offset amount by $190 and yielding a total retirement payment of $1,190. In 2006, the monthly payment would increase by 20 percent of the difference between $1,000 and $190, or $162, reducing the original monthly offset by $190 plus $162, or $352, and yielding a monthly retirement payment of $1,352. In 2007 the $352 figure would increase by 30 percent of the difference between $1,000 and $352, and so on. In the final year, 2014, the monthly payment would increase by 100 percent of the difference between $1,000 and the monthly payment for 2012, bringing the individual to full concurrent receipt on December 31, 2013.

| **Disability Rating** | 50% | 60% | 70% | 80% | 90% | 100% |
|---|---|---|---|---|---|---|
| **2004 additional monthly retirement payment*** | $100 | $125 | $250 | $350 | $500 | $750 |

* *i.e.*, reduction of monthly offset

**Summary**: The more significant statutes relating to disability retirement and retired pay are displayed in capsulized form below.

**Summary of Significant Statutes Relating to Disability Retirement and Retired Pay**

| **Enactment** | **Action** |
|---|---|
| Act of February 28, 1855, ch. 127, 10 Stat. 616 (1855) | Authorized involuntary removal of Navy officers from active list for disability and other reasons. |
| Act of August 3, 1861, ch. 42, 12 Stat. 287 (1961) | Established disability retirement system for regular officers of all services. |
| Act of March 2, 1867, ch. 174, 14 Stat. 515, 516 (1867) | Established disability retirement system for Navy and Marine Corps enlisted personnel with 20 or more years of service. |
| Act of July 15, 1870, ch. 294, 16 Stat. 315 (1870) | Fixed disability retired pay for Army and Marine Corps officers at 75 percent of active duty pay, a formula that continued until 1949. |
| Act of March 3, 1873, ch. 230, 17 Stat. 547 (1873) | Made 75 percent disability retired pay formula applicable to Navy officers. |
| Act of June 4, 1920, ch. 228 [Public Law 243, 66th Congress], 41 Stat. 812, 834 (1920) | Temporarily made officers of naval reserve eligible for disability retirement on same basis as regular officers. |
| Act of May 24, 1928, ch. 735 [Public Law 506, 70th Congress], 45 Stat. 735 (1928) | Created "emergency officers' retired list"; made non-regular officers of all services disabled during World War I eligible for "retirement" pay from VA. "Retirement" pay equivalent of "retired" pay of corresponding regular officers. |
| Naval Aviation Personnel Act of 1940, ch. 694 [Public Law 775, 76th Congress], 54 Stat. 864 (1940) | Made non-regular Navy and Marine Corps officers eligible for same disability retirement benefits as regulars. Such non-regulars handled same as regular officers. |
| Act of June 30, 1941, ch. 263 [Public Law 140, 77th Congress], 55 Stat. 394 (1941) | Established disability retirement system for Army enlisted personnel with 20 or more years of service. |
| Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949) | Revised disability retirement system; applicable equally to officer and enlisted personnel of both regular and reserve components; disabilities rated by degree and resultant ratings factor in retired pay entitlement and taxability; temporary as well as permanent disabilities provided for. |

| | |
|---|---|
| National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, 113 Stat. 644 | Initiated special compensation for rated at higher than 70 percent disability |
| National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, 115 Stat. 1128 | Provided for authority for concurrent receipt of military retired pay and veterans' disability compensation, contingent on enactment of legislation to offset expenditures; reduced minimum disability rating to 60 percent for receipt of special compensation for severely disabled retirees. |
| National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, 116 Stat. 2458 | Provided for concurrent receipt of military retired pay and veterans' disability for veterans categorized as combat-related disabled uniformed services retirees, if their disability rating was 60 percent or higher. |
| National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, 108th Congress | Provided for phase-in over a ten-year period (through 2013) of full concurrent receipt of military retired pay and veterans' disability compensation for military retirees with greater than 50 percent disability. Extended eligibility for combat-related disability special compensation to all retirees with combat-related disabilities, regardless of disability rating. |

**Cost**: For the cost of disability retired pay from 1972 to 2004, see Tables III-4 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter III.B.4.**

## Adjustments to Retired and Retainer Pay

**Legislative Authority**: 10 U.S.C. §1401a.

**Purpose**: To provide a mechanism for adjusting the retired and retainer pay entitlements of members of the uniformed services to offset or compensate for the effects of inflation in order to protect the initial value of that pay and to insure that persons who make a career of the uniformed services and become entitled to retired or retainer pay do not have the purchasing power of that pay eroded by inflation.

**Background**: The subject of post-retirement adjustments to retired and retainer pay is an issue with major budgetary implications and has received considerable attention in recent years. The history of such adjustments dates to 1870. The Army and Navy Appropriation Acts for 1871 (Act of July 15, 1870 (Army Appropriation Act of 1871), ch. 294, §24, 16 Stat. 315, 320 (1870), and Act of July 15, 1870 (Navy Appropriation Act of 1871), ch. 295, §3, 16 Stat. 321, 330-332 (1870)), enacted nine years after the first military retirement system had been created, included a pay raise for officers on the active list. The Acts also provided for an adjustment in the retired pay of officers who were already retired based on the new active duty rates. Army Appropriation Act of 1871, ch. 294, §24, 16 Stat. 315, 320 (1870), and Navy Appropriation Act of 1871, ch. 295, §5, 16 Stat. 321, 333 (1870). The Navy Act was especially clear in this regard, stating that "the pay of all officers of the navy now on or hereafter placed on the retired list" was to be based on "the highest pay prescribed by this act for officers on the active list whose grade corresponds to the grade held by such retired officers."[1] The adjustment of retired and retainer pay on the basis of new active duty pay rates became known as "recomputation" of retired pay, inasmuch as retired and retainer pay entitlements of

[1] The Act of July 15, 1870 (Navy Appropriation Act of 1871), ch. 295, §5, 16 Stat. 321, 333 (1870), provided that the actual retired pay of any particular officer was to be computed as "one half" of "the highest pay prescribed by this act for officers on the active list whose grade corresponds to the grade held by such retired officers."

retired members were "recomputed" every time there was an increase in pay rates for members of the active force.

The Act of August 5, 1882 (Navy Appropriation Act of 1883), ch. 391, §1, 22 Stat. 284, 286 (1882), though it made no change in active duty pay rates, discontinued recomputation for retired Navy officers: "Hereafter there shall be no promotion or increase of pay in the retired list of the Navy but the rank and pay of officers on the retired list shall be the same that they are when such officers shall be retired." This provision was aimed primarily at preventing post-retirement promotions with attendant pay increases, but its language also had the effect of barring recomputation. Army and Marine Corps officers were not affected by the bar, nor were the enlisted personnel of any service, including the Navy.

The Act of March 3, 1899 (Navy and Marine Corps Reorganization Act of 1899), ch. 413, §13, 30 Stat. 1004, 1007 (1899), resulted in an increase in the active duty pay of Navy officers. The pay of retired Navy officers was not adjusted on the basis of these new rates, however, both because of the bar on recomputation contained in the Navy Appropriation Act of 1883 and because of the express provision that "nothing in this Act shall operate to increase or reduce the pay of any officer now on the retired list of the Navy."

Recomputation was restored to retired Navy officers by the next Navy pay bill, the Act of May 13, 1908 (Navy Appropriation Act of 1909), ch. 165 [Public Law 115, 60th Congress], 35 Stat. 127, 128 (1908). This Act provided that "the pay of all commissioned, warrant and appointed officers, and enlisted men of the Navy now on the retired list shall be based on the pay, herein provided for, of ... officers and enlisted men of corresponding rank and service on the active list."

The Act of May 18, 1920, ch 190 [Public Law 210, 66th Congress], §§1-6, 8, 11, 13, 41 Stat. 601, 601-604 (1920), authorized a temporary increase in the active duty pay of all personnel "until the close of the fiscal year ending June 30, 1922, unless sooner

amended or repealed," while at the same time providing that such "increases ... shall not enter into the computation of the retired pay of officers or enlisted men who may be retired prior to July 1, 1922." Act of May 18, 1920, ch. 190, *id*., §13, 41 Stat. at 604. Thus, not only did the act bar recomputation on the basis of the new rates for personnel already on the retired list, it prohibited personnel retiring after the effective date of the Act but before July 1, 1922, from computing their retired pay on the basis of the higher rates--and this despite the fact that such personnel had actually received the higher rates while on active duty. These prohibitions were presumably due to the stop-gap nature of the 1920 pay legislation, evidenced by a provision calling for the creation of a special committee of Congress to "make an investigation and report recommendations to their respective Houses not later than the first Monday in January, 1922, relative to the readjustment of the pay and allowances of the commissioned and enlisted personnel of the several services." Act of May 18, 1920, ch. 190, *id.*, §13, 41 Stat. at 604.

The recommendations of the special Congressional committee were reflected in the Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §§1 and 9, 42 Stat. 625, 625-627 (1922), which authorized permanent increases in active duty pay rates. Enlisted personnel on the retired list were allowed to recompute their retired pay on the basis of the new rates, but officers were expressly prohibited from doing so. Joint Service Pay Readjustment Act of 1922, ch. 212, *id*., §1 (commissioned officers) and §9 (warrant officers), 42 Stat. at 625-627 and 629-630. This prohibition was removed by the Act of May 8, 1926 (Pay Equalization Act of 1926), ch. 274 [Public Law 204, 69th Congress], 44 Stat. 417 (1926), which permitted officers retired before July 1, 1922, to prospectively recompute their retired pay on the basis of the active duty pay rates that had been prescribed effective that date; such officers were not, however, permitted to retroactively reclaim the benefits of recomputation for the period 1922-1926.

The recomputation principle was followed for both officer and enlisted personnel in each of the active duty pay raises that occurred between 1922 and 1949. The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §511, 63 Stat. 802,

829-830 (1949), permitted the pay of any retired member to be recomputed under the higher basic pay rates it established, but it also gave personnel retired before October 1, 1949, an option that resulted in an election by many such members, particularly officers retired for disability, to forego recomputation. Officers were entitled to disability retired pay of 75 percent of their active duty pay until the disability retirement system was revised by the Career Compensation Act of 1949, ch. 681, *id*. Under the revised system, they were entitled to retired pay computed by multiplying the basic pay of their grade by either their percentage of disability or their years of active service, up to a ceiling of 75 percent. Those retired before October 1, 1949, could choose to have their retired pay recomputed under the "new" pay rates using the revised method of computation, or to continue to receive 75 percent of the "old" rates. Members with a 50 percent disability and 20 years of service, for example, had a choice between 50 percent of the new rates or 75 percent of the old rates. As it worked out, 60 percent of the new rates was as a general rule slightly greater than 75 percent of the old rates. Thus, it took a disability rating of 60 percent or higher or a minimum of 24 years of service to make recomputation advantageous. Many retired members had neither this degree of disability nor length of service; hence, they elected to remain under the pre-October 1949 pay rates and method of computation. Personnel who made such an election were prohibited from having their retired pay recomputed under the subsequent military pay raises of 1952 and 1955, even though recomputation was authorized generally under those pay bills.

The Act of May 20, 1958 (Armed Forces Pay Act of 1958), Public Law 85-422, 72 Stat. 122 (1958), increased active duty basic pay rates, §1(1), 72 Stat. at 122, but prohibited recomputation of retired pay on the basis of the new rates, §3(a), 72 Stat. at 128. It provided for a six percent cost-of-living increase in retired pay instead. It is clear from the legislative history of the Act that Congress had not at this point made up its mind whether recomputation should be abandoned permanently or whether it should merely be suspended for this particular piece of legislation. The added cost of recomputation played a major part in its prohibition in the 1958 Act. As explained by the House Armed Services Committee:

> A major departure from the Department of Defense proposal lies in the treatment of retired personnel. The Cordiner Group recommended that pay of all retired personnel should be recomputed on the basis of the new pay scales. The Department of Defense proposal, H.R. 9979, recommended that retired personnel should receive no increase in retired pay. The Committee on Armed Services has taken the middle ground. The cost factor involved, approximately $65 million, precluded the adoption of the Cordiner Committee recommendation. On the other hand, the Committee felt strongly that the advance in the cost of living has created conditions of hardship which require some measure of relief. Therefore, H.R. 11470 includes an increase of 6 percent to all personnel retired prior to the effective date of the proposed legislation at a cost of a little over $35 million.[2]

The Chairman of the Senate Armed Services Subcommittee that handled the pay legislation sounded a similar theme when he introduced the bill in the Senate:

> The only reason for changing the present system of including all retired personnel, at whatever increase was applied to the corresponding rank in the active service, was the question of where to put the money so that it would do the most good, and also the question of the future soundness of the retirement program.[3]

The Uniformed Services Pay Act of 1963, Public Law 88-132, §5(g), 77 Stat. 210, 213-214 (1963), replaced the recomputation system in permanent law with a method of retired pay adjustment based on increases in the cost of living as measured by the Consumer Price Index (CPI). The permanent shift from a recomputation to a cost-of-living method of adjustment was explained in these terms:

> The Committee on Armed Services recognizes the tradition that has attached itself in the past to the method of recomputing retired pay whenever the rates of basic pay for members on active duty are changed. It was not easy in 1958, and it is not easy now, to recommend this break with tradition. Nevertheless, the break with tradition was made in 1958 when recomputation of retired pay based on changes in active duty pay rates was not authorized.
>
> The Committee on Armed Services fully realizes the obligation we have to those now retired who have served their Nation. But the committee also recognizes its obligation to those now serving on active duty and those who will enter on active duty in the future.

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[2] House Report No. 1538 (Committee on Armed Services), p. 47, accompanying H.R. 11470, 85th Congress, 2d Session (1958).

[3] 104 *Cong. Rec*. 7612 (1958).

> The committee cannot disregard the already heavy costs involved in military retirement or the substantial added costs which would result if recomputation were to be retained as a part of the military retirement system.[4]

The adjustment method adopted in the Uniformed Services Pay Act of 1963, Public Law 88-132, §5(g), 77 Stat. 210, 213-214 (1963), required a determination in January of each year of the percentage increase in the CPI, as measured by the annual average of that index for the year. If the increase was three percent or more, retired pay was to be increased by that percent on the first of April.

Despite the creation of the CPI adjustment mechanism and the formal abandonment of recomputation, the Act in fact authorized recomputation for two specific groups of retired personnel. Those retired before June 1, 1958, were permitted to recompute their retired pay on the basis of the active duty pay rates prescribed in 1958; and those retired between April 1 and October 1, 1963, were allowed to recompute on the basis of the new active duty pay rates that took effect October 1, 1963.

No retired pay adjustments resulted from the formula adopted in the Uniformed Services Pay Act of 1963, Public Law 88-132, §5(g), 77 Stat. 210, 213-214 (1963). The Act of August 21, 1965, Public Law 89-132, §5, 79 Stat. 545, 547 (1965), changed the adjustment mechanism to require a monthly determination of the percentage by which the CPI had increased over the base index used for the most recent adjustment of retired pay. When the CPI had increased by at least 3 percent over the base index and held at 3 percent or more for three consecutive months, retired pay was to be increased on the first day of the third month following the consecutive three-month period by the highest percent of the increase plus 1 percent. The one percent add-on was incorporated into the adjustment mechanism, starting with the November 1, 1969, cost-of-living increase, by the Act of December 30, 1969, Public Law 91-179, 83 Stat. 837 (1969), for the purpose of compensating for the loss of purchasing power during the time the CPI was building up to the three percent level and before the increase in the cost of living was actually reflected in higher retired pay. The Civil Service Retirement Amendments of 1969,

[4] House Report No. 208 (Committee on Armed Services), p. 19, accompanying H.R. 5555, 88th Congress, 1st Session (1963).

Public Law 91-93, 83 Stat. 136, 139 (1969), had authorized a similar 1 percent add-on in Federal civil service annuities, and the add-on had been in effect for the cost-of-living increase that occurred in civil service annuities on November 1, 1969. The Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, §801(a), 90 Stat. 923, 929 (1976), eliminated the one percent add-on to military retired pay, contingent on repeal of the similar 1 percent add-on for civil service retirees. The Legislative Branch Appropriation Act, 1977, Public Law 94-440, §1306(d), 90 Stat. 1439, 1462-1463 (1976), amended the preexisting adjustment mechanism by providing that retired and retainer pay was to be adjusted twice yearly--on March 1 and September 1--by the percentage increase in the index, rounded to the nearest one-tenth of 1 percent, on the preceding January 1 and July 1, respectively. In 1980, Congress, in the Department of Defense Authorization Act, 1981, Public Law 96-342, §812, 94 Stat. 1077, 1098-1099 (1980), further amended the adjustment mechanism by deferring the adjustment that would otherwise have taken place in September 1980 and by providing, in effect, that future adjustments should be made only once a year, at the same time Civil Service retirement annuities were adjusted pursuant to 5 U.S.C. § 8340(b), and by the same percentage.

The Department of Defense Authorization Act, 1984, Public Law 98-94, §§921 and 922, 97 Stat. 614, 640-642 (1983), made two amendments to the provisions affecting the mechanism for adjusting retired and retainer pay under 10 U.S.C. §1401a. The first of the changes, adopted as Section 921 of the 1984 Authorization Act, Public Law 98-94, *id*., §921, 97 Stat. at 640-641, repealed the so-called "one-year `look-back'" provision of prior law. Under the one-year "look-back" rule, military retirees were permitted to base their retired or retainer pay either on the pay scale in effect on the date of their retirement or on the immediately preceding pay scale as adjusted for changes in the cost of living pursuant to 10 U.S.C. §1401a, whichever was greater. The 1984 Authorization Act eliminated the latter option--basically because of budgetary concerns.[5] The second change, adopted as Section 922 of the 1984 Authorization Act, Public Law 98-94, id.,

[5] See, *e.g.*, House Report 98-352 (Committee of Conference), p. 227, Senate Report No. 99-213 (Committee of Conference), p. 227, and Senate Report No. 98-174 (Committee on Armed Services), pp. 219-220, accompanying S. 675, 98th Congress, 1st Session (1983).

§922, 97 Stat. at 641-642, required that monthly retired or retainer pay entitlements, both as initially computed and as subsequently adjusted pursuant to 10 U.S.C. §1401a, be rounded down to the next lower full dollar. At bottom, budgetary concerns were responsible for this change as well. As explained by the Senate Committee on Armed Services:

> The Committee proposal to round down monthly retired [and retainer] pay to the next lower dollar is consistent with the provisions of the Omnibus Reconciliation Acts of 1981 and 1982 which rounded down monthly Social Security benefits and civil service annuities, respectively. Although each [military] retiree would only lose from $.12 to $11.88 per year, the Department of Defense estimates that rounding down would save an estimated $9 million annually through fiscal year 1987.[6]

The Military Retirement Reform Act of 1986, Public Law 99-348, §§102 and 103, 100 Stat. 682, 683-686 (1986), made further changes to the mechanism by which retired and retainer pay is adjusted to compensate for increases in the general price level. As previously indicated,[7] the basic thrust of the Military Retirement Reform Act of 1986, Public Law 99-348, id., was to create a new, and less expensive, retirement system for members of the uniformed services who first became members on or after August 1, 1986. To this end, the Military Retirement Reform Act of 1986, Public Law 99-348, *id*., made two fundamental changes in the retirement system as applied to such members. The first of the changes, discussed in Chapter III.B.1. hereof, above, "Nondisability Retired and Retainer Pay," created new, and lower, percentage multipliers to be applied to affected members' "monthly retired or retainer pay bases" to determine initial retired or retainer pay entitlements. The second of the changes established a new mechanism for adjusting retired or retainer pay entitlements of affected members.

Before enactment of the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986), all retired members or former members of the uniformed

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[6] Senate Report No. 98-174 (Committee on Armed Services), p. 219, accompanying S. 675, 98th Congress, 1st Session (1983). Also see House Report No. 98-352 (Committee of Conference), p. 227, and Senate Report No. 98-213 (Committee of Conference), p. 227, accompanying S. 675, 98th Congress, 1st Session (1983).

[7] See Chapter III.B.1. hereof, above, "Nondisability Retired and Retainer Pay."

services had their retired or retainer pay entitlements adjusted annually at the same time and by the same percentage as Civil Service retired pay to reflect changes in the Consumer Price Index.[8] The mechanism for effecting such adjustments, as previously indicated, sought to protect the full purchasing power of the initial retired or retainer pay entitlement of a particular member of a uniformed service by increasing the entitlement, at stated intervals, by the percentage by which the Consumer Price Index had increased since the last adjustment. [9] Under the Military Retirement Reform Act of 1986, Public Law 99-348, id., the linkage with Civil Service retired pay adjustments is broken for members of the uniformed services who first became members on or after August 1, 1986, and the adjustment mechanism that is to be applied to the retired or retainer pay of such members no longer protects the full purchasing power of their initial retired or retainer pay entitlements. Rather, the adjustment mechanism for all members of the uniformed services who first became members on or after August 1, 1986, provides that, between the time a member retires and the time the member reaches age 62, the member's retired or retainer pay entitlement is to be adjusted, at the same time adjustments are made for pre-August 1, 1986, accessions, by the percentage by which the Consumer Price Index had increased since the last adjustment less one percentage point. Then, when the member reaches age 62, and at the same time as the member's retirement percentage multiplier is increased,[10] a one-time "catch-up" adjustment is made to the Consumer Price Index adjustment mechanism. In short, when a member reaches age 62, two adjustments are made to the member's retired or retainer pay entitlement. The first adjustment effectively results in a recomputation of the member's initial retired or retainer pay

[8] For purposes of this chapter, references to "members" in connection with the discussion of adjustments to retired or retainer pay should be understood to include former members as well.

[9] This adjustment process was, in practice, slightly more complicated than indicated for members of the uniformed services who had retired since the time the last previous adjustment had been made.

[10] As previously indicated, see Chapter III.B.1., "Nondisability Retired and Retainer Pay," the percentage multiplier applied to a member's monthly retired or retainer pay base to determine the initial retired or retainer pay entitlement is, under the provisions of the Military Retirement Reform Act of 1986, depressed until the member reaches age 62. When the member reaches age 62, the amount by which the percentage multiplier was depressed under the Retirement Reform Act is restored, so that an affected member then has a percentage multiplier that is the same as that applicable to pre-August 1, 1986, accessions.

entitlement by application of what for most affected individuals[11] will amount to a new and higher percentage multiplier to be applied to the member's monthly retired or retainer pay base. The second adjustment effectively escalates this recomputed monthly retired or retainer pay base to compensate for the full increase in the Consumer Price Index between the time the member retired and the time the member reached age 62.[12] After these two adjustments to a member's retired or retainer pay entitlement are made when the member reaches age 62, future adjustments to the member's retired or retainer pay to compensate for increases in the general price level revert to the CPI-minus-1 formula.

As explained by Congress:

> The uniformed services retirement system has existed essentially unchanged for the last 50 years, and its basic form was established over a century ago. During the past two decades, the uniformed services retirement system has come under increasing scrutiny and attack. By recommending the [current] changes ..., the conferees are attempting to put the issue of structural reform of the uniformed services retirement system to rest for the foreseeable future. The conferees believe that, as a result of these changes, the criticism of the uniformed services retirement system will subside and the concerns of service members regarding the uncertainty of retirement benefits can be assuaged.
>
> The conferees emphasize that the changes to the uniformed services retirement system included in this conference report [and the Act] would apply only to those who first become members of a uniformed service on or after August 1, 1986. No member who had joined a uniformed service before that date--much less any current retiree of a uniformed service--would be affected.
>
> Most of the features of the current uniformed services retirement system are well known.
>
> (1) An immediate annuity is available to a service member who completes 20 years of service; no benefit is available to a service member who does not complete 20 years of service.

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[11] The percentage multiplier will in fact be higher for all retirees who first became members of a uniformed service on or after August 1, 1986, except for members who retired with 30 or more years of "creditable service," who are in any event entitled to a percentage multiplier of 75 percent. See Chapter III.B.1., "Nondisability Retired and Retainer Pay." (For this purpose, the term "creditable service" refers to the number of years of service with which a member is credited for determining the member's retired or retainer pay entitlement.)

[12] This second adjustment will result in an increase in the retired or retainer pay entitlements of all persons who retired before reaching age 62--even for those individuals who retired before reaching age 62 with 30 or more years of "creditable service."

(2) Retired pay equals high-3 average basic pay times a multiplier. (For those becoming members of a uniformed service for the first time before September 7, 1980, [*sic*][13] retired pay is based on final basic pay instead of high-3 average basic pay.) The multiplier equals 2 1/2 percent times years of service and ranges from 50 percent at 20 years of service to 75 percent at 30 or more years of service.

(3) Retired pay is adjusted annually by the increase in the cost of living as measured by the consumer price index (CPI).

The uniformed services retirement system is noncontributory. However, the service member contributes, while on active duty, to the social security system and, thereby, earns eligibility for a social security retirement benefit. The receipt of uniformed services retired pay has no effect on social security retirement benefits and vice versa.

The conferees agreed to change the uniformed services nondisability retirement system as follows:

(1) The formula for the multiplier would remain unchanged--2.5 percent for each year of service up to 30 years of service. However, for members who retire with less than 30 years of service, the multiplier would be reduced by 1 percentage point [from what it otherwise would have been] for each year of service the member retired [with] less than 30 [years of service]. The reduction would be eliminated when the member reached age 62.

(2) The cost-of-living adjustment mechanism would be changed to provide CPI minus 1 for life with a one time restoral in the purchasing power of the annuity at age 62.

With regard to the multiplier, the formula would provide a two-tiered retirement annuity: a reduced annuity between the time the member retires from the uniformed service and the normal retirement age and an unreduced annuity thereafter.

For example, a member who retires with twenty years of service would receive retired pay based on a multiplier of 40 percent from retirement until age 62 and retired pay based on a multiplier of 50 percent thereafter. For a member who retires with 30 years of service, no reduction in the multiplier would be made and retired pay would be based on the maximum multiplier of 75 percent.[14]

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[13] Should read "before September 8, 1980." See, *e.g.*, 10 U.S.C. §1406.

[14] House Report No. 99-659 (Committee of Conference), pp. 29-31, accompanying H.R. 4420, 99th Congress, 2d Session (1986). For a discussion of the various concerns that led to the above-highlighted amendments to the uniformed services retirement system, see Senate Report No. 99-292 (Committee on Armed Services), pp. 2-5, accompanying S. 2395, 99th Congress, 2d Session (1986). Also see House Report

The different methods for adjusting the retired or retainer pay entitlements of members and former members of the uniformed services apply to all forms of retired and retainer pay--including disability retired pay as well as retired pay for non-regular (i.e., reserve) service. Thus, for example, a person who first became a member of a uniformed service on or after August 1, 1986, and who subsequently became entitled to disability retired pay would have his or her disability retired pay entitlement adjusted in the same way as a non-disability retiree who first became a member of a uniformed service on or after August 1, 1986. That is, such a person's disability retired pay would be adjusted on a CPI-minus-1 basis until the member reached age 62, at which time there would be a one-time "catch-up" for full CPI, with subsequent adjustments based on CPI-minus-1 for the remainder of the retiree's period of entitlement to disability retired pay. Pre-August 1, 1986, accessions who become entitled to disability retired pay or to retired pay for non-regular service will continue to have their retired pay entitlements adjusted on a full-CPI basis.

The three different retirement systems currently in effect for members of the Armed Forces may be conveniently summarized as follows:

| **Short Form Reference** | **Final Basic Pay** | **High-Three Year Average** | ***Military Retirement Reform Act of 1986 (Redux)*** |
|---|---|---|---|
| Applies to: | Persons in service before September 8, 1980 | Persons joining service from September 8, 1980, through July 31, 1986 and persons joining after that date and refusing Career Service Bonus upon completion of 15 years of active service | Persons joining service after July 31, 1986, accepting Career Service Bonus upon completion of 15 years of active service, and incurring additional 5-year active service obligation |

No. 99-513 (Committee on Armed Services), pp. 21-27, accompanying H.R. 4420, 99th Congress, 2d Session (1986).

| | | | |
|---|---|---|---|
| Basis of Computation (Retired or Retainer Pay Base): | Final rate of monthly basic pay | Average monthly basic pay for highest 36 months of basic pay | Average monthly basic pay for highest 36 months of basic pay |
| Multiplier: | 2.5 percent per year of service | 2.5 percent per year of service | 2.5 percent per year of service less 1.0 percentage point for each year of service less than 30 (restored at age 62) |
| Cost-of-Living Adjustment Mechanism: | Full CPI-W | Full CPI-W | CPI-W minus 1 percent (one-time catch up at age 62) |

**Cost:** For the cost of temporary and permanent disability retired pay from 1958 to 2004, see Tables III-5 of *Military Compensation Statistics Tables*, volume II of this edition.

**Summary of Methods for Making Adjustments to Retired and Retainer Pay Entitlements of Members and Former Members of the Uniformed Services 10 U.S.C. §1401a**

**Background**: (1) Before June 1, 1958, each time military basic pay was increased, retired pay of persons on the retired roles was, subject to the exceptions set out above, recomputed on the basis of those newly established pay rates. That practice was discontinued on June 1, 1958, and the pay of retired personnel was increased by six percent, which approximated the increase in the cost of living since 1955, when retired pay had last been increased. In 1963, a permanent system of increasing retired pay, based on a formula geared to increases in the cost of living, was adopted. That same essential system remains in effect at present, except that the formula is slightly different for persons who first became members of a uniformed service after July 31, 1986. (2) Under the current system for adjusting retired or retainer pay entitlements of retired members or former members of the Armed Forces, retired or retainer pay is increased in December of each year based on the percentage by which the average Consumer Price Index (CPI) for the preceding July-September quarter increased over the average CPI for the same quarter one year before.[1] [2] (3) For persons who first became members of a uniformed service on

[1] The Consumer Price Index (CPI), which is designed to measure the average change in prices paid by urban consumers for a specified set of goods and services, is a numerical index produced and updated regularly by the United States Department of Labor's Bureau of Labor Statistics. Two different indexes are maintained--the index for urban wage earners and clerical workers (CPI-W) and the index for all urban consumers (CPI-U). CPI-U represents the buying habits of approximately 87 percent of the noninstitutional population of the United States, whereas the older CPI-W represents the buying habits of only approximately 32 percent of the same population. "The Consumer Price Index," Chapter 17 of the *BLS Handbook of Methods*, United States Department of Labor, Bureau of Labor Statistics, Washington, D.C. CPI-W is the index actually used to make adjustments in retired and retainer pay.

[2] The Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, §2001, 107 Stat. 312, 335 (1993), amended 10 U.S.C. §1401a by suspending for fiscal years 1994 through 1998 the normal rule under which retired or retainer pay increases for a given fiscal year were to go into effect on December 1 of that fiscal year. Under the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, §2001, *id*., the effective date for the increase in retired or retainer pay that was scheduled to have gone into effect on December 1, 1993, for fiscal year 1994 was postponed to March 1994, and the effective dates for the increases scheduled to have gone into effect on December 1, 1994, December 1, 1995, December 1, 1996, and December 1, 1997, for fiscal years 1995, 1996, 1997, and 1998, respectively, were postponed, to September 1, 1995, September 1, 1996, September 1, 1997, and September 1, 1998, respectively (except for disability retirees, whose date for receiving retired pay increases remained fixed at December 1). The amendment effected by the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, §2001, *id*., was itself amended by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §1182, 107 Stat. 1547, 1773 (1993), without substantively changing the result. The Department of Defense Appropriations Act,

1995, Public Law 103-335, §8114A, 108 Stat. 2599, 2648 (1994), made an exception to the September 1, 1995, effective date for the fiscal year 1995 cost-of-living adjustment by providing that the increase would be effective on March 1, 1995. *cf*. National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §631, 108 Stat. 2663, 2785-2786 (1994). Similarly, the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §631(a), 110 Stat. 186, 364 (1996), provided that the increase in retired pay that became effective December 1, 1995, for fiscal year 1996 would be first payable on March 1, 1996, and that the increase that will become effective on December 1, 1997, for fiscal year 1998 would be first payable on September 1, 1998, provided, however, that the increase in military retired pay for fiscal year 1998 may not become effective at a date later than the date on which a retired pay adjustment becomes effective for retired civil service personnel. Budget considerations underlay the original postponement provided in the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, §2001, *id*. House Report No. 103-111 (Budget Committee), pp. 72-73, accompanying H.R. 2264, 103d Congress, 1st Session (1993); cf. House Report No. 103-213 (Committee of Conference), pp. 435-436, accompanying H.R. 2264, 103d Congress, 1st Session (1993). Considerations of basic fairness and equity as between the effective date of cost-of-living increases for military and civilian retirees underlay the change from September 1, 1995, to March 1, 1995, as made clear by the following sense-of-Congress statement incorporated as Section 632 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §632, 108 Stat. 2663, 2786 (1994):

> (a) FINDINGS.—Congress makes the following findings:
>
> (1) Congress, in the Omnibus Budget Reconciliation Act of 1993, changed the effective date for future cost-of-living adjustments for military retired pay and for Federal civilian retirement annuities, which (before that Act) were provided by law to be made effective on December 1 each year.
>
> (2) The timing, and the percentage of increase, of military and Federal civilian retirees' cost-of-living adjustments have been linked for decades.
>
> (3) The effect of the enactment of the Omnibus Budget Reconciliation Act of 1993 was to abandon the longstanding congressional practice of treating military and Federal civilian retirees identically in matters related to cost-of-living adjustments.
>
> (b) SENSE OF CONGRESS.—In light of the findings in subsection (a), it is the sense of Congress that—
>
> 1) as a matter of simple equity and fairness, it is imperative that cost-of-living adjustments in retirement benefits for military and Federal civilian retirees be returned to an identical schedule as soon as possible, but not later than January 1, 1999;
>
> 2) if after October 1, 1998, there is, by law, a difference between the date on which a cost-of-living adjustment for Federal civilian retirees takes effect and the date on which a cost-of-living adjustment for military retirees takes effect, then the difference in those effective dates should be eliminated by requiring that cost-of-living adjustments for both classes of retirees become effective on the earlier of the two dates; and
>
> 3) if after October 1, 1998, there is, by law, a difference between the first month for which a cost-of-living adjustment for civilian retirees is payable and the first month for which a cost-of-living adjustment for military retirees is payable, then the difference in the months for which those adjustments are first payable should be eliminated by requiring that the cost-of-living adjustments for both classes of retirees first become effective for the earlier of the two months.

In this same connection, see House Report No. 103-499 (Committee on Armed Services), pp. 252-253, accompanying H.R. 4301, and House Report No. 103-701 (Committee of Conference), pp. 714-715, accompanying S. 2182, 103d Congress, 2d Session (1994). With respect to the specification of the effective dates for military retired and retainer pay COLAs for fiscal years 1996 and 1998, Congress was particularly concerned to eliminate any disparity in treatment as between military and civil service retirees. See House Report No. 104-131 (Committee on national Security), pp. 232-233, accompanying H.R. 1530, Senate Report No. 104-112 (Committee on Armed Services), p. 257, accompanying S. 1026, and House Report No. 104-406 (Committee of Conference), pp. 817-818, accompanying H.R. 1530, 104th Congress, 1st

or after August 1, 1986, the adjustment is based on the same percentage figure as determined under Paragraph 2 immediately above less one percentage point, provided that there may not under any circumstances be a reduction in retired or retainer pay after applying the adjustment mechanism. If an adjustment that would otherwise have been made for a particular year is eliminated under a budget reconciliation provision, for example, or some other non-permanent reduction mechanism, the next time a cost-of-living adjustment is made each member's retired or retainer pay entitlement will be increased to the same level it would have been at if the adjustment had not been eliminated in the first instance.[3] (4) The first CPI adjustment given after a person retires differs from the procedure set out under Paragraphs 2 and 3 immediately above. For a member who first became a member of a uniformed service on or after August 1, 1986, the first adjustment to retired or retainer pay is determined by taking the percentage increase in average CPI for the preceding July-September quarter over the average CPI for the quarter (July-September, October-December, January-March, April-June) preceding the member's retirement. For all other members, the first adjustment is determined by taking the percentage increase in average CPI for the preceding July-September quarter over the average CPI for the quarter (July-September, October-December, January-March, April-June) preceding the last increase in basic pay, and this adjustment is made at the time of retirement if the last general retired pay adjustment came between the last increase in basic pay and the time of retirement.

Session (1995); and House report No. 104-450 (Committee of Conference), p. 808, accompanying S. 1124, 104th Congress, 2d Session (1996).

[3] 10 U.S.C. §1401a(b)(4) as added by Section 1(a)(2) of the Act of December 30, 1987 (Technical Corrections to Military Retirement Reform Act of 1986), Public Law 100-224, §1(a)(2), 101 Stat. 1536 (1987). See House Report No. 100-231 (Committee on Armed Services), p. 2, accompanying H.R. 2974, 100th Congress, 1st Session (1987).

## RETIRED PAY INCREASES SINCE 1 JUNE 1958

| Date of Scheduled Increase | Percentage Increase | Cumulative Increase |
|---|---|---|
| Jun 1, 1958 | 6.0 | 6.0 |
| Oct 1, 1963 | 5.0 | 11.3 |
| Sep 1, 1965 | 3.5 | 16.2 |
| Dec 1, 1966 | 3.7 | 20.5 |
| Apr 1, 1968 | 3.9 | 25.2 |
| Feb 1, 1969 | 4.0 | 30.2 |
| Nov 1, 1969 | 5.3 | 37.1 |
| Aug 1, 1970 | 5.6 | 44.8 |
| Jun 1, 1971 | 4.5 | 51.3 |
| Jul 1, 1972 | 4.8 | 58.6 |
| Jul 1, 1973 | 6.1 | 68.2 |
| Jan 1, 1974 | 5.5 | 77.5 |
| Jul 1, 1974 | 6.3 | 88.7 |
| Jan 1, 1975 | 7.3 | 102.4 |
| Aug 1, 1975 | 5.1 | 112.8 |
| Mar 1, 1976 | 5.4 | 124.3 |
| Mar 1, 1977 | 4.8 | 135.0 |
| Sep 1, 1977 | 4.3 | 145.1 |
| Mar 1, 1978 | 2.4 | 151.0 |
| Sep 1, 1978 | 4.9 | 163.3 |
| Mar 1, 1979 | 3.9 | 173.6 |
| Sep 1, 1979 | 6.9 | 192.4 |
| Mar 1, 1980 | 6.0 | 210.0 |
| Sep 1, 1980 | 7.7 | 233.9 |
| Mar 1, 1981 | 4.4 | 248.6 |
| Mar 1, 1982 | 8.7 | 278.9 |
| Apr 1, 1983 | 3.9 (See note 2) | 293.7 |
| Dec 1, 1984 | 3.5 | 305.1 |
| Dec 1, 1985 | 0.0 | 305.1 |
| Dec 1, 1986 | 1.3 | 310.3 |
| Dec 1, 1987 | 4.2 | 327.6 |
| Dec 1, 1988 | 4.0 | 344.7 |
| Dec 1, 1989 | 4.7 | 365.6 |
| Dec 1, 1990 | 5.4 | 390.7 |
| Dec 1, 1991 | 3.7 | 408.9 |
| Dec 1, 1992 | 3.0 | 424.2 |
| Dec 1, 1993 | 2.6 | 437.8 |
| Dec 1, 1994 | 2.8 | 452.8 |
| Dec 1, 1995 | 2.6 | 467.2 |
| Dec 1, 1996 | 2.9 | 483.7 |
| Dec 1, 1997 | 2.1 | 496.0 |

| | | |
|---|---|---|
| Dec 1, 1998 | 1.3 | 503.7 |
| Dec 1, 1999 | 2.4 | 518.2 |
| Dec 1, 2000 | 3.5 | 539.8 |
| Dec 1, 2001 | 2.6 | 556.4 |
| Dec 1, 2002 | 1.4 | 565.6 |
| Dec 1, 2003 | 2.1 | 579.6 |

**Notes:**

(1) For non-disability retirees, the increases scheduled to have gone into effect on December 1, 1993, December 1, 1994, and December 1, 1995, were effective March 1 of the following calendar year.

(2) The 1983 adjustment to retired and retainer pay differed as between persons 62 years of age or older and persons under 62 years of age, with persons 62 or over receiving a 3.9% increase as against a 3.3% increase for persons under 62 years of age.

**Chapter III.B.5.**

## Imputed Contribution for Retirement Benefits

**Legislative Authority**: None: The "retirement system" for members of the Armed Forces is "noncontributory."

**Purpose**: The standard reasons favoring explicit contributions by individual employees to retirement funds may be summarized as:

* Lower direct costs to the employer.

* The possibility of higher employee retirement benefits.

* Greater understanding and appreciation of the retirement plan by the employee.

* The belief that contributions give an employee a "contractual right" to a pension.[1]

**Background**: The military retirement system has been "noncontributory" since its inception. Three major studies in the last half century have explored the issue of whether it should remain noncontributory. The so-called Hook Commission, whose 1948 report and recommendations led to the introduction and enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), recommended that the military retirement program be noncontributory.[2] A research group at the University of Michigan concluded in 1961 that Congress should not adopt a contributory plan.[3] In 1967 the *First Quadrennial Review of Military Compensation*[4] recommended

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[1] "A Study of the Military Retired Pay System and Certain Related Subjects, Report to the Senate Armed Services Committee by the Study Committee of the University of Michigan," Committee Print, pp. 65-66, 87th Congress, 1st Session (1961).

[2] "*Career Compensation For the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," pp. 39-41, December 1948.

[3] "A Study of the Military Retired Pay System and Certain Related Subjects, Report to the Senate Armed Services Committee by the Study Committee of the University of Michigan," Committee Print, p. 68, 87th Congress, 1st Session (1961).

[4] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results

that a 6.5 percent retirement contribution be collected from the full military salaries of career members.[5] In 1970 the Gates Commission supported the *First Quadrennial Review*'s recommendation[6] but did not address the subject in any detail.

The Hook Commission's reasons for recommending against establishment of a contributory military retirement system were as follows:

> A noncontributory plan of retirement is traditional with the military and particularly suited to a Government agency. Private industry, lacking the taxing power and the security of perpetual existence, wisely accumulates in advance the funds from which to pay retirement benefits, even though the employer's corporate existence should end. The Government has no need to accumulate such a fund as long as the power to tax exists. Other such Government funds are in reality only bookkeeping entries and the receipts of funds are in fact merged into the general funds of the Treasury and used as such for current expenses. They cannot be set aside years in advance to serve a particular purpose and be productive unless the Government is to move into ownership of the tools of production. Thus, with the fund itself serving no useful purpose, to establish a contributory plan or a funded noncontributory plan would only create a large extra expense to the Government in providing the administrative and clerical personnel necessary to deduct and record the contributions, real or fictitious, and to administer the so-called fund.[7]

In recommending against a contributory retirement system, the University of Michigan, on the other hand, noted (1) employee contributions represent only a small fraction of retirement benefit costs under any retirement system; (2) even in civilian plans, when a contributory pension plan is first implemented, a general pay raise covering all or part of the contribution is often necessary to compensate for the reduction in take-home pay that would otherwise occur; and (3) under a contributory military retirement program, the administrative costs associated with running an enormous savings bank with

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of such review together with any recommendations ... proposing changes" to the compensation system of the uniformed services. The Ninth Quadrennial Review of Military Compensation was convened in 1999, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in 2001.

[5] "Modernizing Military Pay, Report of the First Quadrennial Review of Military Compensation," Volume I, p. 56, November 1967.

[6] "The Report of the President's Commission on an All-Volunteer Armed Force," p. 62, February 1970.

[7] "Career Compensation for the Uniformed Forces, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," pp. 40-41, December 1948.

some 2 1/2 million accounts--1961 figures--having a heavy customer turnover would offset--possibly overwhelm--any savings. For these reasons, the Michigan research group concluded that any government cost savings resulting from a retirement contribution by military personnel would be small at best--possibly non-existent--and recommended against a contributory plan.

By 1967, when the Pay Report[8] of the *First Quadrennial Review* was released, the House Armed Services Committee stated that military basic pay rates were lower by 6.5 percent than they otherwise would have been if members of the Armed Forces were required to make a retirement contribution. The *First Quadrennial Review* concluded that this imputed retirement contribution was inequitable to members who realized no value from it because they did not serve to retirement. Accordingly, a 6.5 percent retirement contribution--vested so that the survivor or survivors, if any, of a member who died before becoming eligible for retired pay could collect the amount contributed--was recommended. This contribution was to be collected only from so-called "career" members, defined in the Pay Report as officers, enlisted members in pay grades E-6 through E-9, and members in pay grades E-4 or E-5 with four or more years of service or with between two and four years of service plus a commitment to serve at least six years. The retirement contribution recommendation was fused with a further recommendation that the elements of basic pay, quarters, subsistence, federal income tax advantage, and imputed retirement contribution be combined into a full military salary for career members.

A 1975 Wyatt Company study of the retirement plans of the 50 largest industrial companies and the 50 states also bears on the choice between contributory and noncontributory retirement systems.[9] This study concluded that the trend in the private sector continued to be toward noncontributory coverage, with 29 of the top-50 salaried

[8] "Modernizing Military Pay, Report of the First Quadrennial Review of Military Compensation," November 1967.

[9] "Retirement Trends in Industrial and Public Pension Systems, a Study Conducted by the Wyatt Company for the Department of Defense," 30 April 1975.

pension plans being noncontributory, and with at least five major corporations having eliminated employee contributions in the preceding five years. In addition, and bolstering its own conclusions, the Wyatt study cited a 1975 Bankers Trust study of corporate pension plans as confirming that the majority of such plans were noncontributory and that the trend was toward noncontributory plans. The study also indicated, however, that most non-federal public plans were contributory and that the trend for such plans was toward increased rates of contribution, although a limited number of states had reduced or eliminated employee contributions.

Quite apart from the controversy surrounding contributory and noncontributory retirement plans, it is clear that members of the uniformed services have never made explicit retirement contributions out of their active duty pay to fund future military retired and retainer pay.[10] Whether active duty pay has in fact been reduced from the level at which it would otherwise have been established on account of an implicit, or imputed, retirement contribution is less clear.

In 1963 the Department of Defense proposed military pay levels that it estimated would achieve comparability between military compensation and civil service salaries. With one major exception, the House Armed Services Committee accepted the proposed pay levels. The committee did not accept that part of the Department of Defense proposal that would have increased basic pay rates for personnel with less than two years of service. The Senate Armed Services Committee materially amended the House bill by (1) providing "under-2" increases for officers and for enlisted members in pay grades E-4 and E-5, (2) enlarging the bill's increases for pay grades O-1 through O-4 and E-4 through E-7, and (3) deleting all subsistence increases. Except for the "under-2" increases, the Senate amendment prevailed. Neither the Department of Defense nor the House or Senate Armed Services Committees ever indicated that the pay levels thus adopted--and enacted as the Uniformed Services Pay Act of 1963, Public Law 88-132, 77

[10] Nor, for that matter, have members of the reserve components of the Armed Forces made retirement contributions based on compensation they have received under Section 206 of Title 37, United States Code, for inactive-duty training.

Stat. 210 (1963)--had been depressed by any percentage for an imputed military retirement contribution.

The 1964 military pay legislation, adopted as the Act of August 12, 1964, Public Law 88-422, 78 Stat. 395 (1964), was enacted to maintain a reasonable compensation trend for military personnel in relation to civil service employees. It provided an 8.5 percent basic pay increase for officers with less than two years of service and a 2.5 percent basic pay increase for all personnel with more than two years of service; it did not address the question of an imputed retirement contribution.

In 1965, the Department of Defense proposed a five percent increase in military pay for personnel with over two years of service "to maintain the 1963 relationship between military and civilian pay" and a 2.7 percent cost-of-living increase for personnel with less than two years of service. Rejecting the Department of Defense proposal, the House Armed Services Committee conducted its own study and concluded "beyond a reasonable doubt" that military pay increases had lagged behind those for civil service employees by 10 to 11 percent (after "shredding out" under-2 personnel) between 1952 and 1964. It accordingly reported out a bill that increased basic pay rates by an average of 10.7 percent, or more than double the percentage proposed by DoD. In connection with its bill, the committee stated:

> After determination was made of the level of pay (including allowances) considered appropriate for each military grade, account was taken of an imputed 6 1/2-percent contribution to retirement on basic pay (except for enlisted personnel with less than 2 years' service).... The importance of this step is that it would set out "in the record" the actual amounts by which military pay scales are lowered because of the military "noncontributory" retirement system and the tax-free status of the basic allowances for quarters and subsistence. In the history of all previous military pay legislation, no documentation of such adjustment has been provided for the record.[11]

The Senate Armed Services Committee did not accept the pay levels incorporated in the House bill but instead reported out its own bill that would have increased basic pay rates by a flat six percent for officers with over two years of service and by 11 percent for

[11] House Report No. 549 (Committee on Armed Services), p.24, accompanying H.R. 9075, 89th Congress, 1st Session (1965).

enlisted personnel with over two years of service. The Senate committee emphasized that the House proposal was incompatible with the then-current structure of the military compensation system and that, for its part, it did not want any structural change in that system. The Senate's flat-percentage-increase pay levels--with its concomitant no-structural-change point of view--was incorporated in the military pay legislation for 1965, the Act of August 21, 1965, Public Law 89-132, §1, 79 Stat. 545, 545-546 (1965).

Based on the evolution of the 1965 military pay legislation, it would seem that the imputed retirement contribution theory embraced in the House Armed Services Committee Report applied only to the pay bill it had reported out, that the committee had effectively abandoned the theory when it agreed to the revisions incorporated in the Senate bill, and that, accordingly, as of 1965 there was no Congressional finding that military pay levels had in fact been depressed for imputed retirement contributions.

The 1965 situation was continued in the military pay legislation for 1966, the Act of July 13 1966, Public Law 89-501, §301, 80 Stat. 275, 276-278 (1966), which gave an across-the-board pay increase of 3.2 percent.

The military pay legislation for 1967, enacted as the Act of December 16, 1967, Public Law 90-207, §1(1), 81 Stat. 649, 649-650 (1967), further increased basic pay rates by 5.6 percent across-the-board. This increase in basic pay was equivalent to a 4.5 percent increase in regular military compensation (RMC),[12] and its purpose was to maintain the comparable relationship between RMC and General Schedule salaries of federal civilian employees. There was no suggestion by either the Department of Defense

[12] Under 37 U.S.C. §101(25) as added by the Act of September 19, 1974, Public Law 93-419, §1, 88 Stat. 1152 (1974), regular military compensation was defined as the total of the basic pay, basic allowance for subsistence, basic allowance for quarters, and the tax advantage attributed to members of the Armed Forces because of the non-taxable status of the allowances that a member receives, directly or indirectly, on account of military service. See Chapter II.B.1., "Basic Pay," and Chapter II.B.4., "Federal Income Tax Advantage," above. (This definition was subsequently amended by the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §11, 94 Stat. 3359, 3368-3369 (1980), to include variable and station housing allowances, if any, within the RMC construct. See Chapter II.B.2., “Housing Allowances,” above, for a discussion of the reasons underlying this amendment.)

or Congress that the military pay levels established in 1967 had been reduced for an imputed retirement contribution.

In addition to providing a basic pay increase in 1967, the Act of December 16, 1967, Public Law 90-207, §8, 81 Stat. 649, 654-655 (1967), also provided that whenever in the future the General Schedule salaries of federal employees were increased a comparable increase was to be made in the basic pay of members of the uniformed services. Under this authority, military pay increases between 1967 and 1971 were made by executive order. These increases had no bearing on an imputed retirement contribution; they simply maintained the preexisting relationship between RMC and civil service salaries.

In January 1971 the Department of Defense submitted a fiscal year 1972 proposal to Congress to increase basic pay rates for personnel with less than two years of service and to increase quarters allowances for personnel in pay grades E-1 through E-4 (four or fewer years of service) by an average of 36 percent over January 1971 levels. It was indicated that a second step was planned for fiscal year 1973 when recommendations would be forwarded that would make military pay fully competitive with civilian pay. At the request of the House Armed Services Committee, the fiscal year 1973 program was developed and furnished to the committee in February. The Department of Defense's fiscal year 1973 proposal would have increased basic pay rates for personnel with less than two years of service by an average of 68.6 percent over January 1971 levels, raised basic allowance for quarters rates for all personnel to 100 percent of the FHA median of housing expenses for comparable income groups, and increased basic allowance for subsistence rates to the level of the Department of Defense food cost index. In support of this recommendation, the Assistant Secretary of Defense for Manpower and Reserve Affairs testified as follows concerning the imputed retirement contribution question:

> I said that the increases recommended for fiscal year 1973 would bring regular military compensation to competitive levels, or what we call the military pay standard. The military pay standard has been established over a period of years by comparisons made between the job content of military positions and

civilian positions. The civilian positions are within the civil service or governmental structure....

The military pay standard is constructed so that it recognizes that military pay does not include a retirement contribution; instead the competitive level of compensation which would be appropriate under a contributory retirement system is depressed by 7 percent as an imputed contribution toward the member's retirement.[13]

The House did not accept the Department of Defense recommendation that military pay levels be increased in two steps but instead reported out a bill that incorporated the proposed fiscal year 1973 pay rates and provided that, instead of becoming effective in fiscal year 1973, the rates would become effective upon enactment. In its report on the bill, the House Armed Service Committee stated:

The Congress in Public Law 90-207 defined Regular Military Compensation (RMC) as consisting of the following elements that service members receive in cash or in kind every payday: basic pay, quarters allowances, subsistence allowance and tax advantage (received because the quarters and subsistence allowances are not subject to Federal income tax).

It is the Regular Military Compensation that is used to establish competitive military pay levels which bear a reasonable relationship to civilian wages for equivalent levels of work. The RMC is based on a military pay standard so constructed that it recognizes that RMC does not include a specific retirement contribution. In other words, the military compensation is depressed by 7 percent to reflect an imputed contribution towards the member's retirement.[14]

The House bill was substantively amended by the Senate, which reported out a bill containing only the Department of Defense's original fiscal year 1972 proposal. In its report on this latter bill, the Senate Armed Services Committee commented on the imputed retirement contribution issue in these terms:

Finally, it should be pointed out that since there is no accepted comparability system linking the various military and civilian pay grades it cannot

[13] "Extension of the Draft and Bills Related to the Voluntary Force Concept and Authorization of Strength Levels: Hearings before the House Armed Services Committee," H.A.S.C. Document 92-2, p. 179, 92d Congress, 1st Session (1971).

[14] House Report No. 92-82 (Committee on Armed Services), pp. 24-25, accompanying H.R. 6531, 92d Congress, 1st Session (1971).

> therefore be reasonably said that military basic pay is being depressed by any percentage as an imputed contribution toward reducing military retired costs.[15]

Upon passage, the divergent bills of the House and Senate were referred to a joint House-Senate conference, where the differences were resolved. The resultant military pay levels were lower than those of the House bill (the Department of Defense's fiscal year 1973 proposal) but higher than those of the Senate bill (DoD's fiscal year 1972 proposal). The House bill's average 68.6 percent basic pay increase for personnel with less than two years of service was agreed to, its BAQ increase to 100 percent of the FHA standard was scaled down to 85 percent of the standard, and its BAS increase was deleted. The compromise pay levels were enacted as part of the Act of September 28, 1971 (Military Selective Service Act Amendments of 1971), Public Law 92-129, §201, 85 Stat. 348, 355-357 (1971), and became effective in November 1971.

As this chronological analysis of pay legislation shows, military pay levels were not depressed for an imputed retirement contribution prior to 1971. Military pay increases from 1972 through 1979 were made by executive order under authority of the Act of December 16, 1967, Public Law 90-207, §8, 81 Stat. 649, 654-655 (1967), and the Act of September 19, 1974, Public Law 93-419, §4, 88 Stat. 1152, 1152-1153 (1974).[16] These increases simply maintained the relative position of military pay and civil service salaries; they had no bearing on an imputed retirement contribution. Pay increases for 1980 and 1981 were made by the Department of Defense Authorization Act, 1981, Public Law 96-342, §801, 94 Stat. 1077, 1090-1092 (1980), and the Uniformed Services Pay Act of 1981, Public Law 97-60, §101(b), 95 Stat. 989, 989-992 (1981), respectively. The

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[15] Senate Report No. 92-93 (Committee on Armed Services), p. 31, accompanying H.R. 6531, 92d Congress, 1st Session (1971).

[16] The Act of September 19, 1974, Public Law 93-419, §4, 88 Stat. 1152, 1152-1153 (1974), adopted a new pay adjustment mechanism, codified at 37 U.S.C. §1009, under which the entire increase in military compensation was no longer incorporated solely in basic pay. Instead, whenever general schedule, *i.e.*, civil service, salaries were increased, military compensation was also to be increased, with raises distributed to all three cash elements of RMC--basic pay, basic allowance for quarters, and basic allowance for subsistence--each of which was to be increased by the same percentage as general schedule salaries. 37 U.S.C. §1009. See Chapter II.B.1., "Basic Pay," hereof, above, for a more complete description of the annual pay adjustment mechanism adopted for members of the uniformed services by the Act of September 19, 1974, Public Law 93-419, §4, 88 Stat. 1152, 1152-1153 (1974).

pay increases authorized by these latter two pieces of legislation exceeded the pay raises awarded General Schedule civilian employees--but there was no indication that the reason for the more generous treatment accorded members of the uniformed services had anything to do with a retirement contribution, whether imputed or not. Indeed, the issue was never raised at all. Instead, the relatively greater increases for members of the uniformed services stemmed from a felt need to improve manning and retention levels in the various services and was, if anything, a rather straight-forward response to a perceived supply-demand imbalance.[17] Nor is there any suggestion in any subsequent legislation relating to military pay that an imputed retirement contribution was to be taken into account in connection with pay increases.[18] If regular military compensation is currently depressed for an imputed retirement contribution, the imputed contribution could only have been created in 1971 by the Act of September 28, 1971, Public Law 92-129, 85 Stat. 348 (1971).

If there were in fact an imputed retirement contribution, logically it would seem it should be deducted primarily or wholly from basic pay, since that is the only element of RMC used in the computation of retired pay. The Act of September 28, 1971, Public Law 92-129, 85 Stat. 348 (1971), did not demonstrably depress basic pay rates, because it left basic pay rates for personnel with more than two years of service unchanged (except for small increases in some grades to prevent "under-two" raises from causing an undue compression). As to the depression of RMC as a whole for this purpose, it must be recognized that Congress did not specifically accept the "military pay standard" used by the Department of Defense as the basis for its fiscal year 1973 proposal as a legitimate benchmark for comparing military and civil service pay levels. Moreover, even had it expressly approved the proposition that the increases recommended for fiscal year 1973 would establish a competitive level of military compensation equal to 93 percent of the level that would be appropriate under a contributory retirement system, the fact that the

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[17] See generally Chapter II.B.1., "Basic Pay," above. In particular, see text accompanying footnotes 32 to 39 of Chapter II.B.1.

[18] In this connection, see discussion of the establishment of the Department of Defense Military Retirement Fund in Appendix I hereto, below.

RMC level adopted in the Act of September 28, 1971, Public Law 92-129, *id*., was different from the RMC level proposed by the Department of Defense for fiscal year 1973 produced an inevitable distortion in the original calculations.

These circumstances compel a conclusion that military basic pay rates are not currently depressed for an imputed retirement contribution. The level of RMC as a whole may be lower by some percentage than it otherwise would have been under a contributory military retirement system; however, in the absence of an accepted military pay standard, neither the proposition that RMC is depressed by seven percent, or any other exact percentage, nor the premise that any such reduction—assuming there is one--resulted from an imputed retirement contribution, is demonstrable.

A separate but related issue involves the establishment of the Department of Defense Military Retirement Fund. The Department of Defense Authorization Act, 1984, Public Law 98-94, §925(a)(1), 97 Stat. 614, 644-648 (1983), established an accrual accounting system for military retired and retainer pay, including retired pay for members and former members of the Reserve components of the Armed Forces. This system, called the Department of Defense Military Retirement Fund, is codified as Chapter 74 of Title 10, United States Code, 10 U.S.C. §§1461-1467. Under the accrual accounting system, funds are appropriated every year to defray future retirement cost liabilities. The appropriated funds are charged to the Department of Defense manpower budget and are transferred to a special fund known as the Department of Defense Military Retirement Fund, which is administered by the Department of the Treasury.

The establishment of the Military Retirement Fund in no way affected the basic nature of the military retirement system. The system is still noncontributory, and Congress, in establishing the fund, in no way indicated that military pay was artificially depressed because of payments into the fund. Congress's expressed purpose in establishing the fund was to provide funding for military retirement obligations at the time those obligations are incurred. As stated by the House Armed Services Committee:

... From the Federal government's perspective, the issue of funding is primarily a matter of timing. Should funds be raised by taxing and borrowing when the obligation becomes due, or should funds be set aside through taxing and borrowing when the obligation is incurred?[19]

The establishment of the Department of Defense Military Retirement Fund provided an answer to the question--funding of future military retirement liabilities should be made when the obligation is incurred.[20]

[19] House Report No. 98-107 (Committee on Armed Services), p. 225, accompanying H.R. 2969, 98th Congress, 1st Session (1983). See House Report No. 98-352 (Committee of Conference), p. 228, and Senate Report No. 98-213 (Committee of Conference), p. 228, accompanying S. 675, 98th Congress, 1st Session (1983).

[20] For more background on the Department of Defense Military Retirement Fund, see Appendix I, "Department of Defense Military Retirement Fund," hereof, below. For a discussion of the relationship between the accrual accounting system established in the Department of Defense Authorization Act, 1984, Public Law 98-94, 97 Stat. 614 (1983), and modifications to the military retirement system effected by the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986), see Chapter III.B.1. hereof, "Nondisability Retired and Retainer Pay," above.

**Chapter III.C.1.**

## Non-disability Separation Pay

**Legislative Authority**: 10 U.S.C. §1174. (Separation authority is found in Chapters 34, 59, and 60 of Title 10, United States Code, as well as at 10 U.S.C. §580 and §6383 and various parts of Title VI of the Defense Officer Personnel Management Act, Public Law 96-513, 94 Stat. 2835 (1980).)

**Purpose**: To provide a lump-sum payment to regular and reserve officers involuntarily discharged short of retirement eligibility, either because of failure of selection for promotion, substandard performance of duty, misconduct, or moral or professional dereliction, or because the retention of such officers is not consistent with the interests of national security, and to reserve enlisted personnel involuntarily discharged or released from active duty or not accepted for an additional tour of duty for which they have volunteered, in order to assist such personnel in readjusting to civilian life.

**Background**: Non-disability separation pay has a long legislative history in one form or another. At times, it has been awarded only to personnel forced out of service against their wishes. The Act of May 14, 1800, ch. 69, §§2 and 3, 2 Stat. 85, 86 (1800), is an early example of such legislation. It empowered the President to discharge by June 15, 1800, any Army "officers, non-commissioned officers and privates ... except the engineers, inspector of artillery, and inspector of fortifications," and authorized three months' additional pay for personnel discharged under that authority. At other times, separation pay—also called "severance pay"--has been paid without regard to the voluntary or involuntary nature of the separation on which it was predicated. The Act of December 24, 1811, ch. 10, §2, 2 Stat. 669, 669-670 (1811), for example, awarded a "bounty" of three months' pay and 160 acres of public land to all former enlisted personnel who had "faithfully performed their duty whilst in service." Until recently, under applicable provisions of Title 10, United States Code, as amended by the Defense Officer Personnel Management Act of 1980, Public Law 96-513, 94 Stat. 2835 (1980),

non-disability separation pay was authorized only for officers in military service--both commissioned and warrant officers, regular and reserve--and reserve enlisted personnel involuntarily discharged, released, or otherwise not continued in military service after at least five years of continuous active duty. Currently, under further amendments to the non-disability separation pay program made by the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §501(a)-(d), 104 Stat. 1485, 1549-1550 (1990), non-disability separation pay is authorized for all members of the Armed Forces--officers and enlisted personnel, regular and reserve. It is, however, available only to persons involuntarily separated from service.

The Officer Personnel Act of 1947, ch. 512 [Public Law 381, 80th Congress], 61 Stat. 795 (1947), required, as part of its "up-or-out" promotion system, the involuntary discharge of regular officers of any branch of service who failed of selection for promotion and who were not eligible for retirement. Persons discharged under that authority were entitled to severance pay computed at the rate of two months' basic pay for each year of commissioned service, not to exceed the lesser of two years' basic pay or $15,000.

The Officer Personnel Act, ch. 512, *id.*, also required Navy and Marine Corps selection boards to report the names of officers with less than 20 years of service who were considered to have performed unsatisfactorily in their current respective grades. An individual officer so reported was involuntarily discharged with the same severance pay entitlement as officers who failed of selection for promotion--that is, with two months' basic pay for each year of commissioned service, not to exceed the lesser of two years' basic pay or $15,000. This "unsatisfactory performance" authority eliminated only a handful of officers. The legislative history of the act does not explain why officers discharged for unsatisfactory performance had the same entitlement as those discharged merely because it was determined that they were less qualified for promotion than some of their contemporaries.

The Officer Personnel Act, ch. 512, *id*., contained no "unsatisfactorily performance" separation provisions for Army and Air Force officers. However, the Army and Air Force Vitalization and Retirement Equalization Act of 1948, ch. 708 [Public Law 810, 80th Congress], 62 Stat. 1081 (1948), required the Secretaries of the Army and Air Force to convene annual boards to review the records of regular officers and to require any officer whose performance of duty was "substandard" to "show cause" why he should be retained on the active list. Officers removed under the "show cause" process who were not eligible for retirement were to be discharged with severance pay computed at the rate of one month's basic pay for each year of commissioned service, not to exceed one year's basic pay. Like its Navy and Marine Corps counterpart, the Army and Air Force "show cause" procedure in practice eliminated only a handful of officers.

The severance pay formula of the Army and Air Force Vitalization and Retirement Equalization Act, ch. 708, *id*., was, on the surface, significantly different from, and less favorable than, the formula for Navy and Marine Corps officers discharged under roughly similar circumstances, and for any officer discharged for failure of selection for promotion. However, increases in basic pay rates between the time the Army and Air Force Vitalization and Retirement Equalization Act became law in 1948 and 1980 significantly distorted the relationship between the two formulas. For example, in 1980, prior to enactment of the Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, 94 Stat. 2835 (1980), an Army or Air Force major discharged after 12 years of service for substandard performance was entitled under the "less favorable" formula--which had no absolute dollar ceiling--to severance pay of one year's basic pay, or $24,580.80. The entitlement of a Navy or Marine Corps officer in the same pay grade discharged for unsatisfactory performance, or of a similar officer of any service discharged for failure of promotion, was limited to $15,000 under the "more favorable" formula of two months' basic pay times years of service, not to exceed the lesser of two years' basic pay or $15,000.

The Act of July 9, 1956, ch. 676 [Public Law 676, 84th Congress], 70 Stat. 517 (1956), established the first specific severance pay program for reserve personnel. It

added a provision to the Armed Forces Reserve Act of 1952, ch. 608 [Public Law 476, 82d Congress], 66 Stat. 481 (1956), that allowed payment of "readjustment pay" to reserve members--both officer and enlisted--who, after five or more years of continuous active duty, were involuntarily released from service or who were released at the end of their tour after having volunteered, but not been accepted, for an additional tour.

From 1956 to 1962 readjustment pay was computed at the rate of one-half month's basic pay for each year of active service, not to exceed nine months' basic pay. The Act of June 28, 1962, Public Law 87-509, §1, 76 Stat. 120 (1962), changed the formula to generally equalize levels of readjustment pay for Reservists with severance pay for regulars. The act provided for the computation of readjustment pay at the rate of two months' basic pay for each year of active service, not to exceed the lesser of two years' basic pay or $15,000. It also provided reduced readjustment pay for members released because of substandard performance. The entitlement in this circumstance was one-half month's basic pay for each year of active service. The act also prohibited service performed in time of war or national emergency declared by Congress after June 28, 1962, from being counted in computing readjustment pay entitlements. Although the act made both officer and enlisted personnel eligible for readjustment pay, few if any enlisted members ever qualified in practice.

In 1980, Congress, in the Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, 94 Stat. 2835 (1980), substantially changed the ground rules for separation pay. In addition to unifying the separation pay authority in one provision of Title 10--namely, 10 U.S.C. §1174--DOPMA generally increased the maximum amount of such pay to which affected personnel might be entitled. It also made the computation of separation pay entitlements dependent on years of active service for all affected personnel, whereas under the preexisting "severance pay" program for regular officers, the computation had been predicated on years of commissioned service.

In unifying the separation pay provisions of Title 10, DOPMA, Public Law 96-513, *id*., referred specifically to three different categories of involuntary separation or

discharge that could invoke separation pay entitlements. First, an officer of a regular component of an armed force with more than five but less than 20 years of active service who was discharged or separated for having twice failed of selection for promotion was entitled to separation pay computed as 10 percent of the product of the officer's years of active service[1] and 12 times terminal monthly basic pay, subject to a $30,000 maximum.[2] Second, similar regular officers discharged for substandard performance of duty, or because of misconduct or moral or professional dereliction, or because their retention was not "clearly consistent with the interests of national security," were entitled either to the product of 10 percent of the product of their years of active service and 12 times terminal monthly basic pay, subject to a $30,000 maximum, or half that amount, subject to a $15,000 maximum, as the Secretary of the military department concerned may determine, unless the Secretary further determined that the conditions under which the officer was discharged or separated did not warrant any separation pay at all. Third, and finally, members of non-regular components of the Armed Forces who were discharged or released from active duty with more than five but less than 20 years of active service, or who were not accepted for an additional tour of duty for which they volunteered, were

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[1] In determining the number of years of service on which a separation payment was to be based, the Defense Officer Personnel Management Act originally specified that a part of a year that was six months or more was to be counted as a whole year, and a part of a year that was less than six months was to be disregarded. This rule derived directly from provisions used in determining years of service for computing military retired pay. In 1982, however, Congress changed the rule for retired pay purposes--but not for separation pay purposes--to require that years of service be computed by considering any full month of an uncompleted year as one-twelfth of a year if the member had six months or more of an uncompleted year, whereas members with less than six months of a completed year received no credit for any such extra months. The reasons for this restriction were basically budgetary in nature. *cf.* House Report No. 98-107 (Committee on Armed Services), p. 213, accompanying H.R. 2969, House Report No. 98-352 (Committee of Conference), p. 227, accompanying S. 675, and Senate Report No. 98-213 (Committee of Conference), p. 227, accompanying S. 675, 98th Congress, 1st Session (1983). This disparity of treatment was justified on the grounds that personnel with less than six months of service--in addition to however many years of service they had--were unaffected by the change. The Department of Defense Authorization Act, 1984, Public Law 98-94, §923, 97 Stat. 614, 642-644 (1983), changed the rule again--not only for retired pay purposes but for separation pay purposes as well--to require that each full month of service in addition to the number of years of service with which a member is credited be counted as one-twelfth of a year and any additional fractional part of a month be disregarded, no matter whether the member had more or less than six additional months of service. See House and Senate Reports at pages cited above.

[2] As set out in 10 U.S.C. §1174, officers eligible for such pay include all regular officers discharged under the authority of Chapter 36 of Title 10, United States Code, relating to regular officers, or Sections 580 or 6383 of Title 10, relating to warrant and Navy limited duty officers, respectively, for having twice failed of selection for promotion.

entitled to separation pay as computed for the regular officers discussed immediately above, as determined by the Secretaries of the various military departments.[3] Members who were discharged or released from active duty at their own request, who were released from active duty for training, or who were, upon discharge or release, immediately eligible for retired or retainer pay were not treated as having been involuntarily released from active duty, with the result that they were not eligible for separation pay under 10 U.S.C. §1174. A member receiving separation pay under 10 U.S.C. §1174--or "severance" or "readjustment" pay under former provisions of Title 10 repealed by the Defense Officer Personnel Management Act--who, subsequent to the adoption of DOPMA, became entitled to retired or retainer pay had his or her retirement or retainer pay reduced by excluding from the computation of that pay the number of years of service on which the member's separation pay was determined, until the amount of the separation payment was recovered. Under special savings provisions, a member on active duty on or before September 14, 1981,[4] was entitled to the new "separation" pay or to the old "severance" or "readjustment" pay, whichever was more advantageous.[5]

As explained in the Report of the House Committee on Armed Services dealing with the new separation pay authority,

> The committee did not wish the new continuation procedures and implementation of the all-regular career force permitted under S. 1918 [96th Congress, 2d Session (1980), ultimately adopted as DOPMA, Public Law 96-513, 94 Stat. 2835 (1980)] to go into effect without providing adequate separation pay for officers who might be forced off active duty as a result of this legislation at an

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[3] Section 911 of the Department of Defense Authorization Act, 1984, Public Law 98-94, §911, 99 Stat. 614, 639-640 (1983), provided a "clarification" to the non-disability separation pay authority affecting members of non-regular components of the Armed Forces. Under the 1984 Authorization Act, 10 U.S.C. §1174(c) was amended to specify that, in order to be eligible for non-disability separation pay, a "member of an armed force other than a regular member" must have "completed at least five years of continuous active duty immediately before ... discharge or release." (For these purposes, a term of active duty is "continuous" if "not interrupted by a break in service of more than 30 days.")

[4] The effective date of the provisions in issue was September 15, 1981, although the Defense Officer Personnel Management Act was enacted December 12, 1980.

[5] See Sections 607 and 631 of the Defense Officer Personnel Management Act, Public Law 96-513, §§607 and 631, 94 Stat. 2835, 2943, 2954 (1980), as amended by the Department of Defense Authorization Act, 1985, Public Law 98-525, §531, 98 Stat. 2492, 2527 (1984), reproduced, as amended, at 10 U.S.C. §611 note.

earlier time than would have been likely under present law and short of eligibility for retirement. The committee has, therefore, significantly revised the officer separation-pay procedures in current law and provided for a ceiling of $30,000 for such payment.

The separation pay is a contingency payment for an officer who is career committed but to whom a full military career may be denied. It is designed to encourage him to pursue his service ambition, knowing that if he is denied a full career under the competitive system, he can count on an adequate readjustment pay to ease his reentry into civilian life.

Under present law officers separated with more than five, but less than twenty, years of service receive severance pay if they are regular officers, or readjustment pay if they are reserve officers, equal to two months' basic pay for each year of service up to a maximum of $15,000. Under current pay conditions the maximum is received by all officers separated involuntarily with five or more years of service.

In creating a revised payment procedure for those involuntarily separated, the committee has provided for "separation pay" that would be equal to ten percent of annual basic pay for each year of service up to a maximum of $30,000. The committee put a ceiling of $30,000 on separation pay in line with the past practice of Congress in placing monetary ceilings on such payments.

Under S. 1918 all of the separation-pay procedures would be provided for in a single proposed new section. The new section would provide for payment of separation pay on the basis of "years of active service" as in present law for readjustment pay for reserve officers. Current law for regular officers is based on commissioned service. The section would provide that should a separated member later become eligible for retired pay, the retired pay would be reduced by excluding from the computation of that retired pay the years upon which the separation pay is based--until the separation pay had been recouped.

The committee believes the revised separation-pay formula in the bill would be more appropriate than the current readjustment- or severance-pay that, in some cases, provides inadequate compensation for those who are separated.[6]

As further explained by the Senate Committee on Armed Services, the new separation pay provision substantially restated the "readjustment pay" provisions

[6] House Report No. 96-1462 (Committee on Armed Services), pp. 30-31, accompanying S. 1918, 96th Congress, 2d Session (1980).

applicable to reserve personnel under former 10 U.S.C. §687[7] and extended those provisions, as restated, to regular officers. For those officers not able to choose between the new and old systems--that is, for all officers who came on active duty after September 14, 1981, the effective date of the provisions in question --it was estimated that the new separation pay provisions would be less generous for persons with less than ten years of service but more generous for those with more than ten years of service.[8]

The National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §501(a)-(d), 104 Stat. 1485, 1549-1550 (1990), made several further changes to the separation pay program. First, the 1991 National Defense Authorization Act, *id*., §501(a)(3), 104 Stat. at 1549, made regular enlisted personnel with six or more but less than 20 years of active service eligible for separation pay. See 10 U.S.C. §1174(b). Before enactment of the 1991 National Defense Authorization Act, an enlisted member denied the opportunity to reenlist or otherwise terminated during the course of an enlistment had no right to any separation pay whatsoever.

Second, the 1991 National Defense Authorization Act, *id*., §501(c), 104 Stat. at 1550, repealed the preexisting limitations on the amount of separation pay to which an individual might be entitled. As previously indicated, the maximum amount of separation pay to which an individual might become entitled before enactment of the 1991 National Defense Authorization Act was either $30,000 or $15,000, depending on the reasons the individual was separated.[9] With enactment of the 1991 National Defense Authorization Act, there is no longer any limitation on the amount of separation pay to which a separated individual--whether an enlisted member or an officer--is entitled. Rather, the amount of separation pay to which a separated member is now entitled is

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[7] Former 10 U.S.C. §687--which provided "readjustment pay" authority for non-regular officer and enlisted personnel--was repealed by Section 109(a) of the Defense Officer Personnel Management Act, Public Law 96-513, §109(a), 94 Stat. 2835, 2870 (1980). But see text accompanying footnote 4 to this chapter, above.

[8] Senate Report No. 96-375 (Committee on Armed Services), pp. 7-8, accompanying S. 1918, 96th Congress, 1st Session (1979).

[9] See text accompanying footnote 2 to this chapter and following.

computed as either ten percent of the product of the member's years of active service and 12 times terminal monthly basic pay or 50 percent of that amount,[10] as determined by the Secretary of the member's military department, provided that, in the case of an officer, the Secretary may determine that the separated officer is, depending on "the conditions under which the officer is discharged," not entitled to any separation pay at all.

Third, the 1991 National Defense Authorization Act, *id*., §501(b), 104 Stat. at 1549-1550, increased from five to six the number of years of continuous active service required immediately before discharge or separation for reserves to be entitled to separation pay after involuntary discharge or release from active duty.[11] 10 U.S.C. §1174(c)(1). The same increase was made applicable to regular officers discharged with less than five years of active commissioned service, officers found not qualified for promotion to pay grade O-2 (first lieutenant or lieutenant (junior grade)), chaplains who have lost their professional qualifications, officers separated for substandard performance of duty or for certain other similar reasons, and warrant officers separated during the

[10] Regular officers separated for failure of promotion under Chapter 36 of Title 10, United States Code, are entitled to the full ten percent of the member's years of service multiplied by 12 times terminal monthly basic pay, 10 U.S.C. §1174(a)(1), whereas officers discharged with less than five years of active commissioned service, officers found not qualified for promotion to pay grade O-2 (first lieutenant or lieutenant (junior grade)), chaplains who have lost their professional qualifications, officers separated for substandard performance of duty or for certain other similar reasons, and warrant officers separated during the three-year probationary period immediately following their appointment as warrant officers may, at the discretion of the "Secretary concerned," be separated either with the full amount computed as above, with 50 percent of that amount, or with no separation pay whatsoever, 10 U.S.C. §1174(a)(2). Enlisted members involuntarily separated or otherwise released from active duty are normally entitled to the full ten percent of the member's years of service multiplied by 12 times terminal monthly basic pay, although members discharged "under criteria prescribed by the Secretary of Defense" are entitled to only 50 percent of that amount, provided that the "Secretary concerned" may determine that a member is, because of the conditions under which he or she is discharged or otherwise separated, not entitled to any separation pay at all. The amount of separation pay to which reserves are entitled upon involuntary separation or non-acceptance for an additional tour of duty for which they have volunteered is determined the same way as for regular officers involuntarily separated or otherwise released from active duty.

[11] Reserves with more than five years of continuous active service on November 5, 1990, the date of enactment of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, 104 Stat. 1485 (1990), are exempted from the increase from five to six years of continuous active service as a condition of entitlement to separation pay, as are officers discharged with less than five years of active commissioned service, officers found not qualified for promotion to pay grade O-2 (first lieutenant or lieutenant (junior grade)), chaplains who have lost their professional qualifications, officers separated for substandard performance of duty or for certain other similar reasons, and warrant officers separated during the three-year probationary period immediately following their appointment as warrant officers. National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, *id*., §501(e)(2), 104 Stat. at 1550.

three-year probationary period immediately following their appointment as warrant officers. 10 U.S.C. §1174(a)(2). Regular enlisted members are also required to have six years of continuous active service for entitlement to separation pay. 10 U.S.C. §1174(b)(1). These changes left regular officers involuntarily discharged or released from active duty for failure of promotion--other than those referred to earlier in this paragraph--as the only officers needing only five years of continuous active service immediately before separation to be entitled to separation pay. See 10 U.S.C. §1174(a)(1) as in effect before enactment of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §501, 107 Stat. 1547, 1644 (1993).

Fourth, and perhaps the biggest change to the separation pay program, the 1991 National Defense Authorization Act, Public Law 101-510, *id*., §501(d), 104 Stat. at 1550, provided that, "[a]s a condition of receiving separation pay," a member otherwise eligible for that pay under 10 U.S.C. §1174 must "enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty."[12] 10 U.S.C. §1174(e).

The amendments to the separation pay program were adopted in response to Congress's perception that there would be substantial "reductions in [military] force over the next 5 years"[13] and that "[a] principal component of the package of transition assistance benefits necessary in a force drawdown environment is a modification of existing law with respect to the payment of separation pay."[14] As the House Armed Services Committee went on to note:

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[12] The three-year obligation is in addition to any other obligated service an affected member has.

[13] Senate Report No. 101-384 (Committee on Armed Services), p. 173, accompanying S. 2884, 101st Congress, 2d Session (1990).

[14] House Report No. 101-665 (Committee on Armed Services), p. 269, accompanying H.R. 4739, 101st Congress, 2d Session (1990).

> ... Currently, separation pay is authorized for regular and reserve officers and reserve enlisted members with five or more, but fewer than 20, years of active service who are involuntarily separated or discharged from active duty (or who are not accepted for an additional tour of active duty for which they have volunteered in the case of reserve members). Regular enlisted members are the only element of the regular and reserve components serving on active duty who are not eligible for separation pay upon involuntary separation. It is important that this inequity be redressed because the potential exists that regular enlisted members may be involuntarily separated as the size of the force is reduced. Moreover, because the present value of separation pay under current computational limits has been eroded over time, other changes to the separation pay mechanism have become necessary.
>
> ... [These changes are] consistent with the notion that separation pay is designed to compensate career oriented service members who have been denied a career opportunity because of circumstances beyond their control.[15]

The National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §501(a), 107 Stat. 1547, 1644 (1993), increased from five to six the number of years of active service that all regular officers involuntarily discharged or released from active duty for failure of promotion must have before being eligible for separation pay. As explained by the Senate Armed Services Committee, the change was made "to standardize the eligibility point for separation pay for all service members ... [at] six years."[16] [17] 10 U.S.C. §1174(a).

**Current rate of payment authorized**: In the normal case, the amount of separation pay to which a qualified member is entitled upon discharge is ten percent of

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[15] House Report No. 101-665 (Committee on Armed Services), p. 269, accompanying H.R. 4739, 101st Congress, 2d Session (1990). See Senate Report No. 101-384 (Committee on Armed Services), p. 173, accompanying S. 2884, 101st Congress, 2d Session (1990):

> ... The committee believes these [proposed separation pay] provisions provide a safety net to personnel who had planned on a career in the military but who may be required to leave active duty before they become eligible to retire. *cf.* House Report No. 101-923 (Committee of Conference), p. 603, accompanying H.R. 4739, 101st Congress, 2d Session (1990).

[16] Senate Report No. 103-112 (Committee on Armed Services), p. 153, accompanying S. 1298, 103d Congress, 1st Session (1993). See House Report No. 103-200 (Committee on Armed Services), p. 275, accompanying H.R. 2401, 103d Congress, 1st Session (1993). Cf. House Report No. 103-357 (Committee of Conference), pp. 669-670, accompanying H.R. 2401, 103d Congress, 1st Session (1993).

[17] See paragraph text accompanying footnote 11 to this chapter, above, concerning the disparity in treatment of different classes of personnel before adoption of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §501(a), 107 Stat. 1547, 1644 (1993).

the product of the member's years of active service and 12 times terminal monthly basic pay.[18]

**Cost**: For the cost of non-disability separation pay from 1972 to 2004, see Table III-6 of *Military Compensation Statistics Tables*, volume II of this edition.

[18] See footnote 10 hereof, above, together with associated text for exceptions to the general rule.

**Chapter III.C.2.**

## Disability Severance Pay

**Legislative Authority**: 10 U.S.C. §1212.

**Purpose**: To authorize a special lump-sum payment to be made to members of the Armed Forces separated from active military service because of minor physical disabilities that, while substantial enough to adversely affect their abilities to perform the military duties of their respective offices or grades, are not so severe as to seriously impair their civilian earnings capacities, in order to assist such personnel in their transitions back to civilian life. Disability severance pay stands in contrast to disability retired pay, which is authorized for more severe physical disabilities.

**Background**: The practice of awarding compensation through a veterans' pension system to persons disabled by military service spans the existence of the United States as a nation. The veterans' pension system has since 1861 been complemented by a military disability retirement system. Until 1949, the military system by and large covered only regular officers and career enlisted personnel. The Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §403, 63 Stat. 802, 820-821 (1949), revised and broadened the military disability retirement system so as in general to place all military personnel--career and non-career, officer and enlisted, regular and reserve--within its scope. In view of this expansion in the disability retirement system, it was considered necessary to draw a dividing line between "real" or "substantial" disabilities warranting lifetime disability retired pay and less substantial, "minor" disabilities not warranting such pay. The Career Compensation Act of 1949, ch. 681, *id*., established the dividing line at 30 percent disability.

Though the justification for non-disability severance pay authority in the Career Compensation Act of 1949, ch. 681, *id*., was that lifetime retired pay was not warranted in the case of personnel separated with disabilities deemed to be "minor" in nature, Congress recognized that such separations are nevertheless involuntary, that affected personnel are forced to reintegrate themselves into the mainstream of civilian life, and

that fair and considerate treatment of such personnel was thus required, at least in part in order to assure individual members of the Armed Forces that, if they are ever disabled in the service of their country, they will not be left to cope with their resulting separations from the service on their own. Accordingly, the Career Compensation Act of 1949, as amended over time, permitted a lump-sum severance payment to personnel with less than 20 years of active service who were separated from active service because of service-connected disabilities that, though rated as less than 30 percent, made them physically unable to perform the military duties of their respective offices or grades.[1] [2] Disabled personnel with 20 or more years of service qualify for disability retired pay[3] even if their degree of disability is less than 30 percent, on the theory that, because of their length of service, they would in any event be eligible for voluntary retirement.[4]

Disability severance pay is computed at the rate of two months' basic pay for each year of active service, not to exceed two years' basic pay.[5] To prevent a double benefit to

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[1] See 10 U.S.C. §§1203 and 1206 generally for an explication of the conditions of entitlement to disability severance pay.

[2] Section 1201(3) of Title 10, United States Code, 10 U.S.C. §1201(3), specifically requires that a member have either 20 years of service or a disability rating of at least 30 percent to be eligible for disability retired pay. The 20-year requirement would appear to rule out the possibility that members of the Armed Forces with at least 15 but less than 20 years of service who have a disability rating of less than 30 percent may be eligible for disability retirement pursuant to the provisions of Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), as amended by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §561(a), 107 Stat. 1547, 1667 (1993), set out as a note under 10 U.S.C. §1293, which provides temporary early retirement authority during the "active force drawdown period", *i.e.*, October 23, 1992, to October 1, 1999, for members of the Armed Forces with at least 15 but less than 20 years of service. As a practical matter, however, the Secretaries of the military departments would appear to have sufficient discretionary authority under the early retirement program authorized by Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), as amended, see Section 4403(d) of the 1993 Authorization Act in particular, to grant regular retirement to members with at least 15 but less than 20 years of service who have a disability rating of less than 30 percent. Thus, there is a possibility that some disabled members of the Armed Forces with less than 20 years of service and a disability rating of less than 30 percent may nevertheless be eligible for retirement pay rather than having to make do with disability severance pay.

[3] See, *e.g.*, 10 U.S.C. §§1201(3)(A) and 1204(4)(A).

[4] See Chapter III.B.3., "Disability Retired Pay," above.

[5] 10 U.S.C. §1212(a).

any given individual, the Department of Veterans Affairs[6] is required to deduct an amount equal to the disability severance payment made to that individual from any veterans' disability compensation to which the individual may later become entitled for the same disabilities.[7]

**Cost**: For the cost of disability severance pay from 1972 to 2004, see Table III-7 of *Military Compensation Statistics Tables*, volume II of this edition.

[6] The Veterans' Administration was redesignated as the Department of Veterans Affairs by the Department of Veterans Affairs Act, Public Law 100-527, 102 Stat. 2635 (1988). Pursuant to that act, from and after March 15, 1989, all references in any Federal law, Executive Order, rule, regulation, delegation of authority, or any document of or pertaining to the Veterans' Administration is statutorily deemed to refer to the Department of Veterans Affairs. Veterans Affairs Act, Public Law 100-527, *id*., §10, 102 Stat. at 2640-2641; see 38 U.S.C.A. §201 note.

[7] 10 U.S.C. §1212(c).

**Chapter III.C.3.**

## Unemployment Compensation

**Legislative Authority**: 5 U.S.C. §§8521-8523, 8525.[1]

**Purpose**: To provide members of the uniformed services with unemployment insurance protection similar to that for which they would have been eligible in the private sector had they not entered federal service.

**Background**: The provision of unemployment insurance protection as a matter of law is of relatively recent origin in the United States. The first measure providing a form of such protection was adopted by Wisconsin in 1932. The present "federal-state" unemployment compensation system--which actually is not a "system" but a collection of systems that parallel one another only in their basic concept--came into being as a result of the Social Security Act of 1935, ch. 531 [Public Law 271, 74th Congress], 49 Stat. 620 (1935). The Social Security Act did not directly provide for the payment of unemployment compensation; it was designed to persuade the states[2] to adopt laws of their own providing for unemployment "insurance." To this end, the act imposed a three percent federal unemployment tax on the first $3,000 earned by employees each year. While the tax was paid by employers, each employer was permitted to offset up to 90 percent of federal unemployment tax liability for amounts paid to an approved state unemployment compensation program. Thus, the states could establish programs and levy taxes up to 2.7 percent of taxable payrolls without any additional tax burden on employers. The federal tax achieved its objective: every state had an unemployment compensation law within two years after it was imposed.

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[1] Unemployment compensation for civilian and military members of the Federal Government is dealt with generally at 5 U.S.C. §§8501-8525. Unemployment compensation for "ex-servicemen" is dealt with specifically at 5 U.S.C. §§8521-8525. (The federal program dealing with unemployment compensation for ex-service members is overseen by the United States Department of Labor and is administratively referred to as the "UCX" program.)

[2] For the purposes of this chapter, the term "states" includes the District of Columbia, Puerto Rico, and the Virgin Islands, as well as the 50 states.

The actual administration of the "federal-state" unemployment compensation system remains a state function. Subject to meeting the minimum standards needed to qualify its program for the federal unemployment tax credit, each state determines eligibility conditions, sets the level and duration of benefits, and makes all payments. The federal unemployment tax on employers is 6.2 percent of the first $7,000 earned by each employee during a year. Against this tax, an employer gets a tax credit for "contributions paid by him into an unemployment fund maintained ... under the unemployment compensation law of a State which is certified" as meeting specified federal standards,[3] but the credit is limited to 5.4 percent of taxable wages. The portion of the federal tax actually collected by the Federal Government--0.8 percent of taxable wages for most states—pays the cost of administering federal and state unemployment programs and employment services, as well as half of the benefits paid under the Federal-State Extended Benefits program. Some funds collected by the Federal Government are put in a special loan account from which states may get advances.

The "federal-state" system covers only workers for whom an employer pays the unemployment tax. Since the Federal Government does not have to pay the tax, its employees were not covered by the system until 1954. At that time, Congress determined that "the Federal Government should not be in the position of providing less favorable conditions of employment than are required of private employers."[4] The Social Security Act amendments of 1954, ch. 1206 [Public Law 761, 83d Congress], 68 Stat. 1052 (1954), accordingly created a program under which a former federal civilian employee was eligible for state unemployment compensation in the same amount, on the same terms, and under the same conditions as would apply if the employee's federal service and wages had been included as employment and wages under the law of the state of the employee's last official duty station. The United States pays each state the additional cost

[3] Section 3301(a)(1) of the Internal Revenue Code of 1986, 26 U.S.C. §3301(a)(1).

[4] Senate Report No. 1794 (Committee on Finance), p. 6, accompanying H.R. 9709, 83d Congress, 2d Session (1954).

resulting from the payment of unemployment compensation under the program for former federal civilian employees.

As is the case with civilian employees, the United States does not have to pay unemployment tax for military personnel. Since the program created by the Social Security Act amendments of 1954, ch. 1206, *id*., covered only civilian employees, military members remained unprotected by unemployment insurance. The Servicemen's Readjustment Act of 1944, ch. 268 [Public Law 346, 78th Congress], §900, 58 Stat. 284, 297 (1944), had authorized a special benefit of $20 a week for up to 52 weeks to unemployed veterans of World War II, and the Veterans' Readjustment Assistance Act of 1952, ch. 875 [Public Law 550, 82d Congress], §401(b), 66 Stat. 663, 684 (1952), had authorized the payment of $26 a week for up to 26 weeks to unemployed veterans of the Korean conflict. Even though these allowances had served the same purpose as unemployment compensation, they were primarily intended to aid former members of the armed services in readjusting to civilian life. In any event, except for some residual application, neither program was in operation after February 1, 1955, when the end of the Korean conflict was proclaimed.

Congress recognized in 1958 that the lack of unemployment insurance protection for military personnel did not square with its policy that the Federal Government should not provide less favorable conditions of employment than are required of private employers. To remedy this situation, the Ex-Servicemen's Unemployment Compensation Act of 1958, Public Law 85-848, §3, 72 Stat. 1087, 1087-1088 (1958), created a program of Unemployment Compensation for Ex-Servicemen (UCX) that is very similar to the program for federal civilian employees. Congress described the purpose of the UCX program in these terms:

> Such a provision does not constitute a special reward for military service, but merely accords the individual a protection he most likely would have had if he had not entered military service.[5]

[5] Senate Report No. 2375 (Committee on Finance), p. 2, accompanying H.R. 11630, 85th Congress, 2d Session (1958).

The Ex-Servicemen's Unemployment Compensation Act of 1958, Public Law 85-848, *id*., provided that a former service member was eligible for state unemployment compensation in the same amount, on the same terms, and under the same conditions as would apply if the member's active military service and pay and allowances had been included as employment and wages under the law of the State in which the former member first filed a claim. Notwithstanding this "same terms" and "same conditions" language, until recently the UCX program differed in one respect from state programs. When a person voluntarily quits his job, he is disqualified in whole or in part for unemployment benefits under all state laws. Until 1981 the "voluntariness" factor was not material under the UCX program--a former servicemember remained eligible for unemployment benefits even if he could have kept his job--that is, even if he could have continued on active duty, whether by reenlisting, extending an enlistment, or whatever--had he chosen to do so. The Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, §2405, 95 Stat. 357, 876 (1981), changed this preexisting rule by adding, as an eligibility requirement for ex-servicemen, a provision that an individual seeking unemployment benefits "did not resign or voluntarily leave the service."[6]

This new, "non-voluntary" termination restriction on the entitlement of unemployed ex-servicemen to unemployment compensation soon proved to be overly restrictive, and Congress in the Miscellaneous Revenue Act of 1982, Public Law 97-362, §201, 96 Stat. 1726, 1732 (1982), effectively deleted it. Under law in effect before enactment of the Emergency Unemployment Compensation Act of 1991, Public Law 102-164, 105 Stat. 1049 (1991), an unemployed ex-service member was entitled to unemployment compensation (UCX) if unemployed for the requisite period of time and, while in the Armed Forces, had active service (not including active duty in a reserve

[6] For eligibility, an individual was required to have had 365 or more days of continuous service (unless that service was terminated because of a "service-incurred injury or disability"), he must have been released or discharged from the service under honorable conditions, he could not have resigned or voluntarily left the service, and he could not have been released or discharged for cause. See 5 U.S.C. §8521(a)(1) as in existence before amendments effected by the Miscellaneous Revenue Act of 1982, Public Law 97-362, §201, 96 Stat. 1726, 1732 (1982), discussed in text below.

status unless for a continuous period of 180 days or more) in the Armed Forces ... if with respect to that service—

> (A) the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and
>
> (B)(i) the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or
>
> (ii) the individual was discharged or released before completing such term of active service—
>
> (I) for the convenience of the Government under an early release program,
>
> (II) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,
>
> (III) because of hardship, or
>
> (IV) because of personality disorders or ineptitude but only if the service was continuous for 365 days or more; ....

5 U.S.C. §8521(a)(1) as in effect prior to enactment of the Emergency Unemployment Compensation Act of 1991, Public Law 102-164, 105 Stat. 1049 (1991).

The House Committee on Ways and Means detailed the history of the UCX program for unemployed ex-service members as follows:

> Prior to enactment of the Omnibus Budget Reconciliation Act of 1981 [Public Law 97-35, 95 Stat. 357 (1981)], Federally funded unemployment benefits were provided to former military personnel upon their separation from military service under the Unemployment Compensation for Ex-Servicemembers (UCX) program, if the ex-servicemember met the eligibility requirements of the State in which he or she applied for unemployment compensation. The military service of an individual qualified as wages or employment in the determination of eligibility for UCX benefits only if the person had (1) served 365 or more continuous days of active duty (unless separated after a shorter period because of a service-incurred injury or disability) and (2) was separated under other than dishonorable conditions. Leaving the military at the end of a term of enlistment, even if the person was eligible to reenlist, was not considered a "voluntary quit" under State law in the determination of eligibility for UCX benefits.
>
> Section 2405 of the Budget Reconciliation bill ... established new requirements for entitlement to benefits under the UCX program. Effective for separations from military service occurring on or after July 1, 1981, individuals:

> (1) must have been discharged or released under honorable conditions: (2) must not have resigned or voluntarily left the service, which means they must not have been able to reenlist; and 3) must not have been released or discharged "for cause" as defined by the Department of Defense. These new requirements apply to individuals who left federal military service on or after July 1, 1981, but only for weeks of unemployment that began on or after August 13, 1981, the date of enactment of the Reconciliation bill. Preliminary estimates indicate that some 35,000 individuals will be denied UCX benefits in fiscal 1981 and over 110,000 individuals will be denied benefits in fiscal 1982 as a result of these new requirements.
>
> The new requirements subject ex-servicemembers to stricter unemployment eligibility standards than civilians and, as a result, inappropriately and unnecessarily prevent a significant number of ex-servicemembers who cannot find civilian jobs immediately after leaving the service from receiving unemployment benefits. Furthermore, the new requirements, by providing UCX benefits only to those who are not acceptable for reenlistment, penalize those individuals who satisfactorily fulfill their military obligation and are therefore offered the opportunity to reenlist but choose to leave the service.
>
> Section 204 [of the Miscellaneous Revenue Act of 1982, Public Law 97-362, id.] repeals the new requirements enacted as part of the Budget Reconciliation Act and replaces them with eligibility requirements based on prior law but modified so as to address concerns and criticisms that have been expressed with regard to the UCX program....
>
> The provisions in this section, while significantly reducing Federal expenditures for unemployment benefits paid to ex-service members under the UCX program, will provide unemployment assistance to those who complete their term of duty satisfactorily, and therefore have the opportunity to reenlist, under the same terms and conditions as those who are not acceptable for reenlistment.[7]

The Miscellaneous Revenue Act of 1982, Public Law 97-362, *id*., §201(c), 96 Stat. at 1732, also changed the unemployment compensation standards for the enlarged population of former service members eligible for unemployment compensation. Under the standards adopted by that act, unemployed ex-service members were required to wait four weeks, rather than the one week required for unemployed civilians, before they became eligible to collect unemployment benefits. The reason given was the assumed availability of severance pay and other separation benefits for ex-service members. In

[7] House Report No. 97-404 (Committee on Ways and Means), pp. 30-31, accompanying H.R. 4961, 97th Congress, 1st Session (1981) (emphasis and punctuation as in House Report No. 97-404). *cf*. House Report No. 97-929 (Committee of Conference), p. 48, accompanying H.R. 4717, 97th Congress, 2d Session (1982).

addition, unemployment benefits were authorized for ex-service members for a maximum of 13 weeks, as opposed to the 26 weeks authorized for unemployed civilians. No reason was articulated for this difference in treatment, but the discussion of the high cost of the program during hearings on the legislation presumably influenced this decision.

The Emergency Unemployment Compensation Act of 1991, Public Law 102-164, §301, 105 Stat. 1049, 1059 (1991), amended prior provisions of law in two regards. Section 301(b) of the act, 105 Stat. at 1059, decreased the active-service requirement for receipt of unemployment benefits by unemployed ex-service members from 180 days to 90 days; and Section 301(a), 105 Stat. at 1059, repealed 5 U.S.C. §8521(c), which provided that unemployed ex-service members could not receive unemployment benefits before the expiration of the four-week period following separation and limited the period for which benefits to ex-service members were authorized to 13 weeks. With the latter change, unemployed ex-service members and unemployed civilians are now treated the same with respect to the time they have to wait before becoming eligible for unemployment benefits and the period for which such benefits are authorized.[8] The reasons for the changes to the unemployment compensation program for ex-service members had to do both with anticipated drawdowns in military strength and a felt need to assist in the transition of ex-service members who had served in Operation Desert Storm back into the civilian economy. As explained by the House Ways and Means Committee:

> The provisions restoring ex-servicemembers' benefits to their pre-1981 levels when ex-military personnel were treated the same as civilians probably helps close to 50,000 ex-military personnel in 1992. As under present law [as of October 1991], those who leave the military who have an opportunity to reenlist are eligible for benefits when they return home. The Committee believes that leaving the military after a period of enlistment is not equivalent to quitting a civilian job, and therefore, these ex-military personnel should get unemployment benefits to aid them while they look for civilian work. In addition, the bill [H.R.

[8] The same changes were adopted in an earlier enactment also titled Emergency Unemployment Compensation Act of 1991, Public Law 102-107, §8, 105 Stat. 541, 546 (1991), but none of the provisions of that act ever became effective because of conditions on effectiveness of the entire Act incorporated as Section 10(b) of the Act, *id*., 105 Stat. at 548.

> 3575, 102d Congress, 1st Session (1991), ultimately adopted as Public Law 102-164] would reduce the number of continuous days of service required of activated reservists from 180 to 90 days, which would help some returning veterans of Operation Desert Storm to receive unemployment benefits.
>
> House Report No.102-273 (Committee on Ways and Means), p. 4, accompanying H.R. 3575, 102d Congress, 1st Session (1991).[9]

While the amount of unemployment compensation differs among states, all states employ basically the same method of calculating the weekly unemployment compensation amount. It is computed as a fraction, or percentage, of the wages earned by the unemployed person during base period employment, with the amount so computed being raised if it is less than a specified minimum figure or lowered if it is more than a specified maximum figure. But the fractions, percentages, base periods, minimums, and maximums used in the calculations vary considerably among the states and are frequently changed by state law.

The "wages" now used to calculate the unemployment compensation of former service members under the UCX program are "all pay and allowances, in cash and in kind, for Federal military service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his latest discharge or release from Federal

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[9] Much the same point was made by the Senate Armed Services Committee in its report on the National Defense Authorization Act for Fiscal Years 1992 and 1993:

> During its debate on the National Defense Authorization Act for Fiscal Year 1991, the Senate passed a provision to provide separating military personnel the same unemployment compensation coverage that is provided for civilian personnel. Currently, separating military personnel are authorized 13 weeks of unemployment benefits after four weeks of unemployment. Civilians are authorized 26 weeks of unemployment compensation after one week of unemployment.
>
> The Senate-passed provision was not enacted last year, because the committee agreed to a request by the Senate Finance Committee and the House Ways and Means Committee to defer the provision for consideration by these two committees as a matter falling under their jurisdiction. The committee notes that the Senate Finance Committee has since held a hearing on this matter. The committee urges the Senate Finance Committee to take favorable action in concert with the House Ways and Means Committee to correct the unemployment compensation disparity this year. Military personnel and their families deserve the same safety net as civilian personnel and their families, especially during this period of substantial reductions in military strength.
>
> Senate Report No. 102-113 (Committee on Armed Services), p. 227, 102d Congress, 1st Session (1991).

service,"[10] averaged by length of service and dependency status for each pay grade. The United States Department of Labor annually updates the amount of these "wages" in the Federal Register--in a table referred to as Schedule of Remuneration for the UCX Program--for use by state employment offices in determining the amount of unemployment compensation to which an unemployed ex-service member is entitled.[11] Thus, for an unemployed ex-service member who left service in, for example, pay grade E-5, the amount of "wages" on which an unemployment compensation calculation would be based are the "wages" set out for pay grade E-5 in the Schedule of Remuneration for the UCX Program and not on the actual wages the member received. The Federal Government pays each state the additional cost resulting from the payment of unemployment compensation under the UCX program.

The UCX program for ex-servicemen is also affected by the way different states treat unused leave payments, retired and retainer pay, and severance pay. Unused leave payments are considered as current wages and, as such, bar the receipt of or cause a reduction in unemployment compensation in a number of states; other states treat such payments as payments for past services and thus as having no effect on unemployment compensation. Retired or retainer pay, on the other hand, is treated as current wages in some states, thereby reducing--in some cases, eliminating--unemployment compensation benefits, and as payment for past services in others. There is a similar disparity of treatment as regards severance pay, with some states treating such pay as current wages and others as payment for past services.[12]

**Cost**: For the cost of unemployment compensation from 1971 to 2004, see Table III-8 of *Military Compensation Statistics Tables*, volume II of this edition.

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[10] 5 U.S.C. §8521(a)(2).

[11] The Schedule of Remuneration for the UCX Program is found at 20 Code of Federal Regulations 614.12. Under the Schedule of Remuneration for the UCX Program current in early 2004, the monthly pay and allowances on which unemployment compensation would be based for an individual member applying for compensation range from a high of $14,857 for an officer in pay grade O-10 to $2,245 for an enlisted member in pay grade E-1.

[12] The reader is referred to the unemployment compensation laws of the different states.

**Chapter III.C.4.**

## Temporary
## Voluntary Separation Incentives

**Legislative Authority**: 10 U.S.C. §§1174a and 1175 and Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), as amended, set out as a note under 10 U.S.C. §1293.

**Purpose**: To provide special incentives for members of the Armed Forces to voluntarily agree to separate from active duty components.

**Background**: In the aftermath of the Cold War, and in light of the expected consequent drawdown in active duty strength levels, the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, 105 Stat. 1290 (1991), established two programs to encourage members of the active duty forces--both regular and reserve components—to voluntarily separate from active duty. One of the programs—adopted by Section 662(a) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, *id*., §662(a), 105 Stat. at 1396-1398, codified at 10 U.S.C. §1175, and generally referred to the "voluntary separation incentive" program, or "VSI"--provides a temporary, variable-length annuity to members separating from the active duty forces and affiliating with reserve components. The second program--adopted by Section 661(a) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, *id*., §661(a), 105 Stat. at 1394-1395, codified at 10 U.S.C. §1174a, and generally referred to as the "special separation benefit" program, or "SSB"—provides enhanced separation pay benefits for members of the active duty services voluntarily agreeing to terminate all connection with the Armed Forces. The National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), as amended,[1] established a third program of separation incentives that authorized early retirement for members of the Armed Forces with at least 15 but less than 20 years of service who agreed to retire before October 1, 1999.

[1] Set out as a note under 10 U.S.C. §1293.

Under the voluntary separation incentive program or VSI--the program aimed at providing incentives to members of the active duty services to separate from active duty and affiliate with reserve components--the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, *id*., §662(a), 105 Stat. at 1396-1398, authorized the Secretary of Defense to "provide a financial incentive to members of the Armed Forces ... for voluntary appointment, enlistment, or transfer to a Reserve component ... for the period of time the member serves in a reserve component." As originally enacted, the amount of the annual VSI payment authorized was to be computed by multiplying the product of the member's terminal monthly basic pay and 12 by the product of the member's number of years of service at separation and 2.5 percent, and subtracting from that amount the sum of any basic pay the member subsequently received for active or reserve service as a member of a reserve component and any compensation the member received for inactive duty training during the year. A member entitled to an annual VSI payment computed as above was to be paid that amount for twice the member's years of service at separation so as long as the member maintained membership in a reserve component. A member of the active duty force was eligible to participate in the VSI program if the member had served on active duty for at least six but less than 20 years, had served at least five years of continuous active duty immediately before the date of separation, and met such other requirements as the Secretary of Defense might provide. A member participating in the VSI program who subsequently became entitled to retired or retainer pay was to have his retired or retainer pay entitlement reduced by an amount based on the service for which he received the VSI until the total amount deducted equaled the total VSI the member received.

Under the special separation benefit program, or SSB--the program aimed at providing incentives to members of the active duty services to terminate all connection with the Armed Forces--the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, *id*., §661(a), 105 Stat. at 1394-1395, directed the Secretaries of each of the military departments to develop "special separation benefits program[s]" under which an "eligible member" could request separation and, upon approval of the request, be "released from active duty or discharged." For the purpose of

each departmental "special separation benefit program," a member of that department's armed force on active duty was eligible for the program only if the member had served on active duty for more than six but less than 20 years as of the date of enactment of the 1992/1993 authorization act, had served on continuous active duty for at least five years immediately before the member's separation from active duty under the program, had not been approved for "payment of a voluntary separation incentive," and met such other requirements as the Secretary of Defense might provide.[2] In addition, an enlisted member of a regular component was required to enter into a written agreement not to request reenlistment in a regular component any time in the future. An eligible member whose request for separation under the SSB program was approved was entitled to a SSB payment computed by multiplying the product of the member's terminal monthly basic pay and 12 by the product of the member's years of active service and 15 percent. Various non-monetary benefits were also extended to members separated under the SSB program.

In explanation of these programs, the House/Senate Conference Committee noted:

> The ... [programs would] ... provide temporary authority to the Secretaries of the military departments to: (1) offer involuntary separation pay and transition benefits to active duty personnel who elect to voluntarily separate in order to avoid the possibility of facing selection for involuntary separation or denial of reenlistment; and (2) offer a voluntary separation incentive in the form of an annuity to active duty personnel who elect to voluntarily separate in order to avoid the possibility of facing selection for involuntary separation or denial of reenlistment.
>
> The conferees take this action because of their concern over the effect of strength reductions during the next few years on our men and women in uniform and their families. The conferees especially recognize that this drawdown in strength is different from previous drawdowns because it affects people who are a product of an all volunteer force. Therefore, the conferees would provide these temporary authorities as tools to assist the military Services in selectively reducing, on a voluntary basis, that portion of the career personnel inventory that is not retirement eligible. The conferees believe that these authorities would give a reasonable, fair choice to personnel who would otherwise have no option but to

[2] The National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §542(b) and (c), 106 Stat. 2663, 2768-2769 (1994), extended both the VSI and SSB programs to members of the Coast Guard.

face selection for involuntary separation, and to risk being separated at a point not of their own choosing.

With regard to the first of the two provisions [SSB], the conferees agree that the "voluntary" separation pay benefit would be calculated at 15 percent of basic pay multiplied by the number of years of service of the separating member. Current involuntary separation pay is calculated on 10 percent of basic pay multiplied by the number of years of service of the separating member. The conferees believe that this enhancement will provide an equitable, up-front incentive for personnel to choose in lieu of facing the prospect of involuntary separation. The enhanced separation benefit would be in addition to employment assistance, medical care, commissary and exchange shopping, housing, relocation assistance, and leave and travel benefits provided by Congress in section 502 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510).

With regard to the second provision [VSI], the conferees recommend the voluntary separation incentive plan proposed by the Secretary of Defense [Cheney]....[3]

As previously indicated, the annual payment to a participating member in the VSI program as originally enacted was to be computed by multiplying the product of the member's terminal monthly basic pay and 12 by the product of the member's number of years of service at separation and 2.5 percent, and subtracting from that mount the sum of any basic pay the member received for subsequent active or reserve service as a member of a reserve component and any compensation the member received for inactive duty training during the year. The National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4406(a)(1), 106 Stat. 2315, 2706-2707 (1992), changed the basis for computing the annual VSI payment by making the subtraction optional and by providing that, in the case of a member choosing to have the subtraction made, the amount of any subtraction would be used as an offset against any future reduction in retired or retainer pay that would otherwise have been required under the VSI program as originally adopted. The National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4405(b), 106 Stat. 2315, 2706 (1992), also extended to a participant in the

[3] House Report No. 102-311 (Committee of Conference), pp. 555-556, accompanying H.R. 2100, 102d Congress, 1st Session (1991).

VSI program the same non-monetary benefits that had been extended to members separated under the SSB program.[4]

As originally enacted, active duty members of the Armed Forces had to take advantage of both the SSB and VSI programs by September 30, 1995. The National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §561(g) and (h), 107 Stat. 1547, 1668 (1993), extended both program authorization dates through September 30, 1999. The program authorization dates were extended to "encourage DOD to develop and implement coherent, integrated, long-term drawdown plans that will minimize the uncertainties and personnel turbulence associated with such a drawdown."[5]

With respect to the third of the voluntary separation incentive programs, the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), adopted early retirement authority--for members with between 15 and 20 years of service--as a "temporary additional force management tool with which to effect the drawdown of military forces through 1995." National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, id., §4403(a), 106 Stat. at 2702.[6] Under the subject authority, the Secretaries of the military departments were

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[4] House Report No. 102-966 (Committee of Conference), p. 887, accompanying H.R. 5006, 102d Congress, 2d Session (1992). Cf. Senate Report No. 102-352 (Committee on Armed Services), p. 203, accompanying S. 3114, and House Report No. 102-527 (Committee on Armed Services), p. 252, accompanying H.R. 5006, 102d Congress, 2d Session (1992).

[5] House Report No. 103-357 (Committee of Conference), p. 678, accompanying H.R. 2401, 103d Congress, 1st Session (1994). To the same effect, see Senate Report No. 103-112 (Committee on Armed Services), p. 145, accompanying S. 1298, 103d Congress, 1st Session (1993):

> The committee recommends a provision ... that would extend through fiscal year 1998, certain temporary authorities which provide tools to the military services for managing personnel reductions, and which provide a safety net of benefits for separating military personnel during the defense drawdown.
>
> The committee believes that these authorities, which have been used effectively by the military services to make reductions in personnel strength on a prudent, humane basis since they were enacted, will continue to be required as further personnel strength reductions are made over the next several years.

[6] See 10 U.S.C. §1293 note for the full text of the early retirement authority adopted by the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992).

authorized to accept applications of members of the Army, the Navy, the Marine Corps, and the Air Force having at least 15 but less than 20 years of service for voluntary early retirement.[7] This early retirement authority was applicable during the "active force drawdown period," which as originally enacted, was defined to be the period beginning on the date of enactment of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, *id*., *i.e*., October 23, 1992, and ending on October 1, 1995.[8] The National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §561(a), 107 Stat. 1547, 1667 (1993), subsequently extended the termination date for the "active force drawdown period" to October 1, 1999. Acceptance of an application for early retirement entitled a member to retired or retainer pay effectively computed by multiplying the member's "retired or retainer pay base" by an adjusted "retired or retainer pay multiplier."[9] The member's adjusted "retired or retainer pay multiplier" is determined by multiplying 2.5 percent times the member's years and months of creditable service (counting 1/12th of a year for each month of creditable service in excess of the number of whole years of service) and then subtracting from that result, stated as a percentage, 1/12th of one percent for each full month by which the member's total months of active service at retirement are less than 240.[10]

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[7] As initially enacted, the early retirement authority did not extend to members of the Coast Guard or to the commissioned officer corps of the National Oceanic and Atmospheric Administration or the Public Health Service. Early retirement authority was, however, subsequently extended to members of the Coast Guard with at least 15 but less than 20 years of service by the National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §542(d), 108 Stat. 2663, 2769 (1994), and to members of the commissioned officer corps of the National Oceanic and Atmospheric Administration by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §566(c), 110 Stat. 186, 328 (1996).

[8] National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403(i), 106 Stat. 2315, 2704 (1992). See 10 U.S.C. §1293 note.

[9] National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403(e), 106 Stat. 2315, 2703 (1992). See 10 U.S.C. §1293 note.

[10] A member's normal, or unadjusted, "retired or retainer pay multiplier" is determined under 37 U.S.C. §1409 in one of two ways, depending on when the member first became a member of the Armed Forces and on what kind of retirement program the member chooses after completing 15 years of active duty. If the member first entered the Armed Forces before August 1, 1986, the "retired or retainer pay multiplier" is determined by multiplying the member's years and months of creditable service (with each full month of creditable service in excess of a full year counted as 1/12th of a year) by 2.5, with that result being stated as a percentage figure. As described in Chapter IIIB1, Nondisability Retired and Retainer Pay, members who entered active service after July 31, 1986 and chose the Career Service Bonus upon completion of 15 years of active duty have their retirement pay computed differently. However, because receipt of the Career

In support of the early retirement authority granted by the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992),[11] the Senate Armed Services Committee, which sponsored the proposal, noted:

> The committee anticipates that the active component strength levels of some of the military services in the current DOD Base Force Plan, which total to an active duty strength level of 1,626,300 by the end of fiscal year 1997, are likely to be reduced substantially. The committee expects such a reduction will result from the Defense Department's own revisions to its current Base Force Plan as a result of budget decisions, a more efficient allocation of roles and missions among the military services, a more efficient active/reserve force mix, and other economies and efficiencies that are discussed elsewhere in this report.[12]
>
> In order to cope with the active duty strength reductions that are currently planned by the DOD, the Congress provided authorities to the military services to assist them in implementing the planned reductions prudently. These authorities included separation benefits that the military services could offer to career personnel to induce them to voluntarily separate from active duty.
>
> The committee notes that these authorities have been effective in helping the military services reduce strength in the six to 15-years-of-service element of the career inventory. At the same time, the committee notes that the military services do not have an effective tool to reduce active duty strength in the 15 to 20-year element of the career inventory.
>
> In view of the committee's expectation that the active duty strengths in the current Base Force Plan will be reduced substantially, and in view of the absence of an effective tool that the military services can use to reduce the 15 to 20-year element of the personnel inventory, the committee believes that existing transition provisions should be augmented....
>
> Therefore the committee recommends...

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Service Bonus also requires a commitment of five additional years of active service, no members in that category have been eligible to retire before completing 20 years This means that all members taking advantage of the early voluntary retirement authority provisions have had their "retired or retainer pay multipliers" determined by the formula set out above. For a member retiring with exactly 15 years of creditable service, for example, the retired or retainer pay entitlement is then five percent less than what it otherwise would have been but for the adjustment required by National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403(e), 106 Stat. 2315, 2703 (1992). See 10 U.S.C. §1293 note.

[11] See 10 U.S.C. §1293 note.

[12] Senate Report No. 102-352 (Committee on Armed Services), accompanying S. 3114, 102d Congress, 2d Session (1992).

> Section 534 [of the Senate bill, S. 3114, 102d Congress, 2d Session (1992)] would authorize active duty personnel who have 15 but less than 20 years of service to apply for and be approved for early retirement. The committee expects the military services to use this authority selectively to trim surpluses in the 15 to 20-year element of the personnel inventory.[13]

The Senate proposal was amended in conference, with the conference committee noting:

> The amendment would clarify that the purpose in providing this authority is to give the Department of Defense a temporary, additional force management tool to effect the reduction in military personnel through fiscal year 1995. The amendment would clarify that the Secretaries of the military departments may prescribe appropriate regulations or policies regarding the criteria for eligibility and approval of applications under this section [H.R. 5006, §4403, 102d Congress, 2d Session (1992)]. These criteria may include, but are not limited to, such factors as grade, skill, and years of service. The amendment would provide that the retired pay of a member who retires under this section would be reduced by one percent for each year of service less than 20 years.[14]

In extending the "active force drawdown period" for the purposes of early retirement from October 1, 1995, to October 1, 1999, the House-Senate conference committee noted as follows:

> . . .
>
> The Senate amendment contained a provision ... that would extend through fiscal year 1998 certain temporary authorities which provide tools to the military services for managing personnel reductions, and which provide a safety net of benefits for separating military personnel during the defense drawdown.
>
> The House ... [proposes to] extend these transition authorities through 1999. The conferees believe that by providing the Department of Defense with these authorities for the foreseeable length of the drawdown, they will encourage DOD to develop and implement coherent, integrated, long-term

[13] Senate Report No. 102-352 (Committee on Armed Services), pp. 201-202, accompanying S. 3114, 102d Congress, 2d Session (1992).

[14] House Report No. 102-966 (Committee of Conference), p. 886, accompanying H.R. 5006, 102d Congress, 2d Session (1992).

drawdown plans that will minimize the uncertainties and personnel turbulence associated with such a drawdown.[15]

Subsequent legislation extended the drawdown-related early retirement authority from October 1, 1999 through September 1, 2002, in three stages. The National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, extended the authority by two years, through October 1, 2001. The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, extended the authority through December 31, 2001, the end of that calendar year. The National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, further extended the date through September 1, 2002.

**Current authorized rates of special voluntary separation incentives** vary depending on pay grade and length of service.

[15] House Report No. 103-357 (Committee of Conference), p. 678, accompanying H.R. 2401, 103d Congress, 1st Session (1993). (In support of its original proposal to extend the temporary retirement authority through 1998, the Senate Armed Services Committee had noted:

The committee believes that these authorities [including the temporary retirement authority adopted in the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4403, 106 Stat. 2315, 2702-2704 (1992), see 10 U.S.C. §1293 note], which have been used effectively by the military services to make reductions in personnel strength on a prudent, humane basis since they were enacted, will continue to be required as further personnel strength reductions are made over the next several years.

Senate Report No. 103-112 (Committee on Armed Services), p. 145, accompanying S. 1298, 103d Congress, 1st Session (1993).)

**Chapter III.D.1.**

## Retired Members Medical Care

**Legislative Authority**: 10 U.S.C. §§1074, 1077, 1078, 1079, 1086, 1086a, 1987, 1092, 1097, 1098, and 1099.

**Purpose**: The purpose of the medical care program for retirees is threefold: To provide incentives for Armed Forces personnel to undertake military service and remain in that service for a full career; to help ensure the availability of physically acceptable and experienced personnel in time of national emergency; and to provide military physicians and dentists exposure to the total spectrum of demographically diverse morbidity, an experience that is necessary to support professional training programs and ensure professional satisfaction for a medical service career.

**Background**: There was no legislative or administrative authority for medical care to be provided to military retirees and their dependents prior to World War I. At that time administrative directives established that "supernumeraries" might be admitted to military hospitals under certain circumstances. The term "supernumeraries" was construed to include retired personnel.

During World War II severe restrictions were placed on the provision of care to retirees in military medical facilities. These restrictions affected all consumers of military medical care other than active-duty members.

With adoption of the Dependents' Medical Care Act, ch. 374 [Public Law 569, 84th Congress], §301(b) and (c), 70 Stat. 250, 253 (1956), military retirees and their dependents were given a contingent right to care in military medical—including dental--facilities based upon the "availability of space and facilities and the capabilities of the medical and dental staff." 10 U.S.C. §1074(b) (retirees) and §1076(b) (dependents or survivors of retired members). As thus formulated, medical care for retirees in military medical facilities has always been, and to this day remains, a privilege--not an absolute

right, as has been assumed by many. The impact of this limitation was not fully apparent until the 1960s when the numbers of retirees increased at an unprecedented rate and their demands for care began to exceed the capabilities of military medical facilities and their staffs.

The Dependents' Medical Care Act, ch. 374, *id*., also led to the establishment of a beneficiary priority system for determining how care would be provided when there were limited capabilities. First priority for care was given to active-duty members; the second, to dependents and survivors of active-duty members; and, the third, and last, to retirees and their dependents and survivors. As the total beneficiary population increased and medical demands began to exceed capabilities, the first to be affected were retirees.

Recognizing that demand for military medical care was exceeding the capabilities of the services in general, Congress in 1966 amended the provisions of Title 10 dealing with health care for members, former members, and their dependents and survivors, creating authority to contract for the provision of civilian health care to retired members and their dependents as well as the survivors of certain former members, among others. The Department of Defense subsequently exercised this authority through creation of a program that came to be known as the Civilian Health and Medical Program of the Uniformed Services, popularly referred to as CHAMPUS. This program, adopted as part of the Military Medical Benefits Amendments of 1966, Public Law 89-614, §2(7), 80 Stat. 862, 865 (1966) (amending Title 10, United States Code, by adding a new section, 10 U.S.C. §1086, "Contracts for health benefits for certain members, former members, and their dependents"), guaranteed retirees who are not entitled to Medicare benefits access to authorized health services from civilian sources as an alternative to medical care from military facilities.[1]

[1] In general, persons entitled to hospital and related insurance benefits under Part A ("Hospital Insurance Benefits for the Aged and Disabled") of Title XVIII of the Social Security Act, ch. 531 [Public Law 271, 74th Congress], 49 Stat. 620 (1935), as amended, 42 U.S.C. §1395c *et seq*., are not eligible for CHAMPUS benefits. 10 U.S.C. §1086(d)(1). Thus, when retirees and their dependents become entitled to hospital insurance benefits under the Social Security Act of 1935, as amended, they lose eligibility for CHAMPUS benefits.

By law, CHAMPUS was a cost-sharing program with the retiree responsible, in the case of outpatient services, for a deductible of $150 for a single individual, or $300 for a family, each fiscal year, together with 25 percent of all subsequent allowed charges. For hospitalization, the retiree was required to pay 25 percent of all allowed charges for "inpatient care." The government paid the balance of the allowed charges for authorized care, *i.e.*, 75 percent of the allowed charges, provided that a retiree or a retiree's family group of two or more persons could not be required to pay a total of more than $7,500 for health care received under CHAMPUS during any fiscal year.[2] 10 U.S.C. §1086(b)(4).

In an attempt to improve the quality of health care for, among others, retirees and their dependents while at the same time controlling health care program costs, Congress, in the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §§701-702, 100 Stat. 3816,3894-3900 (1986), added a number of new provisions to Chapter 55 of Title 10, United States Code, dealing with medical and dental care. First, Section 702 of the 1987 Authorization Act, Public Law 99-661, *id*., §702, 100 Stat. at 3899-3900, requires the Secretary of Defense, as a part of the so-called CHAMPUS Reform Initiative, to conduct a demonstration project (i) to improve competition among civilian providers of health care services to the Department of Defense beneficiaries, (ii)

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[2] The National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §721(b), 101 Stat. 1019, 1115 (1987), provided for a $10,000 annual limit on deductibles and copayments for retirees and their families to serve as a protection or "cap" against "catastrophic loss," House Report No. 100-446 (Committee of Conference), p. 650, 100th Congress, 1st Session (1987), and to prevent "the potential of wiping-out a family financially," House Report No. 100-58 (Committee on Armed Services), p. 217, 100th Congress, 1st Session (1987). See 10 U.S.C. §1086(b)(4) as in effect before enactment of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §703(a), 106 Stat. 2315, 2432 (1992). *cf*. Senate Report No. 100-57 (Committee on Armed Services), p.150, 100th Congress, 1st Session (1987), which dealt only with placing a "limitation on out-of-pocket expenses for co-payments and deductibles" for members of the active-duty force. (The 1988/1989 Defense Authorization Act, Public Law 100-180, *id*., §721(a), 101 Stat. at 1115, amending 10 U.S.C. §1079(b) (dealing with medical care for dependents of members of the active duty forces), established a $1,000 "cap" on out-of-pocket expenses for medical care for members of the active-duty forces and their dependents. 10 U.S.C. §1079(b)(5). See Chapter IV.B.4., "Medical Care (Servicemembers and Dependents)," below. The House-Senate conferees expressed regret at having to adopt a $10,000 "catastrophic cap for retiree families, due to budget constraints" and indicated an intention to "address this level of catastrophic loss protection again in the future." House Report No. 100-446 (Committee of Conference), p. 650, 100th Congress, 1st Session (1987).) The National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §703(a), 106 Stat. 2315, 2432 (1992), reduced the $10,000 annual cap on copayments and deductibles to $7,500. See Senate Report No. 102-352 (Committee on Armed Services), p. 213), accompanying S. 3114, and House Report No. 102-966 (Committee of Conference), p. 718, accompanying H.R. 5006, 102d Congress, 2d Session (1992). 10 U.S.C. §1086(b)(4).

to test the relative merits of having beneficiaries of the military health care system use a voucher system or fee schedule for the provision of health care services, and (iii) to insure that community hospitals are given equal consideration with other health care providers for the provision of health care services under contracts with the Department of Defense. As set out in Section 702(a) of the 1987 Authorization Act, Public Law 99-661, *id*., §702(a), 100 Stat. at 3899, the purpose of the demonstration project was to improve the effectiveness of the CHAMPUS health care payment system through the competitive selection of health care contractors in the civilian sector of the economy who would be financially responsible for the delivery of defined health care services to former members of the Armed Forces and their dependents (as well as to dependents of members). The demonstration project was required to be limited to one-third of the overall CHAMPUS program.[3]

Second, insofar as military retirees, their dependents, and survivors were specially concerned, the act permitted the Secretary of Defense to contract with a variety of health care providers and insurers for the provision of basic health care services. Included within the scope of permitted contractors were health maintenance organizations, preferred provider organizations, individual providers, individual medical facilities, insurers, and consortiums of all such providers, facilities, and insurers. In addition, the act specifically authorized the Secretary of Defense to prescribe premiums, deductible amounts, copayment percentages or amounts, and other health care charges for affected beneficiaries.

Third, while authorizing the Secretary of Defense to prescribe premiums, deductibles, copayments and the like, the 1987 Authorization Act, Public Law 99-661, *id*., §701(a), 100 Stat. at 3895 (adding 10 U.S.C. §1098, "Incentives for participation in

[3] See, *e.g*., House Report No. 99-1001 (Committee of Conference), pp. 489-490, accompanying S. 2638, 99th Congress, 2d Session (1986). Also see House Report No. 99-718 (Committee on Armed Services), p. 238, accompanying H.R. 4428, 99th Congress, 2d Session (1986), in which the House Committee on Armed Services expressed special concern about how the Department of Defense Project Imprint would affect the delivery of health care services to military retirees and their dependents; *cf. id*. at pp. 234-242 generally for a discussion of the military health care delivery system.

cost-effective health care plans"), also specifically authorized the Secretary to waive beneficiary financial liabilities that would otherwise apply to, among others, military retirees and their dependents under 10 U.S.C. §1086(b). The Secretary was permitted to waive such payments as an inducement to beneficiaries of the military health care system to enroll in alternative health care programs that, while being no more costly to the government, would provide equal or better services. In addition to being permitted to waive various beneficiary liabilities, the Secretary was also permitted to waive limitations on the kinds of health care services that could be provided as a part of the inducement to beneficiaries to enroll in more cost-effective health care plans.

Fourth, the 1987 Authorization Act, Public Law 99-661, *id*., §701(a), 100 Stat. at 3896, required the Secretary of Defense to establish a health care enrollment system for beneficiaries of the military health care program. Under the enrollment system, codified at 10 U.S.C. §1099, beneficiaries are permitted to choose a health care plan from a number of alternative plans designated by the Secretary of Defense. Eligible health care plans include health care facilities of the uniformed services, CHAMPUS providers, all health care plans contracted for by the Secretary of Defense, together with any combination of such plans. An exception to the freedom to choose enrollment could apply where it was deemed necessary to assign beneficiaries to health care facilities of the uniformed services in order to ensure full use of such facilities in a particular geographic area. The Secretary's authority to waive certain beneficiary payments and to depart from limitations on the types of health care services that could be provided to beneficiaries could be used as inducements for beneficiaries to enroll in the alternative health care plans contracted for by the Secretary.

In addition to the changes described, the Secretary of Defense was authorized to prescribe regulations to implement the various provisions, including certain other administrative changes to the system that do not directly affect health care for beneficiaries, including military retirees, their dependents, and survivors.

The CHAMPUS Reform Initiative was amended by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §732(a) and (b), 101 Stat. 1019, 1119-1121 (1987), (i) to require the Secretary of Defense to develop a methodology for evaluating the demonstration project and (ii) to provide that no more than one contract could be accepted from any one contractor under the demonstration phase of the reform initiative, among other things.

In 1994 the Department of Defense embarked on a new program, known as TRICARE, to improve the quality, cost, and accessibility of services for its beneficiaries. Because of the size and complexity of the military health services system (MHSS), TRICARE implementation was phased in over a period of several years. The principal mechanisms for the implementation of TRICARE were the designation of the commanders of selected Military Medical Treatment Facilities (MTFs) as lead agents for 12 TRICARE regions across the country, operational enhancements to the MHSS, and the procurement of managed care support contracts for the provision of civilian health care services within those regions.

A major feature of TRICARE is the establishment of a triple option benefit. CHAMPUS-eligible beneficiaries are offered three options: they may elect to receive health care through (1) an HMO-type program called "TRICARE Prime", (2) the preferred provider network on a case-by-case basis under "TRICARE Extra", or (3) non-network providers under "TRICARE Standard". (TRICARE Standard, the program that replaced the standard CHAMPUS, maintains the same deductible and in-patient charges as those outlined above for the CHAMPUS program.) Enrollees in TRICARE Prime obtain most of their care within the network and pay substantially reduced CHAMPUS cost shares when they receive care from civilian network providers. Enrollees in TRICARE Prime retain freedom to use non-network civilian providers, but they have to pay cost sharing considerably higher than TRICARE Standard if they do so. Beneficiaries who choose not to enroll in TRICARE Prime will preserve their freedom of choice of provider for the most part by remaining in TRICARE Standard. These beneficiaries face standard CHAMPUS cost sharing requirements, except that their coinsurance percentage

is lower when they opt to use the preferred provider network under TRICARE Extra. All beneficiaries continue to be eligible to receive care in MTFs, but active duty family members who enroll in TRICARE Prime have priority over all other beneficiaries.

TRICARE Prime incorporates the "Uniform HMO Benefit Option," which was mandated by Section 731 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §731, 107 Stat. 1547, 1696 (1993). It required the establishment of a Uniform HMO Benefit Option, which was required "to the maximum extent practicable" to be included "in all future managed health care initiatives undertaken by" the Department of Defense. This option is to provide "reduced out-of-pocket costs and a benefit structure that is as uniform as possible throughout the United States". The 1994 Authorization Act further requires a determination that, in the managed care initiative that includes the Uniform HMO Benefit Option, Department of Defense costs are to be "no greater than the costs that would otherwise be incurred to provide health care to the covered beneficiaries who enroll in the option."

In addition to this provision of the 1994 Authorization Act, a similar requirement was established by Section 8025 of the Department of Defense Appropriations Act, 1994, Public Law 103-139, §8025, 107 Stat. 1418, 1443-1444 (1993). As part of an initiative "to implement a nationwide managed health care program for the MHSS", the Department of Defense was required to establish "a uniform, stabilized benefit structure characterized by a triple option health benefit feature". The Uniform HMO Benefit also implements this requirement of law. It offers reduced cost sharing to CHAMPUS-eligible beneficiaries who enroll in TRICARE Prime.

TRICARE/CHAMPUS supports both the active-duty and retired communities. For a more detailed description of the TRICARE/CHAMPUS system considered as a whole, the reasons for its adoption in the first instance, and how it is administered, see Appendix IX, "TRICARE/CHAMPUS," hereof, below.

**Current status of medical care for retired members and their dependents**: The primary form of health care authorized for military retirees and their dependents and survivors before they become eligible for hospital insurance benefits under the Social Security Act, as amended, is TRICARE, which integrates the entitlement to CHAMPUS with the services available to retirees, their dependents, and survivors in military medical facilities depending on "availability of space and facilities and the capabilities of the medical and dental staff." 10 U.S.C. §1074(b) (retirees) and §1076(b) (dependents or survivors of retired members). Even after they become eligible for Social Security hospital insurance benefits, retirees, their dependents, and survivors may receive treatment at military medical facilities on a space-available basis.[4]

Because of the down-sizing of the active-duty forces as a result of the end of the Cold War and the increasing number of retirees who performed the majority of their active service during that period, retirees and their dependents and survivors comprise by far the largest class of persons presently eligible for military medical care. Taking into account dependents of active-duty personnel, non-active duty beneficiaries comprise more than 80 percent of all persons eligible for military medical care. For information on how the number of persons eligible for military medical care, by category, *i.e.*, active duty personnel and their dependents as opposed to retirees and their dependents and survivors, have changed over time, and are expected to change in the future, see the chart on the following page, "Number of Military Medical Eligible Beneficiaries".

**Cost**: For the cost of retired member medical care from 1978 to 1995, see Table III-9 of *Military Compensation Statistics Tables*, volume II of this edition.

[4] The service regulations that establish priorities for medical care for service members and their dependents and survivors and retirees and their dependents and survivors are as follows: for the Army, AR 40-3, chapter 4; for the Navy, NAVMED 6320.33; and for the Air Force, AFR 168-6, chapter 1.

**Chapter III.D.2.**

## Servicemen's Group Life Insurance

## Veterans' Group Life Insurance

**Legislative Authority**: 38 U.S.C. §§1965-1980.

**Purpose**: To make life insurance protection available to members of the uniformed services at a reasonable cost.

**Background**: The practice of insuring the lives of members of the Armed Forces is of relatively recent origin. During the early wars to which the United States was a party, the general public, as well as members of the Armed Forces, had a low regard for life insurance, and the fact that life insurance was not used to provide financial protection for the families of members of the Armed Forces was evidently not looked upon as unusual. By the time the United States became involved in World War I, however, the situation had changed, and it was generally recognized that some means was needed to provide protection for the families of members of the Armed Forces fighting for their country. Commercial insurance companies were not used for this purpose, as the companies refused these risks outright, avoided them through a war clause, or charged prohibitive premiums for waiving the clause.

To fill the gap, the Act of October 6, 1917 (War Risk Insurance Act of 1917), ch. 105 [Public Law 90, 65th Congress], §§400-405, 40 Stat. 398, 409-410 (1917), created a program of United States Government Life Insurance (USGLI) that permitted service members to buy yearly renewable term life insurance in multiples of $500, with minimum coverage of $1,000 and maximum coverage of $10,000. The War Risk Insurance Act, adopted well before the end of the war, specified that the term insurance would expire if not converted to permanent insurance within five years after the war ended, but successive extensions of the cut-off date effectively nullified this provision. In practice, conversion from term to permanent insurance, although allowed, was never required. The government was the USGLI insurer and assumed the cost of the "extra hazard" involved in insuring members of the Armed Forces. The USGLI program was

modified and liberalized many times over the course of the years.[1] All persons who served on active duty at any time between October 6, 1917, and October 8, 1940, ultimately became eligible for USGLI coverage. The program remained available to qualified personnel until April 24, 1951.

The National Service Life Insurance Act of 1940, enacted as Title VI, Part I, of the Second Revenue Act of 1940, ch. 757 [Public Law 801, 76th Congress], §§601-618, 54 Stat. 974, 1008-1014 (1940), substituted National Service Life Insurance (NSLI) for USGLI for persons who entered service on or after that date. Persons in service both before and after October 8, 1940, could choose either NSLI or USGLI or a combination of the two, but they could not carry a combined face value amount of insurance in excess of $10,000. NSLI was five-year renewable term insurance, issued in multiples of $500, with a minimum coverage of $1,000 and a maximum coverage of $10,000 and convertible to permanent insurance after it had been in force for one year. As was the case with USGLI, the government was the NSLI insurer and bore the excess cost resulting from the hazards of military service. Premium rates and reserves were based on a three percent interest rate rather than the 3 1/2 percent rate applicable to USGLI. This resulted in slightly higher premiums and lower death benefits, when paid on an income basis, for NSLI than for USGLI. The Veterans' Administration,[2] as the federal agency charged with authority for administering the NSLI and USGLI programs, traditionally followed a conservative policy in setting premium rates, so that premiums charged were usually more than would be justified by reference to the mortality experience of the

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[1] *e.g* , World War Veterans' Act, 1924, ch. 320 [Public Law 242, 68th Congress], Title III, §§300-307, 43 Stat. 607, 624-627 (1924).

[2] The Veterans Administration was redesignated as the Department of Veterans Affairs by the Department of Veterans Affairs Act, Public Law 100-527, §2, 102 Stat. 2635. Pursuant to that act, from and after March 15, 1989, all references in any federal law, executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Veterans Administration is statutorily deemed to refer to the Department of Veterans Affairs. Department of Veterans Affairs Act, Public Law 100-527, *id*., §10, 102 Stat. at 2640-2641; also see 38 U.S.C.A. §301 note. (Some references to the "Veterans' Administration" or "VA" have been retained in the present chapter, largely for historical reasons. It should be understood, however, that the federal agency currently charged with authority for administering the laws and regulations formerly administered by the Veterans' Administration is the Department of Veterans Affairs.)

insured population. As a result, annual dividends have been paid to NSLI and USGLI policyholders throughout the years. NSLI was closed to new issues on April 25, 1951.

The Servicemen's Indemnity Act of 1951, enacted as Part I of the Act of April 25, 1951, ch. 39 [Public Law 23, 82d Congress], §§1-9, 65 Stat. 33, 33-35 (1951), terminated new issues of NSLI and USGLI and replaced them with a $10,000 gratuitous indemnity payable to the survivors of a member dying while serving on active duty or within 120 days after a period of active duty. The indemnity was to be paid in 120 monthly installments of $92.90 each. Thus, over the full 10-year period, payments of principal and interest totaled $11,148. The amount of the indemnity was reduced by the face value of any NSLI or USGLI policy in force. This requirement in effect negated the insurance risk for which in-service NSLI and USGLI policyholders were paying premiums. Accordingly, such personnel were permitted to surrender permanent policies for cash value or to waive that part of the premium representing pure insurance risk. In-service personnel holding term policies could waive all premiums. The policies were nonparticipating--*i.e.*, non-dividend paying--during the waiver period.

Since the Servicemen's Indemnity Act of 1951, ch. 39, *id.*, terminated new issues of NSLI and USGLI, it also established a Veterans' Special Term Life Insurance (VSLI) program to provide low-cost insurance during the transition from military to civilian life. Insurance Act of 1951, enacted as Part II of the Act of April 25, 1951, ch. 39 [Public Law 23, 82d Congress], §§10-13, 65 Stat. 33, 36-38 (1951). VSLI was five-year renewable term insurance issued in multiples of $500, with minimum coverage of $1,000 and maximum coverage of $10,000, to veterans who applied within 120 days after release from active duty. It was at first nonconvertible and nonparticipating, but it was made convertible in 1959 and participating in 1974. VSLI was issued from April 1951 through December 1956.

Both of the government insurance programs described above and the Servicemen's Indemnity Act gratuity, guaranteed the payment of a fixed sum of money on the death of a covered individual. Neither was designed as a permanent income

replacement plan for dependent survivors of military personnel. The Servicemen's and Veterans' Survivor Benefits Act, ch. 837 [Public Law 881, 84th Congress], §§201-210, 70 Stat. 857, 862-868 (1956), created the Dependency and Indemnity Compensation (DIC) program as a partial income replacement program, to take effect January 1, 1957. It also placed military personnel under the Social Security system effective January 1, 1957, and thus made their dependents eligible for survivor benefits under that system. The Servicemen's and Veterans' Survivor Benefits Act concurrently abolished the $10,000 Servicemen's Indemnity Act gratuity and ended the VSLI program. The DIC and Social Security programs are outside the "insurance" mainstream treated in this chapter.[3]

Beginning January 1, 1957, no government life insurance program was generally available to members or former members of any of the uniformed services for the first time in 40 years. This situation continued until the Act of September 29, 1965, Public Law 89-214, 79 Stat. 880 (1965), established the Servicemen's Group Life Insurance (SGLI) program, as new Subchapter III of Chapter 19, Title 38, United States Code.

The SGLI program has been modified several times since its inception, but most of its fundamentals have remained intact. SGLI is term insurance: it has no cash, loan, paid-up, or extended insurance values. Neither does it provide accidental death or disability benefits. SGLI coverage is in addition to any coverage a member may have under any other government policy. A member eligible for SGLI is insured in the maximum authorized amount unless he declines in writing to be insured or elects in writing less-than-maximum coverage. This "automatic" feature is a departure from the earlier programs under which an individual was required to take affirmative action to be insured in any amount. SGLI also differs from the previous programs in that the government is not the insurer. The Prudential Insurance Company is the primary SGLI insurer under a contract with the Department of Veterans Affairs, the federal agency charged with supervisory responsibility for the program. Several hundred other private insurance companies participate in the program as reinsurers. SGLI premiums are

[3] See Chapter III.D.4., "Dependency and Indemnity Compensation," and Chapter IV.C.1., "Government Contribution to Social Security," hereof, below.

collected by the services from their members, normally by payroll deduction, and are remitted monthly to the Department of Veterans Affairs. Any extra hazard costs of SGLI attributable to military service are determined by the Department of Veterans Affairs on an actuarial basis and paid to that agency by each of the services from appropriated funds.

The SGLI authorized by the Act of September 29, 1965, Public Law 89-214, §1, 79 Stat. 880, 880-881 (1965), adding then new 38 U.S.C. §767 (current 38 U.S.C. §1967), was in the maximum amount of $10,000. All personnel on active duty for more than 30 days were insured, in the absence of an individual election to the contrary. Coverage continued for 120 days after separation, with the cost of such extended coverage being included in the premiums paid while on active duty. Up to the end of this 120-day period, the insured had the right to purchase an individual policy of permanent insurance in an amount equal to his SGLI coverage from any of the companies in the program. Participating companies had to agree to issue such policies upon application and payment of required premiums, at standard rates and without a medical examination, as a condition of admission into the program.

The Act of June 25, 1970, Public Law 91-291, §2, 84 Stat. 326, 327 (1970), amending then 38 U.S.C. §767 (current 38 U.S.C. §1967), raised the SGLI maximum from $10,000 to $15,000 in addition to authorizing "part-time" coverage for certain reservists. Reserve members on active duty for less than 31 days or performing inactive-duty training scheduled in advance were, absent an election not to be covered, insured against death during such duty and while proceeding directly to and returning directly from the place of duty. SGLI was also payable if the reserve member incurred a disability during a period of coverage, and death resulted from the disability within 90 days. If the disability did not result in death within 90 days but did cause the member to be uninsurable at standard rates, he had the right to purchase an individual policy of permanent commercial insurance, under the same rules applicable to "full-time" SGLI, at the end of the 90 days.

The Act of June 20, 1972, Public Law 92-315, 86 Stat. 227 (1972), extended SGLI coverage to cadets or midshipmen of the United States Military, Naval, Air Force, and Coast Guard Academies.

The Veterans' Insurance Act of 1974, Public Law 93-289, §4(1), 88 Stat. 165, 166 (1974), further amending then 38 U.S.C. §767 (current 38 U.S.C. §1967), increased the SGLI maximum from $15,000 to $20,000. It also (1) extended "full-time" coverage to Ready Reserve members assigned to a unit or position in which they might be required to perform active duty and in which they would each year be scheduled for at least 12 periods of inactive-duty training, and to reserve members under age 61 with at least 20 years of satisfactory service as defined in 10 U.S.C. §1332[4] who were members of, or eligible for, assignment to the Retired Reserve but who were not receiving retired pay; (2) changed the disability-extension period for "part-time" reserve coverage from 90 to 120 days; (3) revoked the right to exchange SGLI for an individual commercial policy; and (4) created a new program of Veterans' Group Life Insurance (VGLI).

The Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments Act of 1981, Public Law 97-66, §401, 95 Stat. 1026, 1030-1031 (1981), increased the SGLI maximum to $35,000. The Veterans' Administration Health-Care Amendments of 1985, Public Law 99-166, §401, 99 Stat. 941, 956-957 (1985), further increased the SGLI maximum, this time to $50,000 and provided that amounts of less than $50,000 would be issued in increments of $10,000. The Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §336(a)(1), 105 Stat. 75, 89-90 (1991), further increased the SGLI maximum, this time to $100,000. The Veterans' Benefits Act of 1992, Public Law 102-568, §201, 106 Stat. 4320, 4324 (1992), again increased the SGLI maximum, this time to $200,000. The National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §646, 110 Stat. 186, 369-370 (1996), slightly modified the SGLI program by providing for automatic coverage for all service members in the amount of $200,000 except for members who specifically request in writing not to be insured at all or to be insured for

[4] Now 10 U.S.C. §12732.

some lesser amount than $200,000 that is evenly divisible by $10,000. Persons eligible for such coverage include all members of the uniformed services on active duty, active duty for training, or inactive-duty training, as well as members of the Retired Reserve of any service and persons who, upon application, would be eligible for assignment to the Retired Reserve.[5]

The Veterans Benefits Enhancement Act of 1998, Public Law 105-368, established an accelerated benefit option for terminally ill holders of SGLI policies, providing a lump-sum payment at the face value of the insurance. Effective in 2001, the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106-419, increased the maximum amount of SGLI coverage from $200,000 to $250,000 and granted SGLI eligibility to members of the Individual Ready Reserve who are subject to involuntary callup. Family SGLI coverage was added by the Veterans Survivor Benefits Improvement Act of 2001, Public Law 107-14, for the spouses and dependent children of SGLI-eligible members. The legislation established maximum SGLI coverage of $100,000 for spouses (not to exceed the coverage amount of the member) and automatic coverage of $10,000 for each dependent child.

SGLI coverage normally ends for an active duty member on the 120th day after separation from active duty, and for a member of the Ready Reserve on the 120th day after separation from a full-time-coverage status. If, however, the member is totally disabled on the date of separation, the coverage ends on the date total disability ceases or one year from the date of separation, whichever is earlier, but in no event sooner than 120 days after separation. SGLI coverage for a Retired Reserve ends when he receives retired pay or on his 61st birthday, whichever occurs first. Part-time reserve coverage stops after each period of qualifying duty, including travel time, and resumes at the start of the next period. If a part-time member is disabled during one of the intermittent coverage periods, coverage may be extended for up to 120 days.

[5] Retired reserve SGLI is unique in that coverage is not "automatic"; to obtain coverage, a person normally must apply and pay an initial premium within 120 days after becoming qualified.

Veterans' Group Life Insurance, or VGLI, is a program of post-separation insurance that provides for the conversion of SGLI to an indefinitely renewable five-year term policy. Former members of the active duty force may elect to continue group coverage under the VGLI program. An electing member may choose any amount available under the VGLI program so long as the amount chosen does not exceed the member's SGLI coverage. Members of the Ready Reserves under full-time SGLI may continue group coverage only if they are uninsurable at standard rates as a result of a disability incurred during a period of active duty or inactive-duty training. Members under part-time SGLI may continue group coverage only at the end of a 120-day period during which their SGLI was continued in force as a result of a disability incurred during a period of active duty or inactive-duty training. Retired Reserve members cannot continue group coverage under VGLI.

Like SGLI, VGLI is available in $10,000 increments up to a maximum of $250,000. 38 U.S.C. §§1977(a) and 1967(a), as amended by the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §336(b), 105 Stat. 75, 90 (1991), ~~and~~ the Veterans' Benefits Act of 1992, Public Law 102-568, §202, 106 Stat. 4320, 4324 (1992), the Veterans Programs Enhancement Act of 1998, Public Law 105-368, and the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106-419. To obtain VGLI, an individual must apply for it and pay an initial premium within the period of his extended SGLI coverage--*i.e.*, normally, within 120 days after separation. VGLI takes effect on the day following the expiration of SGLI coverage. Premiums have to be paid by the insured directly to the office designated by the insurer to administer the program. An insured person whose VGLI is in force at the end of any five-year period following initial coverage has an enforceable right to renew his VGLI coverage for another five-year term or to purchase an individual policy of permanent insurance in an amount equal to his VGLI coverage, without a medical examination, at standard rates, regardless of health, from any private insurance company participating in the program. Pursuant to amendments to the VGLI program made by the Veterans' Administration Health-Care Amendments of 1985, Public Law 99-166,

§401(b)(2), 99 Stat. 941, 957 (1985), VGLI coverage is available to members of the Individual Ready Reserve (IRR) and the Inactive National Guard (ING).

No person may carry combined SGLI and VGLI coverage in excess of $250,000 at the same time.

**Cost**: For the cost of SGLI benefits from 1972 to 1975, see Table III-10 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter III.D.3.**

## Death Gratuity

**Legislative Authority**: 10 U.S.C. §§1475-1480.

**Purpose**: To provide an immediate cash payment to assist survivors of deceased members of the Armed Forces to meet their financial needs during the period immediately following a member's death and before other survivor benefits, if any, become available.

**Program Description**: In broad outline, the death gratuity program provides for a special payment of $12,000[1] to the "eligible survivors" [2] of members of the Armed Forces--including members of the reserve components of the Armed Forces—who die while on active duty, while performing authorized travel to or from active duty, while on inactive-duty training, or while performing authorized travel directly to or from active duty for training or inactive-duty training, as well as to members of reserve officers' training programs who die while performing annual training duty under orders for a period of more than 13 days or while performing authorized travel to or from that duty, to applicants for membership in a reserve officers' training corps who die while attending field training or a practice cruise or while performing authorized travel to or from the place where such training or cruise is conducted, and to persons who die while traveling to or from, or while at, a place of acceptance for entry upon active duty who have been ordered or directed to go to that place and have been provisionally accepted for that duty or selected for service under the Military Selective Service Act.[3]

**Background**: A death gratuity equal to six months pay was first authorized for survivors of Regular Army personnel in the Act of May 11, 1908 (Army Appropriation Act, 1909), ch. 163 [Public Law 112, 60th Congress], 35 Stat. 106, 108 (1908), and for

[1] 10 U.S.C. §1478(a).

[2] 10 U.S.C. §1477 catchline.

[3] 10 U.S.C. §1475(a)(1)-(5).

survivors of Regular Navy and Marine Corps personnel in the Act of May 13, 1908 (Naval Service Appropriation Act, 1909), ch. 166 [Public Law 115, 60th Congress], 35 Stat. 127, 128 (1908). A government life insurance program did not exist at the time, and because of the hazards of service, war clause exemptions in commercial insurance, and the relatively low level of military pay, career personnel often could not obtain or afford adequate commercial life insurance. The original purpose of the death gratuity was to help fill the financial gap resulting from this lack of life insurance protection. The Act of October 6, 1917 (War Risk Insurance Act of 1917), ch. 105 [Public Law 90, 65th Congress], §312, 40 Stat. 398, 408 (1917), repealed the Army, Navy, and Marine Corps death gratuity laws while establishing a government life insurance program, *id*., §§400-405, 40 Stat. at 409-410, and the predecessor of today's dependency and indemnity compensation program, *id*., §§300-314, 40 Stat. at 405-408.

Early in 1919, a bill to reinstate the Army's death gratuity program was reported to the floor of the House, where it touched off a spirited debate. The arguments advanced by the bill's proponents focused almost exclusively on the quasi-contractual nature of the original death gratuity law and on the government's alleged breach of good faith in repealing it. Since the death gratuity had been created as a life insurance substitute, and since the 1917 government life insurance program was still in effect at the time, these arguments did not address the question of the ultimate aim to be served by reinstating the death gratuity. Opponents of the bill argued that existing government life insurance and death compensation programs made the death gratuity unnecessary. Controversy also arose over whether, if the program were reinstated, it should be limited to the survivors of regular personnel or extended to non-regular components, and whether the gratuity should be pay-related or paid in the same amount to all survivors. Supporters of reinstatement prevailed, and the Act of December 17, 1919, ch. 6 [Public Law 99, 66th Congress], §1, 41 Stat. 367 (1919), reestablished a death gratuity equal to six months' pay for the survivors of Regular Army personnel. The Act of June 4, 1920 (Naval Service Appropriation Act, 1921), ch. 228 [Public Law 243, 66th Congress], 41 Stat. 812, 824 (1920), reinstated the Navy and Marine Corps death gratuity programs.

The Act of June 20, 1949, ch. 225 [Public Law 108, 81st Congress], §§1-3, 63 Stat. 201, 201-202 (1949), extended death gratuity payments to survivors of reserve and National Guard members who died during a period of active duty or inactive-duty training. This provision was part of a larger package entitling members of reserve components of the Armed Forces to the same benefits in general as members of regular components. In view of the fact that the death gratuity for members of regular components of the Armed Forces had been reinstated in 1919-1920 primarily because it had been held to represent a contract-like understanding between the government and such personnel, the rationale for extending similar benefits to members of reserve components must have been somewhat different. Whatever the case, there was not a murmur of dissent to the 1949 act's expansion of the program to reservists.

Congress also looked closely at the death gratuity in its deliberations on H.R. 7089, 84th Congress, 2d Session (1956), ultimately adopted as the Servicemen's and Veterans' Survivor Benefits Act, ch. 837 [Public Law 881, 84th Congress], §§301-304, 70 Stat. 857, 868-869 (1956). Under this reexamination of the basic concept of the death gratuity, Congress advanced the notion of its purpose as an "emergency fund" intended to tide survivors over the period immediately following the death of a service member while payment of dependency and indemnity compensation, Social Security survivor benefits, and life insurance proceeds, as applicable, was pending. To this end, the act specified that the gratuity be paid "immediately," and implementing regulations require payment, if possible, within 24 hours of death where eligible beneficiaries can be properly determined.

The evolution of the bill in Congress emphasizes the emergency-fund function of the death gratuity and demonstrates the importance Congress attached to having it paid to eligible survivors immediately. The first version of the revised death gratuity law provided that payment be made only to dependent relatives. While dependency would have been presumed for a surviving widow or minor children, other relatives would have had to prove it. Because the requirement to prove dependency would in certain cases inevitably have slowed up the payment process, the bill ultimately adopted allowed

payment to be made to non-minor children, parents, and brothers and sisters, as well as to spouses and minor children, without regard to their dependency status.[4]

When H.R. 7089, 84th Congress, 2d Session (1956), was under consideration, the amount of death gratuity payable on the death of a service member was still equal to "six months' pay."[5] Because of the items of compensation included within the "pay" on which death gratuity entitlements were to be determined, the actual amount of death gratuity payable could have ranged from a low of $468, for a member in pay grade E-1 "under 2" with no special or incentive pays, to a quite larger amount for senior officers with special and incentive pays. (Six months' basic pay for the most senior officer grade amounted to $8,648 in 1956.) The committee concluded that the amounts payable were too small to adequately serve an emergency-fund purpose for the survivors of lower-pay-grade personnel and so large as to be excessive in the case of survivors of personnel nearer the top of the pay scale. Accordingly, the Servicemen's and Veterans' Survivor Benefits Act, ch. 837, *id*., though it retained the general principle of a death gratuity equal to six months pay, placed an $800 floor and a $3,000 ceiling on payments. Imposing a minimum and a maximum on entitlements blurred the pay-related distinctions resident in the gratuity program. Inflation long since had completely eliminated the original distinctions. The effect of the combination of increasing pay rates and the $3,000 ceiling so warped the "six months' pay" principle of death gratuity as to make any coupling of those two terms misleading.

Congress again examined the question of the basis and appropriate level of the death gratuity in connection with its consideration of the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, 100 Stat. 3816 (1986). In Senate Bill S. 2638, 99th Congress, 2d Session (1986), the Senate proposed changing the basis for

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[4] The order of precedence among survivors for death gratuity payments is specified at 10 U.S.C. §1477(a).

[5] For the purpose of determining the amount of death gratuity payable under 10 U.S.C. §1478 when the amount was computed as a multiple of monthly basic pay--it no longer is, see below--the term "pay" was defined in 10 U.S.C. §101(27), the predecessor of present 10 U.S.C. §101(a)(15), to include "basic pay, special pay, ... incentive pay, ... and equivalent pay, but ... not ... allowances".

computing death gratuity benefits so as to give survivors three months of basic pay, basic allowance for subsistence, and basic allowance for quarters, with a minimum payment of $3,000 and a maximum payment of $9,000. In support of this proposal, the Senate Armed Services Committee noted:

> The death gratuity, originally instituted in 1908, is designed to provide immediate funds to the family of deceased military members to meet immediate expenses. The rates of the death gratuity have not changed since 1956. Under present law, this payment is equal to six month's basic pay (plus any special and incentive pays) with a minimum of $800 and a maximum of $3,000. Because of increases in pay rates since 1956, the death gratuity for all personnel is $3,000.
>
> The President's *Fifth Quadrennial Review of Military Compensation* recommended that the death gratuity be updated to better meet the needs of survivors of military personnel. The committee agrees that this benefit should be updated....[6]

The Senate proposal was rejected in conference, with the following explanation:

> Currently, the death gratuity is equal to six months of basic pay with a minimum payment of $800 and a maximum payment of $3,000.
>
> The Senate bill contained a provision ... that would change the death gratuity computation to three months of basic pay, basic allowance for subsistence, and basic allowance for quarters with a minimum payment of $3,000 and a maximum payment of $9,000.
>
> . . .
>
> The conferees note that, although the death gratuity was established in 1908, the military estate program has been expanded to include social security benefits, dependency and indemnity compensation, and Serviceman's [*sic*] Group Life Insurance (SGLI). The maximum SGLI payment was recently increased to $50,000.[7] [8]

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[6] Senate Report No. 99-331 (Committee on Armed Services), p.234, accompanying S. 2638, 99th Congress, 2d Session (1986).

[7] House Report No. 99-1001 (Committee of Conference), p. 484, accompanying S. 2638, 99th Congress, 2d Session (1986).

[8] The maximum SGLI insurance amount has since been increased three times--first, to $100,000 by the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §336(a), 105 Stat. 75, 89-90 (1991); second, to $200,000 by the Veterans' Benefits Act of 1992, Public Law 102-568, §201, 106 Stat. 4320, 4324 (1992); and to $250,000 by the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106-419. See Chapter III.D.2., "Servicemen's Group Life Insurance, Veterans' Group Life Insurance," hereof, above.

In thus rejecting the Senate proposal to increase the amount of the death gratuity payable upon the death of a member, Congress apparently determined that the total amount of money payable on the death of a member was in some sense adequate but notably failed to make any findings on the adequacy of the "emergency fund" made available to survivors under the death gratuity program.

Under the pay raise effected by the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §601(b), 104 Stat. 1485, 1575 (1990), the lowest rate of basic pay for any member of the Armed Forces--specifically, a member in pay grade E-1 with less than four months of service--was $697.20 per month,[9] so that the death gratuity for all members was $3,000, and no distinction was made on the basis of the "pay" received by a deceased member immediately before the member's death. The prescribed $800 minimum was then, and had long been, totally without effect. No matter how "pay" was viewed--whether as regular military compensation (RMC) under 37 U.S.C. §101(25 or as "pay" under 10 U.S.C. §101(a)(15)[10]--no survivor, regardless of the pay grade of the deceased member, received a death gratuity equal to the member's "pay" for six months. Indeed, no survivor received a death gratuity as great as six months' basic pay of the deceased member.

The Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §307, 105 Stat. 75, 82-83 (1991), temporarily increased the amount of the death gratuity payable under 10 U.S.C. §1478(a) from $3,000 to "$6,000 for a death resulting from any injury or illness incurred during the Persian Gulf

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[9] See Executive Order 12736 of December 12, 1990, Schedule 8, 55 Fed. Reg. 51385, set out at 5 U.S.C.A. §5332 note. Also see p. 67 of Chapter II.B.1., "Basic Pay," above.

[10] See footnote 5 to this chapter, above.

conflict or during the 180-day period beginning at the end of the Persian Gulf Conflict."[11] [12]

The temporary increase in the amount of the death gratuity from $3,000 to $6,000 made by the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §307, 105 Stat. 75, 82-83 (1991), was made permanent later that same year by the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §652, 105 Stat. 1290, 1387-1388 (1991).[13] This amendment to 10 U.S.C. §1478(a) was made retroactive to August 2, 1990, the beginning of the Persian Gulf conflict. The Military Family Tax Relief Act, Public Law 108-121, 117 Stat. 1337 (2003), increased the death gratuity from $6,000 to $12,000 and made the increased allowance retroactive to deaths occurring on or after September 11, 2001. The National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, 117 Stat. 1520, enacted the same provisions. Public Law 108-121 also exempted the full amount of the death gratuity from federal taxation; previously, one-half of the amount had been taxable.

The Servicemen's and Veterans' Survivor Benefits Act, ch. 837 [Public Law 881, 84th Congress], §§301-304, 70 Stat. 857, 868-869 (1956), as amended by the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §604(e), 100 Stat. 3816, 3877 (1986), made the survivors of a member who died within 120 days after release from active duty or inactive-duty training, eligible for a death gratuity, but only if the Veterans' Administration[14] determined that the death resulted from disease or injury

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[11] Pursuant to the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §3(2), 105 Stat. 75, 77 (1991), the term "Persian Gulf conflict" was defined to mean "the period beginning on August 2, 1990, and ending thereafter on the date prescribed by Presidential proclamation or by law."

[12] See House Report No. 102-16, Part 1 (Committee on Armed Services), p. 11, accompanying H.R. 1175, 102d Congress, 1st Session (1991).

[13] See House Report No. 102-60 (Committee on Armed Services), p.251, accompanying H.R. 2100; Senate Report No. 102-113 (Committee on Armed Services), p. 226, accompanying S. 1507; and House Report No. 102-311 (Committee of Conference), p. 554, 102d Congress, 1st Session (1991), all recommending that the temporary increase be made permanent. No consideration was given to the question of whether the amount of the gratuity paid to a survivor should or should not be in any way related to the rate of pay earned by the decedent at the time of death.

[14] The Veterans Administration was redesignated as the Department of Veterans Affairs by the Department of Veterans Affairs Act, Public Law 100-527, §2, 102 Stat. 2635. Pursuant to that act, from and after March

incurred or aggravated during such duty. As administered, this provision is inconsistent with the death-gratuity-as-an-immediate-emergency-fund theory of the rest of the program. Before a gratuity can be paid in this situation, the Department of Veterans Affairs, after being notified, must obtain information concerning the circumstances of the death and details from the individual's service medical history, compare and evaluate those data, make its service-connection determination, and advise the military service in which the member was serving of the result. A lapse of several months is normal to this procedure.

**Current amount of death gratuity authorized**: The current amount of death gratuity authorized under 10 U.S.C. §1478(a) is $12,000.

**Cost**: For the cost of death gratuity payments from 1972 to 2004, see Table III-11 of *Military Compensation Statistics Tables*, volume II of this edition.

15, 1989, all references in any federal law, executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Veterans Administration is statutorily deemed to refer to the Department of Veterans Affairs. Department of Veterans Affairs Act, Public Law 100-527, *id*., §10, 102 Stat. at 2640-2641; also see 38 U.S.C.A. §201 note. (Some references to the "Veterans' Administration" or "VA" have been retained in the present chapter, largely for historical reasons. It should be understood, however, that the federal agency currently charged with authority for administering the laws and regulations formerly administered by the Veterans' Administration is the Department of Veterans Affairs.)

**Chapter III.D.4.**

## Dependency and Indemnity Compensation (DIC)

**Legislative Authority**: Chapter 13 of Title 38, United States Code, 38 U.S.C. §§1301-1323.

**Purpose**: To authorize a payment to the surviving dependents of a deceased military member partially in order to replace family income lost due to the member's death and partially to serve as reparation for the death.

**Background**: Compensation for the dependent survivors of United States military personnel was first provided by a 1780 resolution of the Continental Congress that granted the widow and children of any officer who died as a result of Revolutionary War service half the officer's pay for seven years. No provision was made, however, for the survivors of enlisted personnel or for anyone else who died as a result of military service other than during the Revolutionary War. After expiration of the authority contained in the 1780 resolution, the Act of April 30, 1790, ch. 10, §11, Stat. 119, 121 (1790), established a disability compensation program that covered both officer and enlisted personnel but made no provision for compensation for their survivors. Peacetime death compensation of half pay for five years was, however, authorized for the survivors of officers by the Act of March 16, 1802, ch. 2, §15, 2 Stat. 132, 135 (1802). The widows and children of deceased enlisted personnel--together with officers--were made eligible for the five-year half-pay death compensation by the Act of March 19, 1836, ch. 44, §5, 5 Stat. 7 (1836). The time for which death compensation was paid was subsequently extended for additional five-year periods and finally for life or until the surviving spouse remarried. These "peacetime" death compensation provisions covered persons who served in the War of 1812 and the Mexican War.

The preexisting death compensation system was substantially revised during, and as a result of, the Civil War. In 1862, Congress, in the "general law" of the Act of July 14, 1862, ch. 166, 12 Stat. 566 (1862), established a disability compensation program for

members and a related new death compensation program for survivors, the substance of which remained in effect until after the United States entered World War I. The "general-law" provided for disability compensation based on a member's grade and degree of disability, with survivors being authorized the same death compensation as would have been allowed if the member, instead of having died, had been alive but totally disabled. Act of July 14, 1862, ch. 166, *id*., §§2, 3, 12 Stat. at 567.

The Act of October 6, 1917 (War Risk Insurance Act of 1917), ch. 105 [Public Law 90, 65th Congress], §301, 40 Stat. 398, 405-406 (1917), eliminated grade and degree of disability as factors determinative of survivor compensation. It provided instead a single rate for all widows plus a fixed additional sum for each child. The act also permitted military members to buy up to $10,000 of low-cost government life insurance to supplement the death compensation otherwise due their survivors under law. Act of October 6, 1917, ch. 105, id., §400, 40 Stat. at 409. The act's separate death compensation and life insurance programs amounted to the first legislative recognition that the government had an obligation to aid the survivors of persons killed in service with both "dependency" compensation, intended partially to replace the loss of income resulting from the member's death, and a damages-like "indemnity" payment, intended to serve in some sense as reparation for the death, to the extent a price could be set on human life.

The system of providing survivors both income maintenance through death compensation and reparation through Government life insurance continued until the Insurance Act of 1951, §10, enacted as Part II of the Act of April 25, 1951, ch. 39 [Public Law 23, 82d Congress], §10, 65 Stat. 33, 36-38 (1951), terminated new issues of government life insurance. This act strengthened, however, rather than weakened, the practice of providing different-purpose "dependency" and "indemnity" payments to survivors: another provision substituted a blanket $10,000 indemnity payment for the optional life insurance that was terminated. Servicemen's Indemnity Act of 1951, §2, enacted as Part I of the Act of April 25, 1951, ch. 39 [Public Law 23, 82d Congress], §2, 65 Stat. 33, 33-34 (1951). Thus, instead of being automatically eligible for death

compensation and contingently eligible for government life insurance if the member had purchased such insurance and kept his premium payments current, survivors of active-duty members became eligible for both death compensation and the $10,000 servicemen's indemnity payment without any affirmative action on the member's part and without cost to him.

The Servicemen's and Veterans' Survivor Benefits Act, ch. 837 [Public Law 881, 84th Congress], Title II, §§201-210, 70 Stat. 857, 862-868 (1956), replaced the preexisting death compensation program and the $10,000 Servicemen's Indemnity Act payment by Dependency and Indemnity Compensation (DIC). The House Select Committee on Survivor Benefits explained its reasons for this action as follows:

> During the past 4 years a constant criticism of the $10,000 gratuitous indemnity has been that payments suddenly come to an end at a time when the needs of the recipient survivor remained unmitigated. In an effort to overcome this objection there was considerable testimony before the committee that the amount of the indemnity should be reduced, paid for a longer period certain, and in some cases payments continued for the life of the recipient.
>
> After careful analysis on this subject and lengthy deliberations, the committee concluded that this benefit should be terminated and payments formerly made under this program integrated with the existing Veterans' Administration compensation program by increasing significantly current compensation programs so as to reflect an indemnity increment therein. Thus these two separate and distinct survivor benefit programs administered by the Veterans' Administration would become one. To this limited extent one of the objectives of the committee, greater simplicity, would be accomplished and the long-term interest and equity of survivors protected.
>
> The committee feels that the upward adjustments of benefit payments which are set forth in this bill adequately and fully compensate future survivors and that there remains no necessity for any indemnity or Government insurance program to supplement the dependency and indemnity compensation rates....[1]

Although Congress intended that the DIC program provide survivors with both "dependency" and "indemnity" benefits, and though it believed at the time the program would make supplementary government life insurance unnecessary, in retrospect the

[1] House Report No. 993 (Part 1) (Select Committee on Survivor Benefits), pp. 5-6, accompanying H.R. 7089, 84th Congress, 1st Session (1955).

General Counsel of the then Veterans' Administration, now the Department of Veterans' Affairs,[2] seems prescient when he testified:

> ... [R]egardless of the fact that the new form of compensation will be termed dependency and indemnity compensation, it is quite likely that it will not be widely accepted or understood as something materially different from the existing death compensation. Accordingly, it may be expected that as time moves on there will be demands for reinstatement of an in-service insurance program or an indemnity program additional to the compensation benefit. This possibility is emphasized by the fact that insurance, followed by indemnity, has been a distinct part of the system of benefits for survivors for nearly 40 years.[3]

The Servicemen's and Veterans' Survivor Benefits Act of 1956, ch. 837 [Public Law 881, 84th Congress], §202(a), 70 Stat. 858, 862 (1956), established a monthly DIC rate for widows of $112 plus 12 percent of the basic pay prescribed for the deceased member's pay grade and length of service. It was generally assumed, though never explicitly stated, that the $112 represented the "indemnity" element of the compensation and the 12 percent of basic pay the "dependency" element. The $112 base figure was raised to $120 in 1963. Act of October 5, 1963, Public Law 88-134, §1, 77 Stat. 223 (1963). The amount of DIC produced by the 12-percent-of-basic-pay side of the formula increased each time basic pay rates were increased. Eight such basic pay raises occurred during the period the formula was in effect.[4]

The Act of October 27, 1969, Public Law 91-96, §3, 83 Stat. 144, 144-145 (1969), discontinued the preexisting DIC formula in favor of a system prescribing flat rates by pay grade. This change was not related to the split "dependency" and "indemnity" concept; it stemmed from dissatisfaction with the linkage between basic pay

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[2]The Veterans' Administration was redesignated as the Department of Veterans Affairs by the Department of Veterans Affairs Act, Public Law 100-527, 102 Stat. 2635 (1988). Pursuant to that Act, from and after March 15, 1989, all references in any Federal law, Executive Order, rule, regulation, delegation of authority, or any document of or pertaining to the Veterans' Administration is statutorily deemed to refer to the Department of Veterans Affairs. Department of Veterans Affairs Act, Public Law 100-527, *id*., §10, 102 Stat. at 2640-2641; see 38 U.S.C.A. §201 note.

[3] Survivor Benefit Act: Hearings on H.R. 7089 before the Senate Committee on Finance, p. 136, 84th ongress, 2d Session (1956) (statement of Guy H. Birdsall, General Counsel, Veterans' Administration).

[4] See the tables showing increases in basic pay rates (by pay grade) subsequent to 1956 in Chapter II.B.1., "Basic Pay,"above.

and DIC. Junior personnel had benefited less from the eight basic pay raises than other personnel. Because of the partial tie-in between basic pay and DIC rates, their survivors had thus gained lesser DIC increases than other survivors.

As was predicted in 1956 during the hearings on the bill that established DIC, a program of in-service life insurance was reinstated some nine years later. Under 38 U.S.C. §1967(a), as most recently amended by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §646, 110 Stat. 186, 369-370 (1996), military members are permitted to purchase up to $250,000 of low-cost Servicemen's Group Life Insurance. See Chapter III.D.2. hereof, "Servicemen's Group Life Insurance, Veterans' Group Life Insurance," above.

The Dependency and Indemnity Compensation Reform Act of 1992, enacted as Title I of the Veterans' Benefits Act of 1992, Public Law 102-568, Title I, §102, 106 Stat. 4320, 4321-4322 (1992), changed the basis for determining the amount of DIC to be paid to a survivor of a deceased veteran. Under the new program, the amount of DIC to be paid to a survivor is not dependent on the pay grade of the deceased member. Rather, the 1992 law prescribed that DIC be paid to all surviving spouses at the rate of $750 per month, independently of the pay grade of the member.[5] An additional $165 per month was authorized for the surviving spouse of a veteran who, at the time of death, had been eligible to receive compensation for a service-connected disability that had been rated totally disabling for at least eight continuous years before the veteran's death, provided the surviving spouse had been married to the veteran at least eight years immediately before the veteran's death.[6] Additional amounts are authorized for a surviving spouse with minor children, the additional amount depending on how many minor children the surviving spouse has.[7]

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[5] The $750 rate established under the Dependency and Indemnity Compensation Reform Act of 1992 has since been adjusted upward for cost-of-living increases that have occurred since 1992. Beginning December 1, 1995, the basic DIC rate for a surviving spouse of a member or former member dying after December 31, 1995, is $810 per month. 61 Fed. Reg. 5836-5837 (1996).

[6] Codified at 38 U.S.C. §1311(a)(2).

[7] As enacted, a surviving spouse with minor children was entitled to an additional $100 per month per child during fiscal year 1993, $150 per child during fiscal year 1994, and $200 per child during fiscal year 1995.

As of 2004, the standard monthly rate of DIC for the survivor of a deceased veteran was $967, following the increase from $948 prescribed in the Veterans Compensation Cost-of-Living Adjustment Act of 2003, Public Law 108-147, 117 Stat. 1885, effective December 1, 2003. That act also increased the allotment for surviving spouses of veterans who had received a service-connected rating of totally disability to $208 and the allotment for each minor child of such surviving spouses to $242. The new DIC program applies to veterans whose deaths occurred after December 31, 1992. DIC paid with respect to deceased veterans whose deaths occurred before January 1, 1993, is to be paid under the rates in existence before enactment of the Dependency and Indemnity Compensation Reform Act of 1992 or under the rates adopted by the act, both as adjusted from time to time for cost-of-living increases, whichever are higher.[8] [9]

As explained by Congress, the impetus for change in the DIC program was basic dissatisfaction with reliance on the member's or former member's military rank while on active duty as the primary determinant of the amount of DIC payable to survivors. During hearings, the point of view was frequently expressed that a new and "more equitable" payment system should be established "to better provide for ... survivors of individuals in the lower ranks who die while in service or as a result of a service-connected disability."[10] The Department of Veterans Affairs, in particular, voiced its support for changing the method for determining the amount of DIC payments to survivors:

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38 U.S.C. §1311(b). With the cost-of-living adjustments effected by the Veterans' Compensation Cost-of-Living Adjustment Act of 1995, Public Law 104-57, §2(a) and (b)(8), 109 Stat. 555 (1995), as implemented by the Department of Veterans Affairs, a surviving spouse with minor children is entitled to an additional $205 per child beginning December 1, 1995.

[8] 38 U.S.C. §1311(a)(3).

[9] As indicated in the table of DIC rates for surviving spouses of veterans who died before January 1, 1993, below, surviving spouses of veterans in pay grade E-6 and below are better off under the new DIC program, whereas surviving spouses of veterans in pay grade E-7 and above are better off under the old DIC program. This situation should continue over time, as identical cost-of-living increases have historically been made, and will most likely continue to be made, to the DIC rates under both programs.

[10] House Report No. 753, Part I (Committee on Veterans' Affairs), p. 10, accompanying H.R. 5008, 102d Congress, 2d Session (1992); *cf*. House Report No. 753, Part II (Conference on Ways and Means), pp. 5-6, accompanying H.R. 5008, 102d Congress, 2d Session (1992).

> The large majority of DIC recipients are awarded the benefit following post-service deaths, many occurring several decades after separation from service. In those cases, the military rank attained by the deceased is not related to his or her income prior to death.
>
> . . .
>
> We find the inequity of payments made to spouses under the current program troublesome. DIC payments to a few spouses are in some cases three times those paid to other surviving spouses. Quite frankly, we are just not prepared to conclude that one family's loss from a service-connected death is somehow greater than another's, merely because their loved one attained a higher service rank.[11]

In response to these and other similar concerns, Congress amended the method for determining the amount of DIC payable to "establish parity among all surviving spouses."[12]

Numerous cost-of-living increases in the DIC schedule followed the 1969 and 1992 revisions--in 1971, annually from 1974 to 1982, twice in 1984, again in 1986, 1987, 1988, 1989, and annually since 1991. The most recent DIC cost-of-living increases were authorized by the Veterans Compensation Cost-of-Living Adjustment Act of 2003, Public Law 108-147, 117 Stat. 1885. The following table shows, by pay grade, current DIC rates for surviving spouses of veterans deceased before January 1, 1993. A more complete description of the DIC program as currently effective and administered by the Department of Veterans Affairs[13] follows the table.

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[11] House Report No. 753, Part I (Committee on Veterans' Affairs), pp. 28-29, accompanying H.R. 5008, 102d Congress, 2d Session (1992).

[12] House Report No. 753, Part I (Committee on Veterans' Affairs), p. 11, accompanying H.R. 5008, 102d Congress, 2d Session (1992).

[13] See footnote 2 to this chapter, above.

## DIC Rates by Pay Grade

## (Applicable to Survivors of Veterans Who Died before January 1, 1993)

| Pay Grade | Monthly Surviving Spouse's DIC (2004 Rates) |
|---|---|
| Chief of Staff (Note 2) | $2,211 |
| O-10 | 2,061 |
| O-9 | 1,880 |
| O-8 | 1,756 |
| O-7 | 1,601 |
| O-6 | 1,482 |
| O-5 | 1,315 |
| O-4 | 1,194 |
| O-3 | 1,129 |
| O-2 | 1,056 |
| O-1 | 1,021 |
| W-4 | 1,157 |
| W-3 | 1,083 |
| W-2 | 1,063 |
| W-1 | 1,021 |
| Senior Enlisted (Note 3) | 1,188 |
| E-9 | 1,092 |
| E-8 | 1,056 |
| E-7 | 1,000 |
| E-6 | 967 |
| E-5 | 967 |
| E-4 | 967 |
| E-3 | 967 |
| E-2 | 967 |
| E-1 | 967 |

**Note 1:** In addition to the amount set out in the column titled "Monthly Surviving Spouse's DIC," an additional $242 per month is authorized for each dependent child under age 18. A special additional amount is also authorized if the surviving spouse either is a patient in a nursing home or is helpless or blind, or so nearly helpless or blind as to need regular aid and attendance by a third person, or if the surviving spouse, although not completely helpless or blind, is disabled and permanently housebound. In the case of a helpless or blind surviving spouse, or a surviving spouse who is a patient in a nursing home, the additional amount authorized is $242 per month; in the case of a disabled and permanently housebound surviving spouse, the amount is $115 per month. 38 U.S.C. §1311(b), (c), and (d). Notwithstanding the amounts set out in the table above, the minimum spousal DIC benefit is $1,175 in the case of a deceased veteran rated totally disabled for a period of eight continuous years immediately before the veteran's death if the surviving spouse was married to the veteran for those same eight years. 61 Fed. Reg. 5836-5837 (1996).

**Note 2:** The surviving spouse of a member or former member of one of the Armed Forces who served as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard is entitled to $2,211 per month as Dependency and Indemnity Compensation. Note 2 to the table set out at 38 U.S.C. §1311(a)(3).

**Note 3:** The surviving spouse of a member or former member of one of the Armed Forces who served as Sergeant Major of the Army, Senior Enlisted Advisor of the Navy, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Master Chief Petty Officer of the Coast Guard is entitled to $1,188 per month as Dependency and Indemnity Compensation.

## DIC--PROGRAM DESCRIPTION

Dependency and indemnity compensation (DIC) was established by the Servicemen's and Veterans' Survivor Benefits Act, ch. 837 [Public Law 881, 84th Congress], Title II, §§201-210, 70 Stat. 857, 862-868 (1956), and became effective January 1, 1957. It was designed to provide indemnification to certain survivors of veterans who died during military service as well as to survivors of veterans who died after military service as a result of service-connected disabilities. It was also designed to provide partial compensation to survivors for economic losses attributable to veterans' deaths. In 1982, the Veterans' Compensation, Education, and Employment Amendments of 1982, Public Law 97-306, §112(a), 96 Stat. 1429, 1432 (1982), extended DIC eligibility to survivors of certain veterans who were totally disabled as a result of service-connected conditions at the time of death but whose deaths were determined not to be service-related.

The rate of DIC payable to a surviving spouse of a veteran who died before January 1, 1993, is based on the decedent veteran's pay grade while on active duty or on the rate established by the Dependency and Indemnity Compensation Reform Act of 1992 (as thereafter adjusted for cost-of-living increases[14]), enacted as Title I of the Veterans' Benefits Act of 1992, Public Law 102-568, §102, 106 Stat. 4320, 4321-4322 (1992), whichever is higher. The rate of DIC payable to a surviving spouse of a veteran who died after December 31, 1992, is based on the rate established by the Dependency

[14] The most recent adjustments to DIC rates were effected by the Veterans' Compensation Cost-of-Living Adjustment Act of 1995, Public Law 104-57, §2(a) and (b)(4) through (8), 109 Stat. 555 (1995). The adjustments were effective December 1, 1995.

and Indemnity Compensation Reform Act of 1992 (as thereafter adjusted for cost-of-living increases[15]), enacted as Title I of the Veterans' Benefits Act of 1992, Public Law 102-568, §102, 106 Stat. 4320, 4321-4322 (1992). If a veteran died while on active duty before January 1, 1993, the pay grade on which the survivors' DIC payments are based is generally the veteran's pay grade on the date of death; if a veteran died after service, the pay grade on which DIC payments are based is generally the veteran's pay grade at the time of separation from service.

Income and need are not factors in determining a surviving spouse's entitlement to DIC, but if a surviving spouse is also entitled to Survivor Benefit Plan payments (SBP)[16] under Subchapter II or Subchapter III of Chapter 73 of Title 10, United States Code, 10 U.S.C. §§1447-1460b, SBP payments must be offset by the amount of DIC the surviving spouse receives. Surviving spouses who are themselves so severely disabled that they are housebound or need the regular aid and attendance of another person may be entitled to a special allowance in addition to basic DIC.

A surviving spouse entitled to DIC may receive additional benefits on behalf of unmarried children under the age of 18. Benefits payable on behalf of an unmarried child end when the child reaches age 18. The child may then claim DIC benefits in his or her own right so long as the child is attending school, although school-related benefits are not payable after the child reaches age 23. Under another provision of law, a child who became permanently incapable of self-support before reaching age 18 due to mental or physical disability is entitled to DIC benefits for as long as the mental or physical disability exists. A child under age 18 may receive DIC benefits in his or her own right only if there is no surviving spouse who is entitled to DIC benefits. DIC benefits payable to eligible dependent children and other persons who became eligible during childhood are set out at 38 U.S.C. §§1313 and 1314, as amended pursuant to the Veterans' Benefits of 2003, Public Law 107-330, 116 Stat. 2820 (2002).

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[15] See preceding footnote.

[16] See Chapter IV.C.2., "Survivor Benefit Plan," below.

A surviving parent or parents may in some cases also be entitled to DIC. While a parent's basic entitlement depends on the service-connected death of the parent's veteran son or daughter, the DIC payable to a surviving parent depends on the parent's income and marital status. No DIC entitlement exists if a parent's income exceeds a statutorily prescribed limit. A parent who is in need of the regular aid and attendance of another person may be entitled to a special allowance in addition to whatever DIC payment has been awarded.[17]

The DIC program is administered by the Department of Veterans Affairs.[18]

**Cost**: For the cost of dependency and indemnity compensation from 1972 to 2004, see Table III-12 of *Military Compensation Statistics Tables*, volume II of this edition.

[17] DIC benefits payable to eligible surviving parents are set out at:
http://www.vba.va.gov/bln/21/Rates/comp04.htm

[18] See footnote 2 to this chapter, above.

## Chapter IV.A.

### Overview of Supporting Benefits

The military compensation system incorporates a number of benefits that have over the years grown to have special importance for the morale of members of the Armed Forces and their dependents.[1] Some of these benefits directly support the active- and inactive-duty military forces of the United States; others support both active- and inactive-duty forces as well as retired members and their dependents. This Section IV of Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items--Their Purposes and Legislative Backgrounds covers two major groupings of benefits. Those groupings are military benefits that are applicable to active-duty and reserve forces personnel and their dependents, on the one hand, and benefits that are applicable to both active-duty and retired members and their dependents, on the other hand.[2] The first group of these benefits is covered in Subsection B of this Section IV; the second, in Subsection C.

Some of the benefits covered in this Section IV of Military Compensation Background Papers have analogues or counterparts in civilian compensation benefit systems; others--such as commissaries and exchanges--do not. Even in the first case, however, the military benefits are specially tailored to take into account the distinctive conditions of military service. Thus, while civilian compensation benefit systems typically incorporate health care insurance benefits, military health care benefits are disproportionately oriented to the provision of in-kind health care to members of the Armed Forces and their dependents. Similar but different distinctions apply to all of the

[1] For a discussion of the importance of military benefits to morale of members of the Armed Forces and their dependents, see the 1976 Report of the Defense Manpower Commission, which refers to the most important of these as "institutional benefits."

[2] Post-service and death benefits--also important to members of the Armed Forces--are covered in Subsections C and D of Section III of Military Compensation Background Papers (Subsection C covers separation pays and related post-service benefits, whereas Subsection D covers benefits specially applicable to retired personnel and their dependents).

benefits covered by this Section IV that have some counterpart in civilian compensation benefit systems--except for government contributions to Social Security.

The principles and concepts of military compensation that are exemplified by the system of supporting benefits covered in this Section IV of Military Compensation Background Papers are focused on the overall effectiveness of the compensation system, in both peace and war; on the achievement of substantial equity for members of the Armed Forces, especially in the sense of establishing a compensation system that is generally competitive with compensation in the private sector; on the interrelationship between the military manpower requirements of the United States and the compensation system considered as a whole; and on motivation of members and potential members of the Armed Forces.

**Chapter IV.B.1.**

## Annual Leave
## Accrued Leave Payments
## Leave Lost

**Legislative Authority**: Annual Leave--10 U.S.C. §§701-704. Accrued Leave Payments--37 U.S.C. §501.

**Purpose**: To authorize members of the uniformed services to take a specified number of days of leave of absence, or vacation, for rest and relaxation away from their respective duty stations; to allow the accumulation for later use of earned leave that cannot be currently used because of military, or other, exigencies; and to authorize cash payments as reimbursement for accrued leave remaining unused at the expiration of a member's term of service.

**Background**: The background and legislative history of the Armed Forces Leave Act of 1946, ch. 931 [Public Law 704, 79th Congress], 60 Stat. 963 (1946), the basic source of the current military leave system, are discussed in detail following the summary discussion immediately below.

**Summary**: Under the present statutory leave system, members of the uniformed services earn leave at the rate of 2 1/2 days per month of active service. Such members may accumulate no more than 60 days of leave as of the end of a fiscal year. Exceptions to this standard occur when a member enters a missing status, serves in a hostile fire pay area for 120 days or longer, or is assigned to a type of duty designated by the Secretaries of the military departments and approved by the Secretary of Defense as duty in which the member is unlikely to be able to use annual leave. Unused accrued leave in excess of 60 days is lost at the end of the fiscal year.

Data submitted by the Army and Air Force for fiscal years 1973 and 1974 indicate leave usage by military personnel averaging 22.2 days per man-year.[1] At that same time, an average of 7.2 days of leave was accumulated to be used later or, if not used or lost, to be reimbursed in cash when the member's term of service expired. In the process of reducing leave balances to 60 days at the end of each fiscal year, members lost an overall average of 0.6 days per year.

In percentage terms, as of 1974 uniformed services personnel used approximately 74 percent of their annual leave entitlement on a current basis, accumulated 24 percent, and lost two percent. The loss of leave has not, however, always been evenly spread across the force. Before 1976, enlisted personnel typically lost very little leave because they could be reimbursed for unused leave at the end of each enlistment. Career officers, on the other hand, have typically lost an average of six to 22 days per year. An officer loses leave when his leave balance at the start of the fiscal year, plus the 30 days earned and minus the number of days taken during the year, exceeds 60 days at the end of the fiscal year. Leave lost by military personnel in fiscal year 1974 had an estimated lump-sum reimbursement value of about $28 million, most of the burden of which fell on officers.

Members discharged, retired, or released from active duty under honorable conditions, or their survivors in the case of deceased members, are entitled to reimbursement, in a lump-sum cash payment, for not more than 60 days of unused accrued leave. The 60-day ceiling does not apply to payments made to or on behalf of personnel in a missing status. A member's unused leave payment is computed on the basis of the basic pay to which he was entitled on the date of separation. An enlisted member is eligible for an unused accrued leave payment each time he is discharged at the expiration of his enlistment or on the effective date of a first extension of an existing enlistment, even if he has no break in service, although, as covered more fully below, he

[1] In using leave, members of the uniformed services are required to take leave for Saturdays, Sundays, and holidays--*i.e.*, for days that, in the civilian work force, are regarded as normal days off--as well as for days that, in the civilian work force, are regarded as normal workdays.

is limited to a maximum of 60 days accrued leave pay during his military career. Payment of unused accrued leave is subject to taxation, just as is the basic pay on the basis of which such payments are computed.

Before enactment of the Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, §304, 90 Stat. 923, 925-926 (1976), payment for unused accrued leave was based on basic pay, basic allowance for quarters, and basic allowance for subsistence for both officer and enlisted personnel, as well as personal money allowance for certain senior officers. Under amendments to the accrued leave program made by the 1977 Appropriation Authorization Act, Public Law 94-361, *id*., payment for unused accrued leave is now made taking only basic pay into account, 37 U.S.C. §501(b)(1),[2] although payment for leave accrued before July 14, 1976, is computed taking basic pay, basic allowance for quarters, basic allowance for subsistence, and personal money allowance, if any, into account, 37 U.S.C. §501 note.[3]

Congress's purpose in amending the military unused-accrued-leave payment system to exclude all items of pay other than basic pay was explained as follows:

> Section 304 of the Senate amendment to the House bill would ... limit to 60 days the reimbursement for unused leave during a military member's career. This amendment would delete authority for payment of quarters and subsistence allowances as a part of this reimbursement for leave accrued after the enactment of this legislation....
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> The House vigorously opposed the portion of this amendment deleting subsistence and quarters allowances from leave payments. However, the Senate was adamant.
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> The conferees agreed that the purpose of authorizing leave is to provide personnel rest and respite from the arduous duties of military service and not to encourage the accumulation of unused leave for additional pay. The Senate conferees argued that the provision, and particularly the elimination of the

[2] Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, §304(c), 90 Stat. 923, 925 (1976).

[3] Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, §304(h), 90 Stat. 923, 926 (1976).

> payment for quarters and subsistence in payments for unused leave, would encourage military members to take leave rather than accumulate it.
>
> Under current law, officers and enlisted personnel are treated differently in the payment of quarters and subsistence for unused leave. By eliminating such payments, the Senate provision would treat all recipients of unused leave payments in the same manner.[4]

In thus attempting to discourage members from accumulating leave, Congress did not address the fact that unused leave accumulation may result more from military necessity than member choice. In an effort to alleviate the most serious of such problems, Congress, in the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §10, 94 Stat. 3359, 3368 (1980), provided that a member "assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section"—*i.e.*, 10 U.S.C. §701, relating to entitlement to and accumulation of leave—could accumulate up to 90 days of leave, but also required that any leave so accumulated in excess of 60 days had to be used by the member before the end of the fiscal year after the fiscal year in which the qualifying service ended. As reflected in the relevant Congressional report, Congress was mainly concerned about leave lost because of operational exigencies:

> Under current law, military personnel may not accumulate more than 60 days leave, except for members receiving hostile fire pay for at least 120 days, who may accumulate 90 days. The additional 30 days for these individuals must be used within a year after the end of the assignment.
>
> The extended length of the Indian Ocean deployments have resulted in personnel losing leave to which they are entitled because they cannot leave their ship. The committee recommendation includes a provision to allow the Service Secretary to extend the benefit of accumulating leave to Service members on ships or at other locations on long deployments.[5]

In an amendment to the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id.*, effected by the Department of Defense Supplemental Authorization Act, 1981, Public Law 97-39, §702, 95 Stat. 939, 943 (1981), the provisions in question were

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[4] House Report No. 94-1305 (Committee of Conference), p. 45, accompanying H.R. 12438, 94th Congress, 2d Session (1976).

[5] Senate Report No. 96-1051 (Committee on Armed Services), pp. 6-7, accompanying H.R. 7626, 96th Congress, 2d Session (1980).

made retroactively applicable to personnel assigned to qualifying duty after September 30, 1979.

In a further amendment to the unused-accrued leave program, the Department of Defense Authorization Act, 1984, Public Law 98-94, §1031(a), 97 Stat. 614, 671 (1983), extended the period within which unused leave accrued as a result of lengthy deployments and other "military exigencies"[6] could be taken. Before passage of the 1984 Authorization Act, leave accrued as a result of "military exigencies" had to be taken before the end of the fiscal year following the fiscal year in which the leave was accrued; under the amendment to 10 U.S.C. §701(f) effected by the 1984 Authorization Act, an affected member is permitted to use such leave any time before the end of the third fiscal year after the fiscal year the leave was accrued. A companion provision[7] made this change in the unused-accrued-leave program retroactively applicable to leave accumulated as a result of "military exigencies" after September 30, 1980. See 10 U.S.C. §701 note. In support of these changes, the Senate Armed Services Committee noted:

> Primarily in response to extensive Indian Ocean naval deployments, the Congress [in the Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, *id*.] authorized certain members to carry forward up to 90 days leave (rather than 60 days) under certain circumstances. This provision has been used effectively by the services not only for long naval deployments but also for the augmentation of military air traffic controllers to the Federal Aviation Administration (FAA). However, that law requires that the leave accrued in excess of 60 days must be used before the end of the fiscal year following the fiscal year in which the excess leave was accrued. For example, excess leave accrued during a deployment in fiscal year 1980 had to be used before the end of fiscal year 1981 or be lost. In fact, some members were unable, due to military exigencies, to use the accrued excess leave they had carried over, and therefore, they actually lost leave.
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> As a result of this unintended penalty to the member and to enhance personnel management, the Committee recommends extending by two years the date by which excess accrued leave must be used or lost by those eligible to carry forward excess leave. This extension will grant appropriate relief to deserving

[6] Senate Report No. 98-174 (Committee on Armed Services), p. 231, accompanying S. 675, 98th Congress, 1st Session (1983).

[7] Department of Defense Authorization Act, 1984, Public Law 98-94, §1031(b)(1) and (2), 97 Stat. 614, 671 (1983).

> members who serve on long, arduous deployments or who are not otherwise able to use their leave because of unique, operational requirements such as the FAA augmentation. Also, to redress the penalty already imposed on members who wrongly lost leave as a result of this provision, the Committee intends this change to be retroactive to leave accrued during fiscal years 1980, 1981 and 1982 and thereafter so that the lost leave can be reinstated.[8]

In a similar vein, various *ad hoc* exceptions to the 60-day career limitation on payments for unused accrued leave have been adopted from time to time. See, *e.g*., National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §1115, 104 Stat. 1485, 1636-1637 (1990), as amended by Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §314, 105 Stat. 75, 86 (1991) (60-day career limitation not applicable to leave accrued during the Persian Gulf conflict by members serving on active duty in connection with Operation Desert Storm), and Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §309, 105 Stat. 75, 83 (1991) (60-day limitation not applicable to leave payments to survivors of a member of the uniformed services who died as a result of an injury or illness incurred while serving on active duty in the Persian Gulf conflict with respect to leave accrued during fiscal years 1990 and 1991).[9]

Given the not infrequent need for making such *ad hoc* exceptions to the prohibitions on excess leave accumulation, the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §638, 105 Stat. 1290, 1384 (1991), added a provision to permanent law pursuant to which "a member of an armed force who serves on active duty ... in support of a contingency operation" [10] may accrue up to 90

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[8] Senate Report. No. 98-174 (Committee on Armed Services), pp. 231-232, accompanying S. 675, 98th Congress, 1st Session (1983). See House Report No. 98-213 (Committee of Conference), pp. 239-240, accompanying S. 675, 98th Congress, 1st Session (1983).

[9] For the purposes of these provisions, the term "Persian Gulf conflict" was defined as the "period beginning on August 2, 1990, and ending thereafter on the date prescribed by Presidential proclamation or by law." Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §3(3), 105 Stat. 75, 77 (1991).

[10] The National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §631, 105 Stat. 1290, 1380 (1991), further amended Titles 10 and 37, United States Code, by providing a definition of the term "contingency operation," as follows:

days of leave in the fiscal year in which he was involved in such an operation or the following fiscal year if the member would otherwise lose accumulated leave in excess of 60 days, provided that the leave in excess of 60 days must be used before the end of the following or next following fiscal year, respectively.[11] A similar exception was made to the provision that limits the amount of accrued leave for which a member may receive payment to include the survivors of service members who die while on duty in support of a contingency operation, as well as reserve and retired members serving on active duty in support of such an operation. National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §637, 105 Stat. 1290, 1383-1384 (1991). As indicated in the relevant House and Senate reports, these provisions were adopted to "make permanent the temporary authority provided in the National Defense Authorization Act for Fiscal Year 1991 [Public Law 101-510, §1115, 104 Stat. 1485, 1636-1637 (1990)], to allow military personnel serving in support of a contingency operation to accrue up to 90 days of leave."[12] The National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, 115 Stat. 1152, provided for payment for unused leave in excess of 60 days for a new category of personnel: members of reserve components on duty for less than one full year, without the stipulation that such members have been on active duty in support of a contingency operation. This category includes reserve personnel on active

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> The term "contingency operation" means a military operation that—
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> (A) is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
>
> (B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 672(a), 673, 673b, 673c, 688, 3500, or 8500 of this title [Title 10, United States Code], chapter 15 of this title, or any other provision of law during a war or during a national emergency declared by the President or Congress.

The subject provision is codified at 10 U.S.C. §101(a)(13), whereas the definition of "contingency operation" codified to Title 37, United States Code, merely provides that for the purposes of the latter title "[t]he term `contingency operation' has the meaning given that term in section 101 of title 10." 37 U.S.C. §101(26).

[11] Codified at 10 U.S.C. §701(f)(2).

[12] Senate Report No. 102-113 (Committee on Armed Services), p. 225, accompanying s. 1507, 102d Congress, 1st Session (1991). See House Report No. 102-60 (Committee on Armed Services), p.250, and House Report No. 102-311 (Committee of Conference), pp. 552-553, accompanying H.R. 2100, 102d Congress, 1st Session (1991).

duty, full-time National Guard duty, and active duty for training for more than 30 but fewer than 365 days.

The National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, 117 Stat. 1478, further adjusted the rules governing accrual of more than 60 days of leave. This provision allowed members who serve for 120 continuous days either in an area eligible for special pay under 37 U.S.C. §310(a) or is assigned to a deployable ship, mobile unit, or other duty comparable to that specified in that section, to accumulate up to 120 days of accrued leave. These members may retain that leave until the end of the third year in which the qualifying duty was performed.

The sixty- and ninety-day limitations on unused accrued leave accumulations do not apply to payments to survivors of members who die while on active duty[13] or to members in a missing status.[14] 10 U.S.C. §701(g). Under the provisions of 37 U.S.C. §501(h), leave accumulated by a member while in a missing status may not be taken by the member after the member is removed from such status but must be paid for.

**Cost**: For the cost of unused accrued leave payments from 1972 to 2004, see Table IV-1 of *Military Compensation Statistics Tables*, volume II of this edition.

[13] 37 U.S.C. §501(d)(1) and (2) as amended by the National Defense Authorization Act for Fiscal Year 1996, §641(a), 110 Stat. 186, 368 (1996). See Senate Report No. 104-112 (Committee on Armed Services), p. 258, accompanying S. 1026, 104th Congress, 1st Session (1995); cf. House Report No. 104-406 (Committee of Conference), p. 819, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), p. 809, accompanying S. 1124, 104th Congress, 2d Session (1996).

[14] See 37 U.S.C. §551(2) concerning the circumstances under which a member is deemed to be in a "missing status." Also see that portion of Appendix VII, "Special Pay and Other Benefits for Missing Persons, Prisoners of War (POWs), and Victims of Terrorism," titled "Missing Persons," below.

**Chapter IV.B.2.**

## Voluntary Education and Training

**Legislative Authority**: 10 U.S.C. §§2005 and 2007; 38 U.S.C. §§3001-3036 and 3451-3485.

**Purpose**: (1) To aid in the recruitment and retention of members of the Armed Forces and to upgrade the skills of such members; and (2) to provide financial assistance to military personnel to enable them to develop educationally and professionally while in service and to encourage them to continue their education after leaving service.

**Background**: Voluntary education and training, although they may serve as an attraction and retention incentive and benefit the military services by contributing to more effective performance, primarily benefits the individual members who take advantage of them. The principal types of voluntary education and training are (1) the tuition assistance program for off-duty education at civilian educational institutions, (2) the Predischarge Education Program, and (3) the Educational Assistance Program of the GI Bill. The latter programs are designed for "veterans," a category that by definition includes in-service military personnel who have served on active duty for more than 180 days. These programs are under the jurisdiction of the Department of Veterans Affairs [1] and are funded by that agency.

The tuition assistance program was started immediately after World War II. There is no permanent statutory authority for tuition assistance; rather, such assistance is based on authority flowing from the appropriation of funds for the program in annual appropriations acts. Congress deleted funds earmarked for the Army officer program from the Department of Defense Appropriation Act, 1953, ch. 630 [Public Law 488, 82d

[1] The Veterans' Administration was redesignated as the Department of Veterans Affairs by the Department of Veterans Affairs Act, Public Law 100-527, 102 Stat. 2635 (1988). Pursuant to that Act, from and after March 15, 1989, all references in any federal law, executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Veterans' Administration is statutorily deemed to refer to the Department of Veterans Affairs. Department of Veterans Affairs Act, Public Law 100-527, *id.*, §10, 102 Stat. at 2640-2641; see 38 U.S.C.A. §301 note.

Congress], 66 Stat. 517 (1952). The Department of Defense Appropriation Act, 1954, ch. 305 [Public Law 179, 83d Congress], §641, 67 Stat. 336, 356 (1953), prohibited the use of appropriated funds for the payment of tuition assistance for officers of any branch of service above pay grade O-2. At that time, the Air Force was paying 75 per cent of tuition costs for approved off-duty education for both officer and enlisted personnel. The Army was paying 50 percent of tuition costs for enlisted personnel and had, until funds for the purpose were denied in fiscal year 1953, also been paying 50 percent of the costs for officers. The Navy and Marine Corps had paid 75 percent of such costs from 1949 through 1952, but in fiscal year 1953 such assistance was terminated for officers and reduced to 50 percent for enlisted personnel.[2]

The Department of Defense Appropriation Act, 1955, ch. 432 [Public Law 458, 83d Congress], §730, 68 Stat. 337, 355-356 (1954), removed the restriction on payment of tuition costs for officers above pay grade O-2 but stipulated that funds appropriated in the act be available only to commissioned personnel who agreed to remain on active duty for two years after completion of the training for which funds were received. Similar limiting language was included in later annual appropriation acts until an active-duty obligation was incorporated into permanent law in 1980. Under current 10 U.S.C. §2005, as added by the Act of September 24, 1980, Public Law 96-357, §2(a), 94 Stat. 1178, 1180-1182 (1980), and as later amended by the Department of Defense Authorization Act, 1984, Public Law 98-94, §1003(b)(1), 97 Stat. 614, 656-657 (1983), the Secretaries of the military departments may require as a condition of providing educational assistance that a person agree to remain on active duty for a specified period.

The Department of Defense Appropriation Act, 1955, ch. 432, *id*., also limited payments to not more than 75 percent of charges of educational institutions for tuition and expenses of off-duty training of military personnel. In general, similar limitations have been incorporated in the appropriations acts from 1955 to the present.

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[2] Hearings on H.R. 5969 before the Subcommittee of the Senate Committee on Appropriations, July 10, 1953, pp. 2055-2057, 83d Congress, 1st Session (1953).

It is Department of Defense policy that the services fund the tuition assistance program to the maximum extent consistent with current legislation for both officer and enlisted personnel. There is no legal restriction on the courses of study that may be pursued under the program; a course may lead to an associate, baccalaureate, or higher degree, or to a high school diploma, or it may comprise technical/occupational study. However, emphasis is placed on courses that enhance a member's competence in his military career field.

The Veterans' Readjustment Benefits Act of 1966, Public Law 89-358, 80 Stat. 12 (1966), is one of the series of laws popularly and collectively known as the "GI Bill." As relates to voluntary education and training, the act authorizes the payment by the Department of Veterans Affairs[3] of an educational assistance allowance to veterans who have served on active duty for more than 180 days without a break in service and who are enrolled in an approved college, graduate or undergraduate, professional, trade or technical, high school, elementary school, or correspondence course conducted by a civilian educational or training institution. The benefits available under this GI-Bill program are included within the present treatment of voluntary education and training because members of the Armed Forces who are still on active duty are within the class of eligible beneficiaries. Generally speaking, the benefits provided under the Veterans' Readjustment Benefits Act of 1966 must be used by an eligible veteran within the ten-year period commencing on the date of the veteran's last discharge or release from active duty after January 31, 1955.

As of October 2003, the VA educational assistance allowance for active duty members was equal to the cost of tuition, fees, books, and supplies peculiar to the course being pursued, limited to a maximum of $985 a month. Entitlement to the allowance is computed on the basis of 1 1/2 months (or the equivalent in part-time educational assistance) for each month of active service performed after January 31, 1955. The allowance entitlement period may not exceed 36 months, except that it may be extended

[3] House Report No. 96-498 (Committee on Veterans' Affairs), p. 19, accompanying H.R. 5288, 96th Congress, 1st Session (1979).

to the end of the term, quarter, or semester when it would otherwise end, or, in schools not operated on one of those systems, to the end of the course or for 12 weeks, whichever is less, when the period of entitlement ends after more than half the course has been completed. The 36-month limit on the GI Bill educational assistance allowance applies to all veterans, and any period of entitlement used during active service is charged against this limit.

The Veterans' Educational Assistance Act of 1987, enacted as Title VII of the Department of Defense Authorization Act, 1985, Public Law 98-525, Title VII, §§701-709, 98 Stat. 2492, 2553-2572 (1984), added a Chapter 30 to Title 38, United States Code, establishing the All-Volunteer Force Educational Assistance Program. In addition to being intended to aid members of the Armed Forces in their readjustment to civilian life after separation from military service, the Education Assistance Act was intended to promote and assist the all-volunteer force program by establishing a new educational assistance program to aid in recruitment and retention of highly qualified personnel in the active and reserve components of the Armed Forces and to give special emphasis to providing education assistance benefits to aid in the retention of personnel in the Armed Forces. See 38 U.S.C. §3001 (stating purposes of the "All-Volunteer Force Educational Assistance Program") as added by Section 702 (a)(1) of the Veterans' Educational Assistance Act of 1984, enacted as part of Title VII of the Department of Defense Authorization Act, 1985, Public Law 98-525, *id*., §702(a)(1), 98 Stat. at 2553-2554. The All-Volunteer Force Educational Assistance Program, which applies to persons who first became members of the Armed Forces or first entered on active duty as members of the Armed Forces after June 30, 1985, is administered mainly by the Department of Veterans Affairs and is, for that reason, treated in Chapter V.B.2. of the Military Compensation Background Papers, "Veterans' Educational Assistance (GI Bill)." Persons on active duty as well as veterans may take advantage of the All-Volunteer Force Educational Assistance Program, commonly known as the "Montgomery GI Bill."

The Veterans Education and Training Amendments Act of 1970, Public Law 91-219, §204(a)(4), 84 Stat. 76, 80-81 (1970), established the Predischarge Education

Program ("PREP"). The program's chief aim was to enhance the schooling of educationally deficient service members in order to encourage them to take advantage of the GI Bill after separation from active duty. To this end, the act permitted the payment of a VA educational assistance allowance equal to cost of tuition, fees, books, and supplies peculiar to the course, but not more than $270 a month, to individuals who had completed more than 180 days of active service and who were enrolled in an elementary, secondary, preparatory, refresher, remedial, deficiency, or special educational assistance course conducted by an approved civilian educational or training institution.

Although PREP was designed primarily as a pre-separation program, PREP courses also could be taken after release from active duty by veterans who were separated without a secondary school diploma or equivalency certificate, or who needed the PREP course or courses for a program of education for which they would be eligible but for such course or courses. No charge was made against an individual's period of entitlement to educational assistance under the GI Bill because of enrollment in PREP courses, either while in service or after discharge.

The legislative authority for PREP was repealed by the Veterans' Rehabilitation and Education Amendments of 1980, Public Law 96-466, §601(a)(1), 94 Stat. 2171, 2208 (1980), because the "continued need for this program ... no longer is apparent" and the benefits available under the program were also "available in the military service."[4]

**Cost**: For the cost of voluntary education and training benefits from 1972 to 1976, see Table IV-2 of *Military Compensation Statistics Tables*, volume II of this edition.

[4] Includes base level education centers; general educational development programs; tuition assistance; other off-duty education; and Predischarge Education Program (VA funded).

**Chapter IV.B.3.**

## Mortgage Insurance Premiums

**Legislative Authority**: 12 U.S.C. §1715m (Section 222 of the National Housing Act, ch. 847 [Public Law 479, 73d Congress], 48 Stat. 1246 (1934), as added by the Housing Act of 1954, ch. 649 [Public Law 560, 83d Congress], Title I, §124, 68 Stat. 590, 603-605 (1954)).

**Purpose**: To authorize the Department of Defense to pay FHA mortgage premiums that individual service members would otherwise have to pay in order to make more uniform the federal housing assistance programs for such personnel and for veterans.

**Background**: The National Housing Act, ch. 847 [Public Law 479, 73d Congress], 48 Stat. 1246 (1934), created the Federal Housing Administration (FHA) and established a program under which that agency insures the payment of mortgages on family dwellings to encourage commercial lenders to make home loans to private individuals. The law requires that the FHA charge a premium, which is based on the loan principal, on all mortgages it insures. The charge is levied on the mortgagee but passed on to the borrower; in practice, it is normally added to the borrower's mortgage payments. The reason for the charge is to establish a reserve against which the FHA can draw to cover the costs of meeting obligations on defaulted loans.

The Servicemen's Readjustment Act of 1944, ch. 268 [Public Law 346, 78th Congress], Title III, §§501-503, 58 Stat. 284, 291-291 (1944), commonly called the GI Bill, created a home loan guarantee program for veterans.[1] The GI Bill is a loan guarantee, rather than a mortgage insurance program, under which the Government absorbs any losses resulting from defaulted loans. Persons covered by the GI Bill thus do not have to pay a recurring charge similar to the FHA mortgage premium.

[1] See Chapter V.B.3., "GI Bill (Home Loan Assistance)," below.

Neither the National Housing Act nor the GI Bill was of much value with respect to the home-buying needs of career service personnel. Lacking community roots, such personnel typically found it difficult to obtain private financing for a home, even with FHA mortgage insurance backing. In addition, they often could not qualify for a GI loan guarantee because, originally, such a guarantee was available only to personnel separated from active service, and not to those who remained on active duty.

The Servicemen's Housing Mortgage Insurance program ("SMI") was created by the Housing Act of 1954, ch. 649 [Public Law 560, 83d Congress], Title I, §124, 68 Stat. 590, 603-605 (1954), to help overcome these problems. The SMI was designed to provide, within the framework of the National Housing Act, home-financing assistance similar to that authorized for veterans under the GI Bill to in-service personnel with more than two years of active service. Because SMI is part of the National Housing Act, rather than the Servicemen's Readjustment Act, an FHA premium had to be paid on each insured mortgage. Since a veteran did not have to pay a similar charge under the GI Bill, however, the SMI program required that the military services pay the premium for their in-service members (and for the surviving spouse of a member who dies on active duty, for up to two years after the member's death) from funds appropriated for the Department of Defense family housing management account. When the SMI program was set up in 1954, Congress indicated that the FHA mortgage premiums of in-service personnel were subsidized because no charges were imposed under the GI Bill for which SMI was supposed to be an in-service substitute. This subsidy was not discontinued, even though the later extension of GI Bill eligibility to in-service personnel removed the original reason for it.

Until Department of Defense participation in the program was administratively discontinued, in-service personnel were eligible for FHA mortgage insurance on a single-family dwelling or a one-family unit in a condominium project under the SMI program without regard to the size of the mortgage. The amount of the mortgage insured, however, could not exceed a maximum loan-to-value ratio of 97 percent of the first $25,000 of the FHA appraised value of the property, plus 95 percent of the appraised

value above $25,000, in the case of mortgages covering dwellings that (i) were appraised for mortgage insurance before the beginning of construction, (ii) were approved for guaranty, insurance, or a direct loan by the then-Veterans Administration[2] before the beginning of construction, (iii) were completed more than one year before the date of the application for mortgage insurance, or (iv) were covered by a consumer protection or warranty plan acceptable to the Secretary of Defense, in the case of members of the Army, Navy, Air Force, or Marine Corps, the Secretary of Transportation, in the case of members of the Coast Guard, or the Secretary of Commerce, in the case of members of the United States National Oceanic and Atmospheric Administration; or in the case of any dwelling not so approved, 90 percent of the appraised value, subject to further limitations on the maximum mortgage insurance exposure of the Federal government.

At present, only the Coast Guard and the National Oceanic and Atmospheric Administration pay FHA premiums on behalf of their members.

**Cost**: For the cost of mortgage insurance premiums from 1972 to 1985, see Table IV-3 of *Military Compensation Statistics Tables*, volume II of this edition. (Data for Armed Forces personnel after 1985 are not available.)

[2] The Veterans' Administration was redesignated as the Department of Veterans Affairs by the Department of Veterans Affairs Act, Public Law 100-527, 102 Stat. 2635 (1988). Pursuant to that act, from and after March 15, 1989, all references in any federal law, executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Veterans' Administration is statutorily deemed to refer to the Department of Veterans Affairs. Department of Veterans Affairs Act, Public Law 100-527, *id*., §10, 102 Stat. at 2640-2641; see 38 U.S.C.A. §201 note.

**Chapter IV.B.4.**

## Medical Care
## (Service Members and Dependents)

**Current Legislative Authority**: Chapter 55 of Title 10, United States Code, 10 U.S.C. §§1071-1110.

**Purpose**: To make medical care available to members of the uniformed services and their dependents in order to help ensure the availability of physically acceptable and experienced personnel in time of national emergency; to provide incentives for Armed Forces personnel to undertake military service and remain in that service for a full career; and to provide military physicians and dentists exposure to the total spectrum of demographically diverse morbidity necessary to support professional training programs and ensure professional satisfaction for a medical service career.

**Background**: The Armed Forces have traditionally provided medical care for active duty personnel as an integral part of their primary mission. The Armed Forces must not only be prepared to care for casualties in the event of conflict, they must also maintain the health of active duty members in peacetime so that affected personnel are ready to respond promptly to whatever military demands may arise. Having medical facilities and personnel necessary to meet their primary mission within legislative constraints imposed by Congress, the Armed Forces have also provided medical care to dependents of active duty personnel when it has been possible to do so without adversely affecting their ability to provide medical care to active duty personnel.

Before 1956, the statutory basis for dependent medical care in military treatment facilities was fragmentary, with resulting disparities in the types of care provided, in the categories of dependents eligible for care, and in access to care. Dependents without access to medical facilities of the uniformed services had to pay the full cost of any care they received from civilian sources. Consequently, dependents with access to military medical care facilities had a significant advantage over those in areas with no such

facilities or in areas where there were too few facilities to meet the joint needs of the active duty and dependent populations.

The Dependents' Medical Care Act of June 7, 1956, ch. 374 [Public Law 569, 84th Congress], 70 Stat. 250 (1956), provided a statutory basis for furnishing medical care to members and certain former members of the uniformed services and their dependents by setting forth categories of dependents eligible for medical care and the types of care to be provided in facilities of the uniformed services.[1] The principal new feature of the law, however, was the authority given the Secretary of Defense to contract with civilian sources for the medical care of spouses and children of members of the uniformed services on active duty. As indicated in the relevant Congressional report, an improved system of dependent medical care was needed as part of a program to make military careers more attractive and to meet the competition offered by private industry, which frequently extended liberal medical care benefits.[2]

Except for an amendment eliminating a statutory requirement that the parent military department of a beneficiary receiving care in a medical facility of another military department reimburse the other military department for the care given, the medical care provisions remained unchanged until 1966.

The Military Medical Benefits Amendments of 1966, Public Law 89-614, §2(6), 80 Stat. 862, 863-865 (1966), established far broader authority for the military departments to contract for health care for beneficiaries to supplement the care provided by military treatment facilities. The implementation of this authority as a government self-insured program became known as the Civilian Health and Medical Program of the

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[1] The provisions covering members and former members are currently codified at 10 U.S.C. §1074; the provisions setting forth the categories of dependents eligible for medical care, at 10 U.S.C. §1076; and the types of medical and dental care that may be given to dependents, at 10 U.S.C. §§1077 and 1076a, respectively. Dependents of a member of the uniformed services are eligible for medical and dental care at "facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff." 10 U.S.C. §1076(a).

[2] Senate Report No. 1878 (Committee on Armed Services), p. 2, accompanying H.R. 9429, 84th Congress, 2d Session (1956).

Uniformed Services, popularly called CHAMPUS. The CHAMPUS legislation came about in response to changed practices in the civilian sector of the economy by which civilian health care plans added outpatient care to the traditional inpatient care coverage for both employees and their dependents. Except for limited access to military treatment facilities, there was no government-supported program for outpatient care for dependents of active duty personnel or for retirees and their dependents prior to this legislation. The principal features of the legislation, which used the Blue Cross-Blue Shield High Option Plan of the Federal Employees' Health Benefits Program as a model, established partial government payment for new and expanded inpatient and outpatient care provided by civilian sources to designated beneficiaries. The act also slightly expanded the types of care that military facilities were authorized to provide. The benefits payable under CHAMPUS were not quite as extensive as those authorized in military medical facilities, and some beneficiaries eligible for care in military facilities--primarily parents and parents-in-law of active duty members--were not eligible for care under CHAMPUS.

The legislation required the dependents of active duty members to share in the cost of the authorized care provided under CHAMPUS at a level less than that specified for retired members and their dependents. For dependents of active duty members, the act required them to pay the greater of $25 for each hospital admission or the same nominal daily fee imposed for inpatient care in military medical facilities. For outpatient care, dependents had to meet a fiscal year deductible of $50 per individual, with a $100 family limit, and 20 percent of the allowed charges for care after the deductible had been met, provided that a member or a member's family group of two or more persons may not be required to pay a total of more than $1,000 for health care received under CHAMPUS during any fiscal year.[3]

[3] The $1,000 annual limit on deductibles and copayments for members and their families was added to the CHAMPUS program, at 10 U.S.C. §1079(b)(5), by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §721(a), 101 Stat. 1019, 1115-1116 (1987), to serve as a protection or "cap" against "catastrophic loss," House Report No. 100-446 (Committee of Conference), p. 650, accompanying H.R. 1748, 100th Congress, 1st Session (1987), and to prevent "the potential of wiping-out a family financially," House Report No. 100-58 (Committee on Armed Services), p. 217, accompanying H.R. 1748, 100th Congress, 1st Session (1987). 10 U.S.C.A. §1079(b)(5). *cf.* Senate Report No. 100-57 (Committee on Armed Services), p.150, accompanying S. 1174, 100th Congress, 1st Session (1987), which dealt only with placing a "limitation on out-of-pocket expenses for co-payments and

Among the differences between CHAMPUS and the Federal Employees' Health Benefits Program was that civilians had to pay a part of the monthly premium but could choose from a variety of plans with different annual benefit structures, while dependents of active duty personnel did not have to pay a premium but also had no choice. CHAMPUS is also unlike the different Federal Employees' Plans in that, under CHAMPUS, beneficiaries are generally required to obtain non-emergency inpatient care from nearby military medical facilities if such care is available there. Thus, CHAMPUS provides only a part of the medical care its beneficiaries receive, and CHAMPUS is not, on that account, directly comparable to the various plans available to participants in the Federal Employees' Health Benefits Program, which provide for complete medical care to beneficiaries.

The Military Medical Benefits Amendments of 1966, Public Law 89-614, §2(6), 80 Stat. 862, 863-865 (1966), also established a specialized program of financial assistance for active duty members with spouses or children who were either moderately or severely mentally retarded or seriously physically handicapped. Known as the Program for the Handicapped, it has no known counterpart in other federal or civilian health care plans. In 1971, eligibility for this program was extended to dependents of active duty members who died while eligible for hostile fire pay—formerly known as combat pay—or who died from a disease or injury incurred while eligible for such pay.

The Military Medical Benefits Amendments of 1966, Public Law 89-614, §2(4), 80 Stat. 862, 863 (1966), allowed only extremely limited dental care under CHAMPUS: only that care necessary as an adjunct to medical or surgical treatment of other than a

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deductibles" for members of the active-duty force. (The 1988/1989 Defense Authorization Act, Public Law 100-180, *id*., §721(b), 101 Stat. at 1115, established a $10,000 "cap" on out-of-pocket expenses for medical care for retirees and their families. 10 U.S.C.A. §1086(b)(4). See Chapter III.D.1., "Retired Members Medical Care," above. The House-Senate conferees expressed regret at having to adopt a $10,000 "catastrophic cap for retiree families, due to budget constraints" and indicated an intention to "address this level of catastrophic loss protection again in the future." House Report No. 100-446 (Committee of Conference), p. 650, accompanying H.R. 1748, 100th Congress, 1st Session (1987). No similar concern was expressed over the $1,000 cap on deductibles and copayments for members of the active-duty forces and their families. The $10,000 cap for retirees and their families was reduced to $7,500 by the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §703(a), 106 Stat. 2315, 2432 (1992). See Chapter III.D.1., "Retired Members Medical Care," above.)

dental condition. In military dental facilities, a broad range of dental services could be provided at overseas locations on a space-available basis, but in the United States only emergency dental care and dental care as an adjunct to medical and surgical care were generally available. An exception to this United States limitation was in areas where adequate civilian dental care was not available, such as at remote duty stations, but even there, only on a space-available basis.

This situation changed with the Department of Defense Authorization Act, 1985, Public Law 98-525, §633, 98 Stat. 2492, 2544 (1984), which authorized broad-based dental care in all military dental facilities to the degree that space for such care was available, effective July 1, 1985.[4] However, uniformed services dental facilities and dental manpower remained relatively limited, so that dental care access for dependents in most locations continued to be quite limited.

As explained by Congress, the reason for extending such care to dependents of active duty personnel was related to two factors. First, the Senate had earlier noted that, while "an increasing number of civilian firms ... [had] added dental programs as part of their health care benefits, dental care insurance programs are not available to most dependents of active duty personnel ... [and] the cost of private dental care is prohibitive for many families, especially those of junior enlisted personnel."[5] Second, the Senate also noted that, because of "fiscal constraints," it was "unlikely that the Congress will authorize a dental insurance program for active duty dependents along the lines of the current CHAMPUS program."[6]

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[4] See 10 U.S.C. §1077(a)(10).

[5] Senate Report No. 98-174 (Committee on Armed Services), p. 230, accompanying S. 675 (relating to the Department of Defense Authorization Act, 1984, Public Law No. 98-94), 98th Congress, 1st Session (1983). See Senate Report No. 98-500 (Committee on Armed Services), pp. 224-225, accompanying S. 2723, 98th Congress, 2d Session (1984).

[6] Senate Report No. 98-500 (Committee on Armed Services), p. 224, accompanying S. 2723, 98th Congress, 2d Session (1984). See Senate Report No. 98-174 (Committee on Armed Services), p. 230, accompanying S. 675 (relating to the Department of Defense Authorization Act, 1984, Public Law No. 98-94), 98th Congress, 1st Session (1983). *cf.* House Report No. 98-1080 (Committee of Conference), pp. 299-300, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

Despite the Senate's 1984 expression of the opinion that enactment of a program for dental care from civilian sources was unlikely, the Congress authorized just such a program the following year. The Department of Defense Authorization Act, 1986, Public Law 99-145, §651, 99 Stat. 583, 655-656 (1985), provided for a voluntary enrollment basic dental benefit for dependents of active duty members, with enrollees sharing in the costs of monthly premiums through payroll deductions. Rather than as an extension of CHAMPUS, the authorization was for a competitively awarded, fixed-price contract with a contractor. The authorization also provided that no dental contract could be entered before September 30, 1986.[7] See 10 U.S.C. §1076a. In authorizing the dental program, Congress appears to have been concerned that even though it had broadened the dental care that might be provided in military facilities, there would be only limited access to such care:

> ... Given the dental care requirements of the active duty force, ... the amount of care available to dependents on a space-available basis will remain very limited.[8]

Congress also indicated that the program was related in part to the need to be competitive with what was happening in the civilian employment sector:

> Although dental care was not a common component of private sector health plans when the Civilian Health and Medical Program of the Uniformed Services was revised and expanded in 1966, it has become increasingly so in recent years.... [R]outine dental care has become increasingly common in larger industries.... In order to remain competitive with private industry employers who direct recruiting efforts at skilled, mid-career military personnel, the committee believes that the services need a dependent dental care benefit as a component of the compensation package. A recent survey of the military medical care system beneficiary population indicated that dental care for active duty dependents was a priority item.[9]

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[7] Department of Defense Authorization Act, 1986, Public Law 99-145, §651(c), 99 Stat. 583, 656 (1985); see 10 U.S.C. §1076a note.

[8] House Report No. 99-81 (Committee on Armed Services), p. 238, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

[9] House Report No. 99-81 (Committee on Armed Services), p. 238, accompanying H.R. 1872, 99th Congress, 1st Session (1985). *cf.* House Report No. 99-235 (Committee of Conference), p. 435, accompanying S. 1160, 99th Congress, 1st Session (1985).

Benefits under the new dental program extend to preventive, diagnostic, and emergency services, for which enrollees have no liability for allowed charges, and to fillings, dental appliance repairs, and stainless steel crowns for children's primary teeth, for which the enrollee's charge is 20 percent of allowed charges. Thus, the benefit is relatively limited in that it does not cover the generally more costly dental procedures such as orthodontia, treatment of gum disease, root canal therapy, adult crowns, or dental bridges.

The National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §707(a), 100 Stat. 3816, 3905 (1986), amended the dependents' dental program by providing that the maximum monthly premium that could be charged for enrollment of a member and the member's dependents in the program was $10. The amendment was offered--in substitution for a provision that required the Secretary of Defense to set premium levels--to clarify the original intent of Congress in adopting the dependents' dental program in the first instance.[10]

In the most extensive revisions to the military medical care provisions of Title 10, United States Code, since enactment of the Military Medical Benefits Amendments of 1966, Public Law 89-614, 80 Stat. 862 (1966), Congress, in the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §§701-702, 100 Stat. 3816, 3894-3900 (1986), supported Department of Defense initiative to change the CHAMPUS program by enactment of a number of additions and changes to Chapter 55 of Title 10, United States Code. First, Section 702 of the 1987 Authorization Act required the Secretary of Defense, as a part of the so-called CHAMPUS Reform Initiative, to conduct a demonstration project (i) to improve competition among civilian providers of health care services to the Department of Defense beneficiaries, (ii) to test the relative merits of having beneficiaries of the military health care system use a voucher system or fee schedule for the provision of health care services, and (iii) to insure that community hospitals are given equal consideration with other health care providers for the provision

[10] Senate Report No. 99-331 (Committee on Armed Services), p. 247, accompanying S. 2638, 99th Congress, 2d Session (1986).

of health care services under contracts with the Department of Defense. As set out in Section 702(a) of the act itself, the purpose of the demonstration project was to improve the effectiveness of the CHAMPUS health care payment system through the competitive selection of health care contractors in the civilian sector of the economy who would be financially responsible for the delivery of defined health care services to former members of the Armed Forces and their dependents (as well as to dependents of members). The demonstration project was required to be limited to one-third of the overall CHAMPUS program.[11]

Second, insofar as military retirees, their dependents, and survivors were specially concerned, the 1987 Authorization Act, Public Law 99-661, *id*., permitted the Secretary of Defense to contract with a variety of health care providers and insurers for the provision of basic health care services. Included within the scope of permitted contractors were health maintenance organizations, preferred provider organizations, individual providers, individual medical facilities, insurers, and consortiums of all such providers, facilities, and insurers. In addition, the act specifically authorized the Secretary of Defense to prescribe premiums, deductible amounts, copayment percentages or amounts, and other health care charges for affected beneficiaries.

Third, while authorizing the Secretary of Defense to prescribe premiums, deductibles, copayments and the like, the 1987 Authorization Act, Public Law 99-661, *id*., also specifically authorized the Secretary to waive beneficiary financial liabilities. The Secretary was permitted to waive such payments as an inducement to beneficiaries of the military health care system to enroll in alternative health care programs that, while being no more costly to the government, would provide equal or better services. In addition to being permitted to waive various beneficiary liabilities, the Secretary was also permitted to waive limitations on the kinds of health care services that could be provided

[11] See, *e.g*., House Report No. 99-1001 (Committee of Conference), pp. 489-490, accompanying S. 2638, 99th Congress, 2d Session (1986). Also see House Report No. 99-718 (Committee on Armed Services), p. 238, accompanying H.R. 4428, 99th Congress, 2d Session (1986), in which the House Committee on Armed Services expressed special concern about how the Department of Defense Project Imprint would affect the delivery of health care services to military retirees and their dependents. *cf*. House Report No. 99-718 (Committee on Armed Services), pp. 234-243, accompanying H.R. 4428, 99th Congress, 2d Session (1986), generally, for a discussion of the military health care delivery system.

as a part of the inducement to beneficiaries to enroll in more cost-effective health care plans.

Fourth, the 1987 Authorization Act, Public Law 99-661, *id*., required the Secretary of Defense to establish a health care enrollment system for beneficiaries of the military health care program. Under the enrollment system, beneficiaries would be permitted to choose a health care plan from a number of alternative plans designated by the Secretary of Defense. Eligible health care plans would include health care facilities of the uniformed services, CHAMPUS providers, and all health care plans contracted for by the Secretary of Defense, together with any combination of such plans. An exception to the freedom to choose enrollment could apply where it was deemed necessary to assign beneficiaries to health care facilities of the uniformed services in order to ensure full use of such facilities in a particular geographic area. The Secretary's authority to waive certain beneficiary payments and to depart from limitations on the types of health care services that could be provided to beneficiaries could be used as inducements for beneficiaries to enroll in the alternative health care plans contracted for by the Secretary.

In addition to the changes described, the Secretary of Defense was authorized to prescribe regulations to implement the various provisions, including certain other administrative changes to the system that do not directly affect health care for beneficiaries.

In 1994 the Department of Defense embarked on a new program, known as TRICARE, to improve the quality, cost, and accessibility of services for its beneficiaries. Because of the size and complexity of the military health services system (MHSS), TRICARE implementation was phased in over a period of several years. The principal mechanisms for the implementation of TRICARE were the designation of the commanders of selected Military Medical Treatment Facilities (MTFs) as lead agents for 12 TRICARE regions across the country, operational enhancements to the MHSS, and the procurement of managed care support contracts for the provision of civilian health care services within those regions. The first region (Washington and Oregon) went into operation in 1995, and the twelfth and last region (Northeastern United States) went into operation in 1998.

Many of the fundamental rules and standards of the CHAMPUS system, such as deductible amounts and eligibility standards, remain in the basic structure of TRICARE. A major feature of TRICARE is the establishment of a triple option benefit. CHAMPUS-eligible beneficiaries are offered three options: they may elect to receive health care through (1) an HMO-type program called "TRICARE Prime", (2) the preferred provider network on a case-by-case basis under "TRICARE Extra", or (3) non-network providers under "TRICARE Standard". (TRICARE Standard, the program that replaced the standard CHAMPUS, maintains the same deductible and in-patient charges as those outlined above for the CHAMPUS program.) Enrollees in TRICARE Prime obtain most of their care within the network and pay substantially reduced CHAMPUS cost shares when they receive care from civilian network providers. Enrollees in TRICARE Prime retain freedom to use non-network civilian providers, but they have to pay cost sharing considerably higher than TRICARE Standard if they do so. Beneficiaries who choose not to enroll in TRICARE Prime will preserve their freedom of choice of provider for the most part by remaining in TRICARE Standard. These beneficiaries face standard CHAMPUS cost sharing requirements, except that their coinsurance percentage is lower when they opt to use the preferred provider network under TRICARE Extra. All beneficiaries continue to be eligible to receive care in MTFs, but active duty family members who enroll in TRICARE Prime have priority over all other beneficiaries.

TRICARE Prime incorporates the "Uniform HMO Benefit Option," which was mandated by Section 731 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §731, 107 Stat. 1547, 1696 (1993). It required the establishment of a Uniform HMO Benefit Option, which was required "to the maximum extent practicable" to be included "in all future managed health care initiatives undertaken by" the Department of Defense. This option is to provide "reduced out-of-pocket costs and a benefit structure that is as uniform as possible throughout the United States". The 1994 Authorization Act further requires a determination that, in the managed care initiative that includes the Uniform HMO Benefit Option, Department of Defense costs are to be "no greater than the costs that would otherwise be incurred to provide health care to the covered beneficiaries who enroll in the option."

In addition to this provision of the 1994 Authorization Act, a similar requirement was established by Section 8025 of the Department of Defense Appropriations Act, 1994, Public Law 103-139, §8025, 107 Stat. 1418, 1443-1444 (1993). As part of an initiative "to implement a nationwide managed health care program for the MHSS," the Department of Defense was required to establish "a uniform, stabilized benefit structure characterized by a triple option health benefit feature." The Uniform HMO Benefit also implements this requirement of law. It offers reduced cost sharing to CHAMPUS-eligible beneficiaries who enroll in TRICARE Prime.

TRICARE/CHAMPUS supports both the active-duty and retired communities. For a more detailed description of the TRICARE/CHAMPUS system considered as a whole, the reasons for its adoption in the first instance, and how it is administered, see Appendix X of this volume, "CHAMPUS AND TRICARE."

**Current status of medical care for members and their dependents**: Military personnel are entitled to medical and dental care at military medical facilities or medical facilities of any of the uniformed services. 10 U.S.C. §1074(a). The primary form of health care authorized for dependents or survivors of active-duty military personnel is TRICARE/CHAMPUS[12], although dependents or survivors may be treated at military medical facilities depending on "availability of space and facilities and the capabilities of the medical and dental staff." 10 U.S.C. §1076(b) (dependents or survivors of members).[13] For additional information about the TRICARE/CHAMPUS system, see the TRICARE website at http://www.tricare.osd.mil.

**Cost**: For the cost of medical care for active-duty personnel and their dependents from 1978 to 1995, see Table IV-4 of *Military Compensation Statistics Tables*, volume II of this edition.

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[12] But see footnote 1 to Chapter III.D.1. hereof, "Retired Members Medical Care," above.

[13] The service regulations that establish priorities for medical care for service members and their dependents and survivors are as follows: for the Army, AR 40-3, chapter 4; for the Navy, NAVMED 6320.33; and for the Air Force, AFR 168-6, chapter 1.

## Chapter IV.C.1.

### Government Contribution to Social Security

**Legislative Authority**: Sections 3101, 3111, and 3121 of the Internal Revenue Code of 1986, 26 U.S.C. §§3101, 3111, and 3121, respectively.

**Purpose**: To require employees and employers—in the present case, members of the uniformed services and the Federal Government, respectively—to jointly finance a Federal Old-Age, Survivors, Disability, and Health Insurance (OASDHI) program in order to provide pre- and post-retirement income and security to covered employees and their families.

**Background**: Section 3101 of the Internal Revenue Code of 1986,[1] 26 U.S.C. §3101, as amended, imposes certain taxes on "wages" received by "employees" in certain types of "employment". Matching taxes are imposed on the "employers" of covered employees by Section 3111 of the Code, 26 U.S.C. §3111. Since the short title of the chapter of the Internal Revenue Code that imposes such taxes is the "Federal Insurance Contributions Act," the taxes themselves are sometimes referred to by the acronym "FICA," although in common parlance they are more frequently referred to as "Social Security taxes." Employment of an individual in the uniformed services qualifies as "employment" for purposes of the Social Security Act of 1935, ch. 531 [Public Law 271, 74th Congress], 49 Stat. 620 (1936), with the result that "wages" paid to members of the uniformed services are subject to Social Security taxes. See, *e.g.*, IRC §3121(m) and (n), 26 U.S.C. §3121(m) and (n).

Section 3101 of the Internal Revenue Code effectively imposes two different types of Social Security, or FICA, taxes. Section 3101(a) of the Code, 26 U.S.C.

[1] The Internal Revenue Code of 1954 was redesignated as the Internal Revenue Code of 1986 by Section 2(a) of the Tax Reform Act of 1986, Public Law 99-514, §2(a), 100 Stat. 2085, 2095 (1986). As redesignated, the Internal Revenue Code of 1986 is classified to Title 26, United States Code. The Internal Revenue Code of 1986, as amended, is hereinafter variously referred to as the "Internal Revenue Code" or, more simply, the "Code".

§3101(a), imposes a tax on the "wages" of "employees" for the benefit of the "Old-Age, Survivors, and Disability Insurance" fund (OASDI), from which Social Security retirement benefits are paid; Section 3101(b) of the Code, 26 U.S.C. §3101(b), imposes a tax on the "wages" of "employees" for the benefit of the "Hospital Insurance" fund (HI), from which Social Security "Medicare" benefits are paid. The amount of the OASDI portion of Social Security taxes is equal to 6.2 percent of an individual's "wages," up to the "contribution and benefit base," which was $87,900 in 2004.[2] The amount of the HI portion of Social Security taxes is equal to 1.45 percent of an individual's total "wages"--with no ceiling on the amount of wages subject to the tax. Under Section 3121(i)(2) of the Code, 26 U.S.C. §3121(i)(2), the "wages" paid to a member of the uniformed services that are subject to Social Security taxes are limited to the basic pay received by the member, in the case of a member on active duty, or to the "compensation" received by a member for inactive-duty training, in the case of a member entitled to compensation for inactive-duty training under 37 U.S.C. §206(a).[3]

The Social Security, or FICA, tax increased as additional coverage, such as Medicare, was added. The increases have occurred in both the tax rate and in the annual wage base ceiling on which the tax is imposed. This chapter contains a schedule of annual wage base ceilings, tax rates, and maximum contributions for the years 1937 through 2004. As previously indicated, only the basic pay of a member of the active-duty components of the uniformed services constitutes "wages" for FICA purposes. Section 3121(i)(2) of the Internal Revenue Code, 26 U.S.C. §3121(i)(2). Also see Section 3121(m) and (n) of the Internal Revenue Code, 26 U.S.C. §3121(m) and (n), for various definitions applicable to military service. Highlights of the OASDHI program follow the schedule of FICA wage base ceilings, tax rates, etc., referred to above.

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[2] The "contribution and benefit base" is referred to hereinafter as the "wage base".

[3] "Compensation" paid under 37 U.S.C. §206 to members of the reserve components of the Armed Forces performing inactive-duty training also--pursuant to amendments to the Internal Revenue Code made by the Omnibus Budget Reconciliation Act of 1987--constitute "wages" for FICA purposes. Section 3121(i)(2) of the Internal Revenue Code of 1986, 37 U.S.C. §3121(i)(2), as amended by the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, §9001(b)(2), 101 Stat. 1330, 1330-286 (1987).

**The Social Security Act**: The Social Security Act of 1935, ch. 531 [Public Law 271, 74th Congress], 49 Stat. 620 (1936), created a federal system of old-age benefits for retired workers who had been employed in industry or commerce. In 1939 Congress changed the concept of the system from an old-age security program to a family security program by providing benefits for a worker's dependents and survivors. The system has evolved into a set of old-age, retirement, and disability benefits for the principal; survivor benefits for the principal's widow or widower and dependent children; and health insurance (Medicare) benefits for those over age 65 and those disabled before age 65.

Additionally, matching federal grants are provided to the states under the Social Security Act, ch. 531, *id.*, for public assistance programs such as old-age assistance, aid to families with dependent children, aid to the blind, and aid to the permanently and totally disabled. The act also authorizes federal tax offsets to employers and grants to states to induce them to enact employment insurance laws. The grants to the states are financed from general revenues and not from employee and employer contributions to the OASDHI program.

Beginning in 1946, Congress enacted a series of amendments to the Social Security Act, ch. 531, *id.*, that extended some benefits to military personnel and their survivors. The theory underlying the extension of Social Security benefits to this class of persons was that service in the Armed Forces of the United States would not, by its very nature, be a life-time career for the vast majority in service at any one time but should instead be seen as interrupting, or taking the place of, a portion of a member's civilian career that would be resumed upon release from active military service. Accordingly, OASDHI benefits were extended to cover military service so that affected personnel would have full--rather than interrupted, or partial--coverage, thus leaving such personnel in the same position they would have otherwise been in had they not entered the Armed Forces.

The Servicemen's and Veterans' Survivor Benefits Act, ch. 837 [Public Law 881, 84th Congress], §401, 70 Stat. 857, 869-870 (1956), brought members of the uniformed

services on active duty into the contributory Social Security system effective January 1, 1957.[4] The Social Security provision was but one part of the act, the primary purpose of which was to overhaul and integrate the benefit programs for survivors of deceased military personnel that, as described by Congressional spokesmen, were then a "complete hodgepodge" and a "jumble of laws." The financial integrity of the Social Security System was also a factor in making military personnel full-fledged members, although such considerations were stated to be secondary. The "gratuitous" benefits that, starting in 1946, had been authorized for military personnel and their survivors were causing a drain on the Social Security trust fund. This drain was being reimbursed out of the general fund of the United States Treasury. It was thought that it would be more economical to the government to make contributions to the trust fund as the employer of military personnel than to reimburse the fund for "free" benefits to such personnel.

As full participants in the Social Security system, military personnel are in general entitled to the same benefits and are subject to the same eligibility criteria and rules as other employees. As of October 1, 2001, TRICARE became a second-payer to Medicare for retirees over age 64.[5] Beneficiaries pay no enrollment fees, co-pays, or deductibles. Eligibility continues for medical care in military facilities on a space-available basis. One feature of OASDHI unique to military personnel grants a noncontributory wage credit of (i) $300 for each quarter between 1956 and 1978 in which such personnel received military "wages" and (ii) up to $1,200 per year ($100 of credit for each $300 of "wages" up to a maximum credit of $1,200 for years after 1977 through 2002). The purpose of this credit is to take into account elements of compensation such as quarters and subsistence not included in the "wages" with respect to which Social Security benefit payments are determined once a person achieves eligibility for benefits.

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[4] In bringing members of the uniformed services on active duty into the Social Security system, Section 401 of the Servicemen's and Veterans' Survivor Benefits Act, ch. 837 [Public Law 881, 84th Congress], §401, 70 Stat. 857, 869-870 (1956), provided, *inter alia*, ... in the case of an individual performing service, as a member of a uniformed service ... the term "wages" shall ... include as such individual's remuneration for such service only his basic pay....
This rule is perpetuated in the *Internal Revenue Code of 1986* at Section 3121(i)(2)(A), 26 U.S.C. §3121(i)(2)(A). See IRC §3121(i)(2)(A), 26 U.S.C. §3121(i)(2)(A).

[5] For a discussion of this medical care system, see Chapter IVB4, “Medical Care for Active Duty Personnel and Their Dependents,” and Appendix X, “CHAMPUS AND TRICARE.”

The Social Security trust funds are reimbursed from Federal general revenues for the additional cost of benefits resulting from the noncontributory wage credit.

A description of how the Social Security program works in practice is set out under the heading, "The OASDHI Program," following the cost and financing data set out on the two following pages.

**Schedule of Annual Wage Base Ceilings and Maximum Contributions, 1937-1992**

| Calendar Year | Annual Wage Base Ceiling | Maximum Employer and Employee Contribution (each) |
|---|---|---|
| 1937-1949 | $3,000 | $30.00 |
| 1950 | $3,000 | $45.00 |
| 1951-1953 1) | $3,600 | $54.00 |
| 1954 | $3,600 | $72.00 |
| 1955-1956 | $4,200 | $84.00 |
| 1957-1958 2) | $4,200 | $94.50 |
| 1959 | $4,800 | $120.00 |
| 1960-1961 | $4,800 | $144.00 |
| 1962 | $4,800 | $150.00 |
| 1963-1965 | $4,800 | $174.00 |
| 1966 | $6,600 | $277.20 |
| 1967 | $6,600 | $290.40 |
| 1968 | $7,800 | $343.20 |
| 1969-1970 | $7,800 | $374.40 |
| 1971 | $7,800 | $405.60 |
| 1972 | $9,000 | $468.00 |
| 1973 | $10,800 | $631.80 |
| 1974 | $13,200 | $772.20 |
| 1975 | $14,100 | $824.85 |
| 1976 | $15,300 | $895.05 |
| 1977 | $16,500 | $965.25 |
| 1978 | $17,700 | $1,070.85 |
| 1979 | $22,900 | $1,403.77 |
| 1980 | $25,900 | $1,587.67 |
| 1981 | $29,700 | $1,975.05 |
| 1982 | $32,400 | $2,170.80 |
| 1983 | $35,700 | $2,391.90 |
| 1984 | $37,800 | $2,646.00 |
| 1985 | $39,600 | $2,791.80 |
| 1986 | $42,000 | $3,003.00 |
| 1987 | $43,800 | $3,131.70 |
| 1988 | $45,000 | $3,379.50 |
| 1989 | $48,000 | $3,604.80 |
| 1990 | $51,300 | $3,924.45 |
| 1991 | $53,400 | $4,075.10 |
| 1992 | $55,500 | $4,245.75 |

## Schedule of Tax Rates, 1937-1992

| Calendar Year | Employer and Employee Tax Rate (each), OASDI 3) | Employer and Employee Tax Rate (each), HI | Employer and Employee Tax Rate (each), Total |
|---|---|---|---|
| 1937-1949 | | | 1.00% |
| 1950 | | | 1.50% |
| 1951-1953 1) | | | 1.50% |
| 1954 | | | 2.00% |
| 1955-1956 | | | 2.00% |
| 1957-1958 2) | | | 2.25% |
| 1959 | | | 2.50% |
| 1960-1961 | | | 3.00% |
| 1962 | | | 3.125% |
| 1963-1965 | | | 3.625% |
| 1966 | 3.85% | 0.35% | 4.20% |
| 1967 | 3.90% | 0.50% | 4.40% |
| 1968 | 3.80% | 0.60% | 4.40% |
| 1969-1970 | 4.20% | 0.60% | 4.80% |
| 1971 | 4.60% | 0.60% | 5.20% |
| 1972 | 4.60% | 0.60% | 5.20% |
| 1973 | 4.85% | 1.00% | 5.85% |
| 1974 | 4.95% | 0.90% | 5.85% |
| 1975 | 4.95% | 0.90% | 5.85% |
| 1976 | 4.95% | 0.90% | 5.85% |
| 1977 | 4.95% | 0.90% | 5.85% |
| 1978 | 5.05% | 1.00% | 6.05% |
| 1979 | 5.08% | 1.05% | 6.13% |
| 1980 | 5.08% | 1.05% | 6.13% |
| 1981 | 5.35% | 1.30% | 6.65% |
| 1982 | 5.40% | 1.30% | 6.70% |
| 1983 | 5.40% | 1.30% | 6.70% |
| 1984 | 5.70% | 1.30% | 7.00% |
| 1985 | 5.70% | 1.35% | 7.05% |
| 1986 | 5.70% | 1.45% | 7.15% |
| 1987 | 5.70% | 1.45% | 7.15% |
| 1988 | 6.06% | 1.45% | 7.51% |
| 1989 | 6.06% | 1.45% | 7.51% |
| 1990 | 6.20% | 1.45% | 7.65% |
| 1991 | 6.20% | 1.45% | 7.65% |
| 1992 | 6.20% | 1.45% | 7.65% |

1. 1951-1956 military personnel were given a "free" credit of coverage at an annual earning level of $1,920.

2. Between 1956 and 1978, military personnel earnings less than the Wage Base Ceiling amount were given a "free" credit of up to $300 per quarter to the extent their basic pay was less than the Ceiling; after 1977, they were given a credit of up to $1,200 a year ($100 for each $300 of covered wages).

3. The Hospital Insurance program, popularly referred to as Medicare, started in 1966; hence, there is no breakout between OASDI and HI for years before 1966.

**Schedule of Annual Wage Base Ceilings, Tax Rates, and Maximum Contributions for Years 1993-2004**

| Calendar year | Program | Tax Rate | Maximum Wages Taxable | Maximum Annual Contribution (each) |
|---|---|---|---|---|
| 1993 | OASDI | 6.2 % | $53,400 | $3,310.80 |
| | HI | 1.45 % | $125,000 | 1,812.50 |
| | OASDI+HI | | | 5, 023.30 |
| 1994 | OASDI | 6.2% | $60,600 | 3,757.20 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |
| 1995 | OASDI | 6.2% | $61,200 | $3,794.40 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |
| 1996 | OASDI | 6.2% | $62,700 | $3,887.40 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |
| 1997 | OASDI | 6.2% | $65,400 | $4,054.80 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |
| 1998 | OASDI | 6.2% | $68,400 | $4,240.80 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |
| 1999 | OASDI | 6.2% | $72,600 | $4,501.20 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |
| 2000 | OASDI | 6.2% | $76,200 | $4,724.40 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |
| 2001 | OASDI | 6.2% | $80,400 | $4,984.80 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |
| 2002 | OASDI | 6.2% | $84,900 | $5,263.80 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |
| 2003 | OASDI | 6.2% | $87,000 | $5,394.00 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |
| 2004 | OASDI | 6.2% | $87,900 | $5,449.80 |
| | HI | 1.45% | Unlimited | Unlimited |
| | OASDI+HI | | | Unlimited |

## The OASDHI Program

### Insured Status

Eligibility for OASDHI benefits is established by the length of an individual's covered employment, measured in "quarters of coverage." A person who received covered wages of $50 or more in any calendar quarter (January-March, April-June, etc.) after 1936 but before 1978 is credited with a quarter of coverage; after 1977, the amount of wages required to receive a quarter of coverage has been systematically increased every year pursuant to a formula in the Social Security Act of 1935, ch. 531 [Public Law 271, 74th Congress], 49 Stat. 620 (1936), as amended. In 1978, a person needed $250 of wages to secure a quarter of coverage; following regular increases in the interim years, in 2004, the amount necessary to secure a quarter of coverage was $900.

A member of the Armed Forces on active duty for more than 90 days between September 16, 1940, and December 31, 1956, earned a quarter of coverage for each calendar quarter during any part of which such active duty was performed, even though active duty service in the Armed Forces was not at that time deemed to be "covered employment". As a general rule, these "free" military credits cannot be used by a member of an armed force retired by reason of length of service before January 2, 1957. A member retired for length of service after January 1, 1957, can use only those military credits earned from January 1, 1951, through December 31, 1956.

Persons born in 1929 or later attain a "fully insured" status by acquiring 40 quarters of coverage. Those born in 1913 through 1928 attain a fully-insured status by acquiring quarters of coverage equal to the number of years from 1951 to the year they reach age 62. Thus, a person born in 1920, for example, requires 31 (1982-1951) quarters of coverage. Men born in 1910 through 1912 need 24 quarters of coverage to have a fully insured status; those born before 1910 became fully insured when they acquired quarters of coverage equal to the number of years from 1951 to the year they reached age 65. Women born before 1913 became fully insured when they acquired quarters of coverage equal to the number of years from 1951 to the year they reached age 62. Once a person

attains a fully insured status, that status exists for life, and no further employment is needed to maintain it. A person may be eligible for disability benefits even if not fully insured, just as the survivors of a decedent who had not attained a fully insured status may be eligible for survivors benefits.

## Benefits in General

Monthly Social Security benefits are now tied to the cost of living as measured by the Consumer Price Index and are increased automatically each year as the cost of living rises. Every year living costs are compared to those of the year before, and if living costs have increased over the previous year, benefits are increased by the same percentage. Increases in benefits become effective in January following the month cost-of-living determinations are made.

The contribution and benefit base (also referred to as the annual wage base ceiling) --the maximum amount of annual earnings on which OASDI taxes are paid and that is creditable for benefits--is also affected by cost-of-living increases. Every time there is an increase in Social Security benefits, the commissioner of Social Security is required to determine by November 1 of that same year a new wage base ceiling for the following year. The wage base ceiling for 2004 was $87,900.

## Retirement (Old-Age) Benefits

From 1990 until 1999, persons retiring at the established “normal retirement age” of 65 received full, unreduced Social Security benefits [6] Starting in the year 2000, however, the "normal retirement age"--the age at which full, unreduced benefits are payable--increased in gradual steps until it reached 67 years of age for individuals born in 1960 or later (see table below). This increase in the "normal retirement age" affects only persons born in 1938 or later. Beginning in 2000, reduced benefits still were payable at

[6] Persons seeking Social Security retirement benefits at age 62 currently receive 80 percent of the amount of the benefit they would receive if they did not seek retirement benefits until age 65.

age 62, but the reduction in benefits was even larger, as a percentage of the total benefits payable, than had been the case previously.

According to what is referred to as the “retirement earnings test,” persons under the normal retirement age (NRA) have benefits reduced if their "retirement earnings" exceed certain stated amounts. The purpose of the earnings test is to assure that benefits are paid to a worker only when he has substantially retired and to his dependents and survivors only when they do not have substantial earnings from work.

Beginning in 2000, the Social Security Administration used two annually adjusted earnings figures, called exemption amounts, to determine benefit reductions for persons who are below the NRA and receiving non-pension earnings. In this system, for every $2 of annual earnings in excess of the lower exemption amount (set at $11,640 in 2004), Social Security benefits are reduced by $1 for individuals below the NRA. However, earnings that exceed a second benchmark, the higher exemption amount ($31,080 in 2004), bring about a benefits reduction calculated at a different rate, $1 for every $3 earned above that amount. Thus, in 2004 an individual who was born in 1940 (thus falling below the NRA) and earned $31,080 would have a benefit reduction for that year of $9,720 ($1 for each $2 in the $19,440 by which the person’s earnings exceed the lower exemption amount, $11,600). If the same individual earned $32,280 instead of $31,080, the benefits would be reduced by an additional $400, or $1 for every $3 in the $1,200 by which earnings exceeded the higher exemption amount. For this purpose, "earnings" means income such as wages, commissions, or bonuses produced as a result of work or effort.[5] Dividends or interest, retirement pay, insurance policy proceeds, rental income, and other similar sources of income are not deemed to be "earnings" for the purposes of the "retirement earnings test" and thus do not reduce Social Security benefits.

The following table shows "normal retirement age" by year of birth:

| **Year of Birth** | **Normal Retirement Age** |
|---|---|
| 1937 or earlier | 65 Years |
| 1938 | 65 Years 2 Months |
| 1939 | 65 Years 4 Months |
| 1940 | 65 Years 6 Months |

| | |
|---|---|
| 1941 | 65 Years 8 Months |
| 1942 | 65 Years 10 Months |
| 1943 through 1954 | 66 Years |
| 1955 | 66 Years 2 Months |
| 1956 | 66 Years 4 Months |
| 1957 | 66 Years 6 Months |
| 1958 | 66 Years 8 Months |
| 1959 | 66 Years 10 Months |
| 1960 or later | 67 Years |

A person who does not apply for Social Security benefits until sometime after reaching "normal retirement age" receives so-called "delayed retirement credits." These credits, which increase the amount of the retirement benefit the person will receive when he or she retires, apply until the month the individual reaches age 70. At that age, everyone is eligible to receive benefits without regard to the "retirement earnings test" referred to above, and no one should have any incentive to further delay receipt of Social Security retirement benefits. The following table shows the "delayed retirement credits" an individual will receive for each month past age 65 that the individual delays receiving retirement benefits:

| **Year in Which Individual Attains Age 65** | **Monthly Percentage Credit** | **Yearly Percentage Credit** |
|---|---|---|
| Before 1982 | 1/12 of 1% | 1% |
| 1982-1989 | 1/4 of 1% | 3% |
| 1990-1991 | 7/24 of 1% | 3.5% |
| 1992-1993 | 1/3 of 1% | 4% |
| 1994-1995 | 3/8 of 1% | 4.5% |
| 1996-1997 | 5/12 of 1% | 5% |
| 1998-1999 | 11/24 of 1% | 5.5% |
| 2000-2001 | 1/2 of 1% | 6% |
| 2002-2003 | 13/24 of 1% | 6.5% |
| 2004-2005 | 7/12 of 1% | 7% |
| 2006-2007 | 5/8 of 1% | 7.5% |
| 2008 or later | 2/3 of 1% | 8% |

Thus, for example a person reaching age 65 in the year 2000 who delays applying for Social Security retirement benefits until the month in which he or she reaches age 68 would be eligible for an increase in his or her monthly retirement benefit of 3 times 6%,

or 18%, over what that benefit would have been if the person had been 65 instead of 68 when he or she first applied for retirement benefits.

Anyone who is eligible and has applied for Social Security retirement benefits is entitled to a monthly payment that represents a portion of average Social Security earnings over a number of years. For a person born before 1930, average earnings are usually computed from 1951 to the year the person reaches age 62. For a person born in 1930 or later, the average will be figured from the year the person became 22 to the year he or she became 62. Five years of zero or low earnings during the period may be disregarded in computing the average. Thus, for example, the retirement benefit of a person reaching age 62 in 1982 would be determined by averaging that person's earnings over 26 ((1982-1951)-5) years. Persons in active military service during the period from 1951 through 1956 are deemed to have Social Security earnings of $1,920 a year ($160 a month) for this purpose. Years of high earnings after reaching 62 can be substituted for earlier years of low earnings, but the number of years used in the computation will not change.[7]

After average monthly Social Security earnings have been calculated, the retirement benefit payable at the "normal retirement age"--the primary insurance amount--is determined from a benefit formula prescribed by law. This formula is revised by the commissioner of Social Security whenever a cost-of-living increase in Social Security benefits occurs or when there is a change in the national average wage index for the United States. If a person elects to receive a retirement benefit between age 62 and "normal retirement age," the primary insurance amount is reduced by a certain percentage

[7] For this reason, in addition to the possibility of receiving higher Social Security retirement benefits because of the "delayed retirement credits" referred to above, an individual may also receive higher Social Security retirement benefits by delaying retirement past "normal retirement age," thereby receiving additional Social Security earnings, which may increase the individual's average annual Social Security earnings on which Social Security retirement benefits are determined.

for each month the person is under "normal retirement age" in order to compensate--actuarially--for the longer expected benefits-receipt period. [8]

The spouse of a person receiving a retirement benefit is eligible for a "wife's or husband's benefit" equal to one-half the covered employee's benefit if the spouse is "caring for" the insured's dependent child who is eligible for child's benefits on the employee's earning record. For the purpose of the wife's or husband's benefit, the term "dependent child" includes children under 16 as well as those disabled. A child under 18, or a child 18 to 19 if a full-time elementary or secondary school student, or a child disabled before age 22, of a person receiving an old-age benefit, is eligible, while unmarried, for a separate child's benefit equal to one-half the beneficiary's benefit if the beneficiary is alive or to three-quarters of the beneficiary's benefit if the beneficiary is dead.

Even though a retiree may be eligible for a retirement benefit and the retiree's spouse and children may additionally all be otherwise eligible for a percentage of such benefit, the total amount that may be paid on the beneficiary's Social Security account is limited by a ceiling (called the maximum family benefit). This ceiling varies with the amount of the retirement benefits.

Where dependent children are not involved, the spouse of a person receiving an old-age benefit is entitled at the spouse's "normal retirement age" to a "wife's or husband's benefit" equal to one-half the primary beneficiary's benefit. The spouse may elect to receive this benefit as early as age 62, in which case the benefit is reduced by an actuarially determined percentage for each month the spouse is under "normal retirement

[8] A person electing retirement benefits at age 62 will receive only 80 percent of the benefits a person retiring at the "normal retirement age" would receive. Persons retiring after age 62 but before age 65 receive retirement benefits greater than the 80 percent applicable to persons retiring at age 62 but less than the full benefit applicable to persons retiring at the "normal retirement age."

age."[9] A spouse who is eligible for a Social Security benefit on his or her own earnings and who is also eligible for a wife's or husband's benefit draws her or his own benefit plus the excess, if any, of the wife's or husband's benefit over his or her own. In effect, the spouse receives the larger of the two. Benefits are payable to a divorced spouse who was married to an entitled service member for at least 10 years. Divorced spouse benefits are payable even if the service member is not yet receiving benefits. In addition to the requirement that a marriage last at least 10 years for a divorced spouse to be entitled to benefits on the service member's record, the service member must be age 62 or older, fully insured, and divorced for at least two continuous years.

**Survivor Benefits**

The surviving spouse, and the divorced surviving spouse, of a person with a fully-insured or currently-insured status is eligible for a "mother's" or "father's" benefit equal to three-fourths of the insured's primary insurance amount while the survivor is "caring for" the deceased's entitled children, provided that, in the case of a divorced surviving spouse, any children on whose behalf a benefit is payable must be the divorced surviving spouse's natural or legally adopted children. For the purpose of this benefit, a dependent child includes one who is under 16 or one disabled before age 22, but does not include a student age 16 through 21. A child under 18, or a child 18 to 19 if a full-time elementary or secondary school student, or a child disabled before age 22, of a person who was fully insured or currently insured at the time of death, is eligible, while unmarried, for a child's benefit equal to three-fourths of the individual's primary insurance amount. However, the total payments that can be made to a surviving spouse and children are limited by the maximum family benefit ceiling.

[9] The "normal retirement age" for a spouse born before 1938 is 65; for spouses born after 1937, the "normal retirement age" is the same as that set out for retirees under the "Retirement Benefits" heading, above.

Where dependent children are not involved, the surviving spouse of a person with a fully-insured status is eligible at "normal retirement age" for a widow's or widower's benefit equal to 100 percent of the insured's primary insurance amount, unless the insured was receiving a retirement benefit at the time of death. If the insured was receiving a reduced retirement benefit at the time of death, the widow's or widower's basic benefit cannot be more than the insured would be getting if still alive, except that the benefit amount cannot be reduced to less than 82 1/2 percent of the insured's primary insurance amount. The surviving spouse may elect to receive the widow's or widower's benefit between age 60 and "normal retirement age," in which case the surviving spouse's basic benefit is reduced by an actuarially determined percentage for each month the spouse is under "normal retirement age." A disabled widow or widower or a disabled surviving divorced spouse may be eligible for reduced benefits at age 50.

When an insured person with a fully-insured or currently-insured status dies, that person's widow or widower is also entitled to a lump-sum payment of $255 if the two were "living together," to use as the surviving spouse sees fit. If there is no "living with" surviving spouse, the lump sum is paid to a surviving spouse who was eligible for or entitled to benefits on the service member's record for the month of death. If there is no such surviving spouse, the lump-sum benefit is payable to the surviving child or children of the service member who was eligible for or entitled to a benefit on the service member's record for the month of death.

**Disability Benefits**

To qualify for disability benefits, a person must have a fully-insured status and, if 31 or older at the onset of the disability, have acquired at least 20 quarters of coverage in the 40 calendar quarters ending with the quarter in which disabled. A person disabled before age 31 must have been covered for one-half the quarters after age 21 up to the date of disability.

A qualified person who is disabled within the meaning of the Social Security Act of 1935, ch. 531, *id.*, as amended, is entitled, after being disabled for 5 full consecutive

months, to a disability benefit based on average Social Security earnings, with no actuarial reduction in the benefit regardless of age. For the purposes of the Social Security Act, the term "disability" is defined as the inability to engage in any substantial gainful activity because of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months. For persons born before 1930, average earnings are usually computed from 1951 to the year of disability. For a person born in 1930 or later, the average earnings are computed from the year the person became 22. Different agencies have different standards, and a person might be rated 100 percent disabled by a military service or the Department of Veterans Affairs and not qualify for a Social Security disability benefit. Conversely, a person might qualify for a Social Security disability benefit even though not rated as disabled or rated as less than 100 percent disabled by another agency. A disability benefit converts to an old-age benefit when the beneficiary reaches age 65.

Children's benefits and wife's and husband's benefits (including benefits payable to divorced former spouses) are payable on the Social Security account of a person receiving a disability benefit in the same percentages and under the same eligibility criteria as apply in the case of a person receiving an old-age benefit.

**Health Insurance for the Aged and Disabled (Medicare)**

In 1965 Congress amended the Social Security Act of 1935, ch. 531, *id.*, as amended, by establishing two related contributory health insurance plans for virtually all persons aged 65 and over: a basic compulsory program of hospital insurance and a voluntary program of supplementary medical insurance. Effective July 1, 1973, such Medicare coverage was extended to certain severely disabled persons under 65, including disabled workers, disabled widows and widowers, and childhood disability beneficiaries.

The employee and employer Hospital Insurance taxes paid while an individual is working are used to finance the basic compulsory plan that provides insurance against the

costs of inpatient hospital services and related post-hospital extended care for individuals who are eligible for Social Security benefits when they reach age 65 (whether retired or not), and for disabled individuals (but not their dependents), regardless of age, who have been entitled to Social security benefits for at least two consecutive years.

As of October 1, 2001, retired members of the uniformed services, their dependents, and dependents of deceased members no longer lose their inpatient and outpatient coverage under the TRICARE/CHAMPUS system when they become eligible for Medicare's basic hospital insurance program (even if they decline its supplementary medical insurance plan). TRICARE/CHAMPUS is a "last pay" health benefits program for these classes of persons, and they cannot choose between it and Medicare once they become eligible for the latter. However, such persons continue to be eligible, under DoD policy, for space-available health care in uniformed services facilities after achieving Medicare eligibility.[10]

Under the hospital insurance plan, after the patient pays a deductible, Medicare pays the remaining costs of hospital services, such as semiprivate accommodations, operating room, and laboratory tests and X-rays, for the first 60 days of hospitalization during each benefit period. A benefit period begins when the individual is admitted to a hospital and ends when he has not received inpatient hospital or skilled nursing facility services for 60 consecutive days. For each day of hospitalization from the 61st through the 90th, the patient pays a set "coinsurance" amount for hospital services and Medicare pays the balance. After 90 days of hospitalization in a benefit period, each beneficiary has a "lifetime reserve" of 60 days of hospital care for his optional use at a still higher "coinsurance" cost to him.

Post-hospital extended care services in an institution or convalescent section of a hospital that qualifies as a skilled nursing facility are also authorized under the hospital insurance plan, after three or more days of hospitalization. This plan provides for up to

[10] See Chapter III.D.1. hereof, "Retired Members Medical Care," above.

100 days of extended care in each benefit period. There is no cost to the patient for services during the first 20 days, but he pays a certain "coinsurance" amount per day for each of the remaining 80 days used. Additionally, the plan authorizes certain post-hospital home health services following a stay of three or more days in a hospital or skilled nursing facility and before the beginning of a new benefit period.

Persons eligible for the basic compulsory hospital insurance are automatically enrolled in the supplementary medical insurance program but have the option of declining such coverage. All persons covered by the supplementary medical insurance program pay a monthly premium for such coverage. The premium is deducted from the benefit payments of persons in receipt of cash payments. After the participant has paid an annual deductible, supplementary medical insurance covers 80 percent of the reasonable charges or costs for items such as physicians or surgeons or outpatient services, outpatient hospital services, and prosthetic lenses and devices other than dental.

**Cost**: For the cost of the government contribution to Social Security from 1972 to 2004, see Table IV-5 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter IV.C.2.**

## Survivor Benefit Plan (SBP)

**Legislative Authority**: 10 U.S.C. §§1447-1460b.

**Purpose**: To establish a program to insure that the surviving dependents of military personnel who die in retirement or after becoming eligible for retirement will continue to have a reasonable level of income.

**Background**: The survivors of a retired member of the Armed Forces who dies in retirement or after becoming eligible for retirement may or may not, depending on circumstances, be entitled to cash payments from one or more government benefit programs. Government benefits could, for example, include Social Security payments to a surviving spouse--if the spouse had children in his or her care or was at least 60 years of age. They could include VA dependency and indemnity compensation--if the member's death resulted from a disease or injury traceable to active service. Or they could include a VA non-service-connected death pension--if the survivor's or survivors' income is less than specified levels. But the Survivor Benefit Plan is the only means by which a retired member can insure that his or her immediate family will be provided with continued government income under any and all circumstances at a level dictated by the member, within established bounds, after the member's death.

The Uniformed Services Contingency Option Act of 1953, ch. 393 [Public Law 239, 89th Congress], §3, 67 Stat. 501, 502 (1953), was the first law to permit military members to receive reduced retired pay during their lifetime in return for insuring that their widows and eligible children would receive an annuity after their death. Under this act, retired members were in effect allowed to pass on part of their retired pay to future survivors. The act provided, however, that the mechanism for so doing had to be constructed on an actuarially self-supporting basis. Hence, a member's contribution costs, *i.e.*, the amount of the reduction in the member's retired or retainer pay entitlement, were determined on the basis of the member's age and the age of the member's eligible dependents at the time of retirement, and by whether the member was retired for

disability or nondisability. Under the original Contingency Option Plan, members could elect, before the completion of their 18th year of service, to leave their survivors an annuity of either one-half, one-fourth, or one-eighth of their initial retired pay, where the amount of such "retired pay" in the case of any particular individual was the amount of such pay as reduced by the amount of the contribution.

The Contingency Option Plan did not prove attractive to most of the members eligible for it because it was quite expensive in terms of the reduction in current retired pay required to effect the election. For example, the cost per dollar of coverage was 22.8 cents for a member who retired for other than disability at age 45 with a wife five years younger. In addition, contributions were subject to taxation, so that a participating retired member had to pay taxes on income he never in fact received. The requirement of an election by the end of the 18th year of service gave a pig-in-a-poke quality to what should have been an informed decision. A member had to commit himself at that point to buy an annuity based on a highly unknown quantity--namely, the amount of his retired pay entitlement some two to twelve years hence. And the future cost of the commitment was even more uncertain, because the cost per dollar as well as the dollar amount of the annuity was subject to change in the interval between election and retirement. Furthermore, since the survivor annuity was based on a member's initial retired pay and remained frozen at that level, inflation in the general cost of living could cause a decrease in the real purchasing power of the annuity. In practice, unchecked inflation rapidly eroded the real purchasing power of the annuity, and for this reason also, the plan never became truly successful. Subsequent legislation chipped away at some of these shortcomings, but neither the Contingency Option Plan, nor the Retired Serviceman's Family Protection Plan, as it was later renamed, achieved a participation rate of more than 15 percent at any time during their 19 years of existence.

The Act of October 4, 1961, Public Law 87-381, §2, 75 Stat. 810 (1961), which changed the name of the Contingency Option Plan to the "Retired Serviceman's Family Protection Plan" (RSFPP), was designed to make the election procedures of the program more flexible. Originally, members could not enter the Contingency Option Plan unless

they so elected before the start of their 18th year of service. An election made before the 18th year could thereafter be changed or revoked, but the change or revocation was not effective unless the member remained on active duty for at least five years after making it. The Act of October 4, 1961, Public Law 87-381, *id*., permitted a member to elect to participate in RSFPP after the start of the member's 18th year of service, but the election was effective only if the member remained on active duty for at least three years after election. It also reduced from five to three years the period of subsequent active duty required to make a post-18-year change or revocation effective. The act further authorized the Secretaries of the military departments to permit a retired member to withdraw from RSFPP because of "extreme financial hardship." Though these changes brought more flexibility to the plan, they did not alter its self-supporting character, and the liberalization of the procedures had the effect of increasing the cost of the plan, and hence the cost to participating members. Thus, for example, a member who retired for other than disability at age 45, with a wife five years younger than he, paid 25.3 cents per dollar of coverage, as compared with the earlier 22.8 cents per dollar.

The Act of March 8, 1966, Public Law 89-365, §1(1), 80 Stat. 32 (1966), made the amount by which retired pay was reduced because of RSFPP participation exempt from income taxation. Under this act, RSFPP was accorded the same income tax treatment as the federal civil service retirement program and other so-called "qualified pension plans." Under the Internal Revenue Code, one of the tests for favorable tax treatment for members participating in such a plan was whether the plan was funded. Since RSFPP was not "funded" within the meaning of the Internal Revenue Code, special legislation was needed to obtain the desired tax treatment. The favorable tax treatment given RSFPP under the Act of March 8, 1966, Public Law 89-365, *id*., was extended to the Survivor Benefit Plan when that plan subsequently replaced RSFPP.

The Act of August 13, 1968, Public Law 90-485, 82 Stat. 751 (1968), further liberalized various provisions of RSFPP in an attempt to obtain greater participation. It permitted elections to become effective immediately if made before the start of the 19th rather than the 18th year of service. It reduced from three to two years the period of

subsequent active duty required to make a post-19th-year election, change, or revocation effective. It allowed members to change or revoke their election between their 19th year of service and the date of retirement, without regard to the two-years-of-subsequent-active duty rule, if such a change or revocation resulted from "significantly changed family circumstances." It enabled retired members to withdraw from RSFPP or to reduce the amount of their respective annuities on their own applications, effective six months after the date of application. Previously, withdrawals had been authorized only for "extreme financial hardship," and reductions in the amount of an annuity had not been allowed. The act changed the annuity base from a member's reduced retired pay to full retired pay. Finally, instead of an election being limited to an annuity of either one-half, one-quarter, or one-eighth of a member's retired pay, the act authorized the election of an annuity in any amount specified by the member, provided the amount was not more than 50 percent nor less than 12.5 percent of the member's retired pay. As was the case with the Act of October 4, 1961, Public Law 87-381, *id.*, however, this liberalization further increased the costs to participating members. The cost to a member who retired for other than disability at age 45, to use the same example as above, with a wife five years younger soared to 42.9 cents per dollar of coverage.

The Uniformed Services Survivors' Benefits Amendments of 1978, Public Law 95-397, 92 Stat. 843 (1978), made several changes to RSFPP designed to improve the benefits available to persons already receiving annuities thereunder. First, and possibly most important, the act, *id.*, §101(a)(3), 92 Stat. at 843, provided that RSFPP annuities payable to survivors of members who died before March 20, 1974, would thereafter be subject to adjustment for increases in the cost of living. Such adjustments ~~to~~ would take effect at the same time, and in the same percentage amount, as retired and retainer pay adjustments take effect under 10 U.S.C. §1401a.[1] [2] Second, the act, *id.*, §101(a)(1) and

[1] Under the provision in question, the RSFPP annuities of survivors of members who had died on or before March 20, 1974, were adjusted on October 1, 1978, by the percentage by which retired and retainer pay had been increased since September 21, 1972.

[2] RSFPP cost-of-living adjustments were authorized because, since RSFPP annuities had not theretofore been indexed, "inflation ha[d] seriously eroded the purchasing power of the fixed amount paid to RSFPP

(2), 92 Stat. at 843, permitted RSFPP annuitants who remarried after age 60 to continue to receive RSFPP payments.[3]

A further perfecting change was made to RSFPP by the Department of Defense Authorization Act, 1985, Public Law 98-525, §642(a)(1)(B), 98 Stat. 2492, 2545-2546 (1984). At the behest of the Senate Armed Services Committee, Congress amended RSFPP to permit the Secretaries of the various military departments to determine, under certain circumstances, that a missing person may be presumed dead, with the result that the person's RSFPP beneficiaries therefore became entitled to RSFPP payments. Under the amendment effected by the 1985 Authorization Act, a service Secretary may determine that a participant who is missing may be presumed dead for the purposes of RSFPP entitlements if the surrounding circumstances would reasonably indicate the person is in fact dead, provided the person has been missing for at least 30 days. As indicated by the Senate Armed Services Committee, the amendment was intended to cure a "deficiency" in the program--also in the Survivor Benefit Plan, see below--under which a retired person's survivors could neither get the missing person's retired or retainer pay entitlement or RSFPP payments.[4] [5]

The Act of September 21, 1972, Public Law 92-425, §3, 86 Stat. 706, 711-712 (1972), terminated RSFPP for members retired on or after that date. In its place, the act created the Survivor Benefit Plan (SBP), enacted as new Subchapter II of Chapter 73, Title 10, United States Code, *id.*, §1(3), 86 Stat. at 706-711. SBP was not intended to be a

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annuitants." Senate Report No. 95-1138 (Committee on Armed Services), p. 2, accompanying H.R. 3702, 95th Congress, 2d Session (1978).

[3] As explained in the relevant Congressional reports, the reason for this change in RSFPP was to make it more compatible with the treatment accorded annuitants under the newer survivor benefit plan, which allowed SBP annuitants who remarried after age 60 to continue to receive their SBP annuities. See, *e.g.*, Senate Report No. 95-1138 (Committee on Armed Services), p. 3, accompanying H.R. 3702, 95th Congress, 2d Session (1978).

[4] See Senate Report No. 98-500 (Committee on Armed Services), pp. 219-220, accompanying S. 2723, 98th Congress, 2d Session (1984). *cf.*, House Report No. 98-1080 (Committee of Conference), pp. 300-301, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

[5] The same amendment was made to the survivor benefit plan.

self-supporting program: its costs were to be shared by the government and retired members. For this reason, it was much less expensive to the member in most cases than RSFPP had been.

The purpose of changing the survivor benefits program from a self-supporting to a cost-sharing plan was described by a Congressional subcommittee in these terms:

> The lack of basic survivor protection, which is a standard feature of most employee fringe benefit programs, public and private, and which is of particular importance to the military man because of his long period of retirement, is a glaring weakness in the singularly outstanding benefits program of the Armed Forces. The lack of a survivor benefits program based solely on the man's retired pay at a cost comparable to other systems, such as the civil service system, calls into question the retiree's inherent legal interest in his retired pay. The subcommittee believes the concept of retired pay as an earned right in which the retiree has a legal interest should be beyond challenge.
>
> The subcommittee believes the Government, in recognition of these rights, has a moral obligation to join in providing income protection for his survivors.
>
> . . .
>
> RSFPP has proved a failure insofar as it was designed to provide general survivor protection to the retired military population. The law has been amended seven times over the past 17 years in an attempt to liberalize its provisions and make it more attractive to military personnel. The efforts have not been successful because of fundamental shortcomings in the plan, and only 15 percent of eligible military retirees have participated since 1953. This means that the survivors of 85 percent of deceased eligible retirees have no claim to any part of the member's military retired pay.
>
> ... Most retirees find it too expensive to participate, and this is particularly true of the lower paid retiree who needs the protection the most. For example, only 10 percent of the enlisted retirees participate, compared to about 20 percent of officer retirees.
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> . . .
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> The subcommittee study shows that many present widows of career military retirees are living in conditions of great economic deprivation, and this is true not just of widows of lower ranked personnel but of the widows of senior officers and senior enlisted men of long and outstanding service.[6]

[6] "Inquiry into Survivor Benefits, A Report by the Special Subcommittee on Survivor Benefits of the House Armed Services Committee," H.A.S.C. Document No. 91-68, printed in "Hearing before and Special Reports Made by the House Committee on Armed Services on Subjects Affecting the Naval and Military Establishments," 1970, pp. 9510, 9511, 9515, 91st Congress, 2d Session (1970).

Under SBP, each member entitled to retired or retainer pay--whether on account of active-duty or non-regular service--with eligible dependents is entitled to participate in the program. A member who becomes entitled to retired or retainer pay on account of active-duty service is automatically enrolled in the program at the maximum authorized level of coverage unless he specifically elects before retirement not to be covered or to be covered at less than the maximum level, whereas a member who becomes entitled to retired pay on account of non-regular service but who has not reached the age of 60 must, within 90 days after notification that he has completed the number of years of service required for eligibility for retired pay, affirmatively elect coverage.[7] [8] Under maximum coverage, the member's retired pay is the "base amount" on which the survivor annuity and member cost are computed.[9] Under less-than-maximum coverage, the base amount is any sum between $300 and a member's total retired pay, as specified by the member. Covered members whose monthly retired pay entitlement is $300 or less do not have a less-than-maximum option; their base amount has to be their whole retired pay--unless they opt out altogether. The maximum survivor annuity is 55 percent of the member's base amount. Prior to amendment of the Survivor Benefit Plan by the Military Survivor

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[7] Before enactment of the Uniformed Services Survivors' Benefits Amendments of 1978, Public Law 95-397, 92 Stat. 843 (1978), members entitled to retired pay for non-regular service who died before reaching age 60, *i.e.*, before they became eligible to actually receive such pay, were not able to protect their dependents under SBP. (In transitional provisions, the Uniformed Services Survivors' Benefits Amendments of 1978 provided that members entitled to retired pay for non-regular service who had not reached age 60 by the date of enactment (September 30, 1978) were given until January 1, 1980, to elect to participate in the plan, but that period was later extended to March 31, 1980, by the Department of Defense Authorization Act, 1980, Public Law 96-107, §816, 93 Stat. 803, 818 (1979).)

[8] A member eligible for retired pay on account of non-regular service who affirmatively elects to participate in the plan must, at the time of election, also indicate whether, should he die before reaching 60 years of age, the annuity provided should become effective on his death or on the 60th anniversary of his birth. This election becomes important, at least in part, because the "base amount" on which the annuity of the survivors of such a member is computed is determined by reference to what the member's basic pay would have been, had he been alive and entitled to such pay, on the date the annuity becomes effective. For a member electing immediate, on-death coverage, SBP annuities are adjusted between the time of a member's death and the time the member would have reached age 60 for changes in the cost of living, whereas increases in basic pay between the time of a member's death and the time the member would have reached age 60 are not necessarily determined by changes in the cost of living, sometimes being more, sometimes less.

[9] In the case of a member eligible for retired pay for non-regular service who dies before reaching age 60, the "base amount" is the amount of retired pay to which the member would have been entitled, had he lived, on the date he elects for the SBP annuity to become effective. See footnote 8 to this chapter, above.

Benefits Improvement Act of 1989, enacted as Title XIV of the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §§1401-1407, 103 Stat. 1352, 1577-1578 (1989), discussed more fully below, a member's cost for spouse's coverage was computed (1) at the rate of 2.5 percent of the first $300 of the member's base amount plus 10 percent of the remainder of the base amount in the case of retired members of Regular components or (2) by an amount prescribed by the Secretary of defense taking into account various actuarial considerations in the case of members entitled to retired pay for non-regular service. The cost for children's coverage is determined actuarially. When a cost-of-living increase occurs in retired pay, the amount of the annuity payable increases proportionately, as does an affected member's contribution. Annuities paid to survivors under the SBP program are increased in the same percentage amount, and at the same time, as increases in retired and retainer pay. According to official statistics, in 1998 the overall SBP participation rate was 79 percent for officer retirees and 55 percent for enlisted retirees[10]--a substantial increase over the 15 percent participation rate for the RSFPP program, but still lower than the 85 percent participation rate targeted during the development of the SBP program.[11]

SBP has a number of other features that differ from RSFPP. A member who is not covered by the plan because he or she is without dependents at the time of retirement may elect to enter it if he or she marries or acquires a dependent child after retirement. A member without eligible dependents may also elect before retirement to provide an annuity to any nondependent person who has an insurable interest in his or her life. An insurable interest annuity may be canceled if the member acquires a spouse or dependent child after retirement and elects an annuity for them.

The SBP program is integrated with the Social Security system and requires certain reductions in annuity payments in connection with Social Security benefit

[10] Department of Defense Statistical Report 1998, p 220, as of Sep 30, 1998.

[11]This compares with an overall participation rate of 57 percent for fiscal year 1986 retirees, when 73 percent of officers and 51 percent of enlisted personnel participated.

eligibility. A widow without children is eligible for a Social Security benefit at age 62 (she can receive an actuarially reduced benefit at age 60). Under integration, the SBP annuity of such a widow is reduced at age 62 by an amount equal to the lesser of the Social Security survivor benefit that would be paid based solely on the member's active military service after December 31, 1956, or 40 percent of the amount of the annuity that would otherwise be payable. A widow with one child in her care is eligible for a Social Security mother's benefit regardless of her age. Under the SBP program, the annuity of such a widow was once reduced by the amount of the mother's benefit payable based on the member's earnings record. A child is eligible for a separate Social Security benefit, which has no effect on SBP annuities. Different treatment is accorded a widow with more than one child in her care. Despite the fact that such a widow is also eligible for a Social Security mother's benefit regardless of her age, the Act does not require her SBP annuity to be reduced on account of any Social Security benefits she receives. Rather, Congress decided that the concurrent receipt of Social Security benefits and an unreduced SBP annuity was justified as a matter of equity where the burden of rearing a multi-child family fell wholly upon a widow.

The survivor of a member who dies on active duty may be entitled to an SBP annuity as a supplement to any dependency and indemnity compensation ("DIC") the survivor receives from the Department of Veterans Affairs, if the member has become eligible to receive retired pay, has qualified for retired pay but not applied for or been granted that pay, or has completed 20 years of active service but has not completed the 10 years of active service as an officer required for retirement as a commissioned officer. See Chapter III.D.4., "Dependency and Indemnity Compensation." A surviving spouse whose DIC entitlement is less than the maximum SBP annuity he or she would have received had the member been retired on the date of the member's death is entitled to an annuity in an amount sufficient to make up the difference. The SBP annuity also functions as a DIC supplement when a member dies in retirement of a service-connected cause and the surviving spouse is thus eligible for DIC. In this situation, the surviving spouse is similarly eligible for SBP payments only to the extent that the SBP entitlement exceeds the DIC entitlement. If no SBP annuity is payable because the DIC entitlement is

equal or greater, all SBP contributions made by the retired member before death are refunded to the surviving spouse. If part of the SBP annuity is payable, the member's retired or retainer pay reductions are recalculated based on the lower annuity, and excess contributions, if any, are refunded to the surviving spouse.

The Act of September 21, 1972, Public Law 92-425, §4, 86 Stat. 706, 712-713 (1972), authorized a "gratuitous" annuity for certain "low-income" widows of retired personnel. To qualify for this special annuity, a widow must (1) have been entitled to a VA non-service-connected death pension; (2) have had less than $1,400 of annual income, subject to adjustments as specified in 10 U.S.C. §1448 note, from other sources; and (3) have been the widow of a retired member who retired before September 21, 1972, and died before September 20, 1973 without having been able to, or not having elected to, participate in the SBP program. (The Department of Defense Authorization Act for Fiscal Year 1984, Public Law 98-94, extended the latter date to March 20, 1974.) The annuity was payable in the amount needed to bring the widow's annual income from sources other than her VA death pension up to $1,400 or such greater amount as specified in 10 U.S.C. §1448 note. While this "income supplement" program remains in effect today, the $1,400 cut-off and income "target" referred to above twice were given specific increases--first to $2,100 by the Act of October 14, 1976, Public Law 94-496, §2(1), 90 Stat. 2375 (1976), and later to $2,340 by the Uniformed Services Survivors' Benefits Amendments of 1978, Public Law 95-397, §209(1), 92 Stat. 843, 848 (1978). The National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, 110 Stat. 2581, prescribed that the amount of this allowance be increased at the same time and by the same rate as increases were made in the Social Security old-age and survivor benefits prescribed in 42 U.S.Code §402. That law further stipulated that, effective July 1 1997, the allowance be paid by the Department of Veterans Affairs rather than by the Department of Defense.

All persons on the retired rolls on the day before September 21, 1972, the effective date of the SBP program, were given the opportunity to enter the program

during the following 12-month period.[12] Those who were in the RSFPP program had three choices. They were permitted to either (1) drop their RSFPP if they elected SBP coverage in an equal or greater amount; (2) continue their RSFPP and also enter the SBP program, provided the total of the two annuities did not exceed 100 percent of their retired pay; or (3) continue their RSFPP alone. Approximately 50 percent of the personnel on the retired rolls on September 20, 1972, elected to participate in the SBP program; the proportion of personnel who converted from RSFPP to SBP is not known.

The Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, §212, 95 Stat. 357, 383 (1981), provided for an open season--from October 1, 1981, to September 30, 1982--during which any "eligible member" who was (1) not already a participant in the SBP program could elect to be a participant or (2) already a participant could elect a higher coverage or change a beneficiary designation in favor of a spouse. For the purpose of this act, the term "eligible member" was defined as a member or former member who, on the date of enactment (August 13, 1981), was entitled to retired or retainer pay.

The Department of Defense Authorization Act, 1984, Public Law 98-94, §941, 97 Stat. 614, 652-654 (1983), amended the Survivor Benefit Plan to carry out Congressional intent underlying the Uniformed Services Former Spouses' Protection Act (USFPA), enacted as Title X of the Department of Defense Authorization Act, 1983, Public Law 97-252, §§1001-1006, 96 Stat. 718, 730-738 (1982). The thrust of the USFPA was to return to the states the authority to treat military retired pay in accordance with individual state laws in divorce settlements and to provide a direct payment mechanism to ensure that valid state court orders were honored by military finance centers. See discussion of the USFPA at Appendix II, below. The USFPA also amended the Survivor Benefit Plan to permit a military member to designate a former spouse as a beneficiary of an SBP annuity. In thus amending the Survivor Benefit Plan, Congress had intended the option to elect SBP coverage to be available not only to those retiring in the future but also to those already retired. The Department of Defense, however, took the position that the option

[12] This 12-month period was subsequently extended to 18 months by the Department of Defense Appropriation Authorization Act, 1974, Public Law 93-155, §804, 87 Stat. 605, 615 (1973).

was not open to persons already retired, and Congress accordingly amended the SBP program to permit such election. Under the amendment, an individual retired before enactment of the Uniformed Services Former Spouses' Protection Act may now designate a former spouse as an SBP beneficiary so long as the retiree had elected to participate in the SBP program at the time of retirement. The 1984 Authorization Act, Public Law 98-94, *id*., also permitted individuals retired after enactment of the Uniformed Services Former Spouses' Protection Act to switch their then-current designation to a former spouse. The amendments made to the SBP program by the 1984 Authorization Act were characterized as "clarifications" of how SBP should apply in the case of former spouses and as having been implemented to carry out Congress's intentions in enacting the Uniformed Services Former Spouses' Protection Act.[13]

The Department of Defense Authorization Act, 1985, Public Law 98-525, §641, 98 Stat. 2492, 2545 (1984), further amended the SBP program to eliminate the Social Security offset against SBP annuities in the case of a survivor who is receiving Social Security benefits based on his or her own earnings, rather than a widow's or widower's benefits based on the earnings of a deceased member-spouse. This provision was itself rendered ineffective, however, by the Department of Defense Authorization Act, 1986, Public Law No. 99-145, §711(b), 99 Stat. 583, 670 (1985). In the words of the Senate Armed Services Committee, the elimination of the Social Security offset was justified on the grounds that "an SBP annuitant who has earned and is receiving a Social Security retirement benefit based on his own work record should [not] be penalized by having their [sic] SBP annuity reduced."[14]

The Department of Defense Authorization Act, 1985, Public Law 98-525, §642(a)(1)(B), 98 Stat. 2492, 2545-2546 (1984), also amended the SBP program to

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[13] See Senate Report No. 98-213 (Committee of Conference), p. 231, and House Report No. 98-352 (Committee of Conference), p. 231, accompanying S. 675, 98th Congress, 1st Session (1983); and House Report No. 98-107 (Committee on Armed Services), pp. 222-223, accompanying H.R. 2969, 98th Congress, 1st Session (1983).

[14] Senate Report No. 98-500 (Committee on Armed Services), p. 219, accompanying S. 2723, 98th Congress, 2d Session (1984).

provide authority to initiate SBP annuity payments when the retired participant is missing. For the conditions attendant upon this authority, see the discussion of the same authority as applied to the Retired Serviceman's Family Protection Plan, above.

Finally, the Department of Defense Authorization Act, 1985, Public Law 98-525, §644(2), 98 Stat. 2492, 2548 (1984), amended the provisions of the SBP program dealing with the designation of a former spouse as a beneficiary under the plan. The Uniformed Services Former Spouses' Protection Act, Public Law 97-252, §§1001-1006, 96 Stat. 718, 730-738 (1982), specified that such a decision must be voluntary and could not be ordered by a court. The 1985 Authorization Act clarified the intent of Congress that those administering the SBP program be able to defer to a court order that incorporated, ratified, or approved a voluntary written agreement by the retiree to designate the spouse as an SBP beneficiary. The amendment was characterized as a "clarification" of Congress's initial intent.[15]

The Survivor Benefit Plan Amendments of 1985, enacted as Title VII of the Department of Defense Authorization Act, 1986, Public Law 99-145, §§701-732, 99 Stat. 583, 666-678 (1985), effected a number of additional changes to the SBP program. As indicated in the relevant Congressional reports, the changes contained in the Survivor Benefit Plan Amendments of 1985 were intended to overcome the problem that SBP had become "too complex for service members and their families to understand," with the result of "simplify[ing] the plan, mak[ing] it more attractive, and eliminat[ing] certain problems."[16] This theme was again stated in the House-Senate Conference Report: The Survivor Benefit Plan Amendments of 1985 were characterized as having been intended

[15] See, *e.g.*, Senate Report No. 98-500 (Committee on Armed Services), pp. 221-222, accompanying S. 2723, 98th Congress, 2d Session (1984), and House Report No. 98-1080 (Committee of Conference), p. 301, accompanying H.R. 5167, 98th Congress, 2d Session (1984). (The catchline of Section 644 of the 1985 Authorization Act, Public Law 98-525, *id*., §644, 98 Stat. at 2548, reads "Clarification of Authority to Elect Former Spouses as Beneficiaries Under the Survivor Benefit Plan".)

[16] House Report No. 99-81 (Committee on Armed Services), p. 250, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

to "improve and simplify the Survivor Benefit Plan as well as correct certain inequities associated with the program."[17]

In effecting changes to the SBP program, the Survivor Benefit Plan amendments of 1985 made both substantive and technical changes. The more important of the substantive changes are summarized below.

First, and probably most important, the SBP amendments modified the Social Security offset provisions of the program. When the SBP program was first established, Congress's major goal was to insure that survivors of military retirees be provided "reasonable and continuous income replacement"[18]--a goal that Social Security could not meet because, for the vast majority of survivors, Social Security entitlement does not begin until the survivor reaches age 62. Because of this, the SBP program provided two different annuity levels for surviving beneficiaries--a level of benefits that applied before a survivor became eligible for Social Security, and another, lower level that applied thereafter. This reduction--known as the Social Security offset—was addressed in the Department of Defense Authorization Act, 1985, when Congress amended the SBP program to provide that there would be no Social Security offset against SBP annuities in the case of a survivor who was receiving Social Security benefits on the basis of his or her own earnings record, rather than a widow's or widower's benefit based on the earnings of a deceased member-spouse. As previously indicated, however, this provision was itself rendered ineffective--by the Survivor Benefit Plan Amendments of 1985, Public Law No. 99-145, Title VII, *id*.--on the grounds that Congress was going to address the whole Social Security offset problem in more detail and in another fashion.[19]

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[17] Senate Report No. 99-118 (Committee of Conference), p. 442, and House Report No. 99-235 (Committee of Conference), p. 442, accompanying S. 1160, 99th Congress, 1st Session (1985).

[18] House Report No. 99-81 (Committee on Armed Services), p. 250, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

[19] Section 641 of the 1985 Authorization Act, Public Law 98-525, *id*., §641, 98 Stat. at 2545, was formally repealed by Section 711(b) of the Survivor Benefit Plan Amendments of 1985, Title VII of the 1986 Authorization Act, Public Law 99-145, *id*., §711(b), 99 Stat. at 670.

Under the amendments to the SBP program effected by the Survivor Benefit Plan Amendments of 1985, Title VII of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., §711(a), 99 Stat. at 666-670, Congress, in an "effort to simplify and make the plan [as it relates to the Social Security offset] more understandable,"[20] eliminated the Social Security offset and established in its stead a "two-tier system under which the survivor would receive 55 percent of retired pay before age 62 and 35 percent thereafter in recognition of the entitlement to Social Security based on military service."[21] As enacted, these provisions were applicable to all SBP beneficiaries. In a savings provision, however, the 1985 SBP amendments provided that current survivors and future survivors of current retired or retirement-eligible members could have their SBP benefits computed under the old Social Security offset system or under the new, 55/35, two-tier system, whichever provided a greater benefit for an SBP-eligible survivor. All other potential beneficiaries, *i.e*., eligible survivors of future retirees who are not presently retirement-eligible, would be subject to the new 55/35, two-tier, income-replacement annuity. The effective date of the amendment in question was March 1, 1986.[22]

Second, the 1985 SBP amendments, Title VII of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., §714, 99 Stat. at 672-673, changed the way in which the cost of SBP coverage was calculated for participants. Under the contribution formula applied to participants, the member is permitted to select SBP coverage ranging from a minimum of $300 to a maximum of full retired pay. To participate, the member paid 2.5 percent of the first $300 for the "base amount" selected and 10 percent of the "base amount" above $300. With increases in basic pay over the years, members' retired pay entitlements increased, with the result that the 10 percent factor applied to a larger percentage of a participant's "base amount" of coverage. This

[20] Senate Report No. 99-118 (Committee of Conference), p. 442, and House Report No. 99-235 (Committee of Conference), p. 442, accompanying S. 1160, 99th Congress, 1st Session (1985).

[21] Senate Report No. 99-118 (Committee of Conference), p. 442, and House Report No. 99-235 (Committee of Conference), p. 442, accompanying S. 1160, 99th Congress, 1st Session (1985).

[22] Retirees who had elected to participate in the SBP program between October 19, 1984, and the date of enactment of the 1985 Authorization Act, Public Law 98-525, *id*., *i.e*., November 8, 1985, were given an option to withdraw from the SBP program any time before November 8, 1986.

situation, in turn, had the effect of eroding the intended cost-sharing ratio of 60-40. As explained by the House Armed Services Committee, the cost-sharing ratio had changed from the intended 60-40 split to a 72-28 split--and this was at least in part due to the application of the 10 percent factor to an ever increasing portion of a participant's elected amount of coverage. To bring the cost split back closer to the intended 60-40 ratio, the 1985 SBP amendments indexed the $300 amount to which the 2.5 percent charge was to be applied to future increases in basic pay. Thus, while a participant can still elect $300 as "base amount" coverage, the lower 2.5 percent charge would be applied to an ever increasing amount.[23]

Third, a number of changes were made to the SBP program insofar as the rights of spouses and former spouses of plan participants were concerned. Under Section 721 of the 1985 SBP Amendments, Title VII of the Department of Defense Authorization Act, 1986, Public Law 99-145, *id*., §721, 99 Stat. at 676-677, a married member who was eligible to provide a standard annuity under the plan could not, without the concurrence of the member's spouse, (1) elect not to participate in the plan; (2) elect less than the maximum level of SBP annuity; or (3) elect to provide an annuity for a dependent child but not for the spouse. As explained by the House Armed Services Committee, this change was intended to provide similar rights to spouses of members of the Armed Forces as were enjoyed by spouses of civil servants and private sector employees under recent Congressional enactments.[24] Under Section 715 of the 1986 Authorization Act, a participant in the plan who did not have an eligible spouse beneficiary, either because of death or divorce, and who remarried was given an option not to provide coverage for the new spouse. If a participant opted not to participate in the plan with respect to the new spouse, or to provide an annuity for the spouse at less than the maximum level, or to provide an annuity for a dependent child but not the new spouse, the new spouse is to be

[23] The changes effected by this amendment apply only to persons who first participate in SBP on or after March 1, 1986. Section 714(b) of the Survivor Benefit Plan Amendments of 1985, Title VII of the 1986 Authorization Act, Public Law 99-145, *id*., §§714(b) and 731(a), 99 Stat. at 673, 678; see 10 U.S.C. §1452 note.

[24] See House Report No. 99-81 (Committee on Armed Services), pp. 252-253, accompanying H.R. 1872, 99th Congress, 1st Session (1985).

notified of the election. Thus, while plan coverage would be automatic upon remarriage unless an eligible retiree elected not to participate, the new spouse had no concurrence rights respecting coverage under the plan. Other changes were made also, but they can for the most part be characterized as "perfecting" or "technical" changes.

The Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986), changed the way military retired and retainer pay entitlements would be calculated for members of the uniformed services who first became members on or after August 1, 1986. In brief, the "multipliers" to be applied to a member's "monthly retired or retainer pay base" in determining retired or retainer pay entitlements of affected personnel would be reduced from current levels until the member reaches age 62, at which time they would be restored to the same level as if the member had been eligible for retirement under the high-three formula. In addition, the Retirement Reform Act changed the way adjustments to retired or retainer pay are made for persons who first become members of a uniformed service on or after August 1, 1986. See Chapter III.B.1., "Nondisability Retired and Retainer Pay."

Under the amended retirement system, the "multipliers" used in determining retired or retainer pay entitlements of affected personnel were generally reduced, by one percentage point from current percentage multipliers for each year by which a member's term of service was less than 30 years.[25] With the application of the percentage multipliers, an affected person's retired or retainer pay entitlement is less than that of a member whose retired or retainer pay is computed using unreduced percentage multipliers. The lower retired or retainer pay entitlements resulting from this altered way of computing entitlements could, without adjustment, affect survivor annuities under the Survivor Benefit Plan. In fact, given the underlying purpose of SBP to provide "reasonable income replacement"[26] for survivors of deceased military retirees, Congress

[25] The multiplier for persons with 30 years of service--and more--is the same as under the former nondisability retirement system.

[26] *e.g.*, Senate Report No. 99-118 (Committee of Conference), p. 442, and House Report No. 99-235 (Committee of Conference), p. 442, accompanying S. 1160, 99th Congress, 1st Session (1985).

determined that the lower percentage multipliers applied in determining the retired or retainer pay entitlement of a retiree-member should not result in a lower Survivor Benefit Plan annuity to a survivor of a deceased retiree.[27] Accordingly, in Section 301 of the Military Retirement Reform Act of 1986, Public Law 99-348, *id*., §301, 100 Stat. at 702, Congress provided for Survivor Benefit Plan annuities to be computed using unreduced retired or retainer pay percentage multipliers. That is, the amount of the annuity is determined on the assumption that at the time of death the retiree was receiving retired or retainer pay computed on the basis of unreduced percentage multipliers--which, except for persons retiring with thirty or more years of creditable service, or persons selecting a "base amount" stated in dollars rather than a percentage of retired or retainer pay, would result in higher annuities than would otherwise have been the case.[28]

The National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §§641-646, 100 Stat. 3816, 3885-3887 (1986), made additional revisions to the SBP program. First, as a "matter of equity" and to come into closer conformity with practice under civil service, Central Intelligence Agency, and private sector survivor benefit plans,[29] Congress amended the SBP program to permit state courts to order military service members to participate in the Survivor Benefit Plan and to designate a former

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[27] See, *e.g*., House Report No. 99-659 (Committee of Conference), pp. 31-32, accompanying H.R. 4420, 99th Congress, 2d Session (1986).

[28] As previously indicated, the Military Retirement Reform Act of 1986, Public Law 99-348, *id*., §102, 100 Stat. at 683-685, also changed the way adjustments to retired pay were to be made for persons who first became members of a uniformed service on or after August 1, 1986. Generally speaking, adjustments to retired or retainer pay for such persons were to be made not on the basis of full cost-of-living changes (as measured by the Consumer Price Index) but on the basis of the percentage change in the Consumer Price Index less one percentage point. This new--and lower--adjustment mechanism was to apply in determining adjustments to SBP annuities for survivors of persons who first became members of a uniformed service on or after August 1, 1986. See 10 U.S.C. §1451(g)(1) as amended by Section 301(b) of the Military Retirement Reform Act of 1986, Public Law 99-348, *id*., §301(b), 100 Stat. at 702. (Under the Military Retirement Reform Act of 1986, affected members were to get a one-time restoral of full cost-of-living increases when they reached age 62, with subsequent adjustments based on the percentage increase in the Consumer Price Index less one percentage point. SBP annuitants were to get a similar one-time restoral--when the decedent would have reached age 62--with subsequent adjustments based on the percentage increase in the Consumer Price Index less one percentage point for the remainder of the annuitant's period of eligibility for SBP.)

[29] House Report No. 99-718 (Committee on Armed Services), p. 209, accompanying H.R. 4428, 99th Congress, 2d Session (1986).

spouse as a beneficiary incident to a divorce agreement or decree. *id*., §641, 100 Stat. at 3885-3886.

Second, the 1987 Authorization Act, Public Law 99-661, *id*., §643, 100 Stat. at 3886, changed the age at which a survivor-beneficiary could remarry without losing SBP benefits. Before the 1987 Authorization Act, the Survivor Benefit Plan provided that a surviving spouse/SBP annuitant who remarried before reaching age 60 lost entitlement to his or her SBP annuity based on the former marriage, but the entitlement could be reinstated if the remarriage ended in death or divorce. This provision tracked the survivor benefits available to survivors of civil service decedents until Congress reduced the remarriage age for civil service surviving spouses from 60 to 55. Congress, having concluded that "military surviving spouses should receive the same considerations as civil service surviving spouses,"[30] lowered the age at which the former could remarry without losing their SBP annuities from 60 to 55.

The 1987 Authorization Act, Public Law 99-661, *id*., §642, 100 Stat. at 3886, also amended the SBP program to authorize the payment of survivor benefits to the surviving dependent children of an active-duty, retirement-eligible member who died without a surviving spouse or if the surviving spouse also subsequently died. This amendment was intended to address an inadvertent oversight in the Survivor Benefit Plan Amendments of 1985, as enacted by the 1986 Authorization Act. Under the 1986 Authorization Act, Public Law 99-145, *id*., survivor benefits under the SBP program were authorized for the surviving dependent children of a deceased, retirement-eligible active-duty member if the member and the member's spouse died as a result of a common accident. This authorization failed to address the case of a single, retirement-eligible member who died on active duty leaving a dependent child or children as well as the case of a retirement-eligible member who died on active duty leaving a dependent child or children and a surviving spouse but whose surviving spouse subsequently died leaving the same

[30] House Report No. 99-718 (Committee on Armed Services), p. 211, accompanying H.R. 4428, 99th Congress, 2d Session (1986).

dependent child or children. The amendment in question was made because of Congress's "concerns about the orphan children of retirement-eligible active duty personnel" and its belief that, "in the absence of a spouse beneficiary, all orphan children of deceased retirement-eligible active duty personnel should be treated alike."[31]

Finally, and as previously indicated, the Survivor Benefit Plan Amendments of 1985 eliminated the Social Security offset to the SBP program in effect before that time while at the same time establishing a "two-tier" system under which a survivor received a SBP annuity of 55 percent of retired pay until age 62 and 35 percent thereafter. In practice, the reduction from 55 percent to 35 percent at age 62 was intended to accomplish the same thing as the Social Security offset while simplifying the plan and making it more understandable to members of the uniformed services and their spouses who were making decisions about whether to become plan participants or not. Thus, when the surviving spouse reached age 62 and became eligible for a Social Security benefit on the basis of the earnings record of the deceased plan participant, the SBP annuity dropped to compensate for the availability of the Social Security benefit. An unintended effect of the amendment in question, however, was to reduce the combined SBP-Social Security entitlements of surviving disabled children of deceased plan participants. The fact is, surviving disabled children of deceased plan participants are not eligible for a Social Security benefit beginning at age 62 that is based on the decedent's earnings record--only a surviving spouse is. Accordingly, the 1987 Authorization Act, Public Law 99-661, *id*., §642(b), 100 Stat. at 3886, amended the reduction provision to provide that it should not apply to the incapacitated dependent children of deceased plan participants who are over age 62 and who are incapable of supporting themselves because of physical or mental impairments that existed before their eighteenth or, under some limited circumstances, their twenty-second birthday.[32]

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[31] House Report No. 99-718 (Committee on Armed Services), p. 210, accompanying H.R. 4428, 99th Congress, 2d Session (1986).

[32] See House Report No. 99-718 (Committee on Armed Services), p. 210, accompanying H.R. 4428, 99th Congress, 2d Session (1986).

The National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §631, 101 Stat. 1019, 1104, 1106 (1987), amended the SBP program to provide specific authority for certain plan participants to withdraw from the plan with the consent of their spouses. Persons intended to benefit from the permissive withdrawal authority were those participants who had remarried in retirement and who were required to contribute to a plan from which their new spouse could never effectively benefit. Specifically, the permissive withdrawal authority was intended to enable a retiree who had, in retirement before March 1, 1986, remarried the widow of another military retiree whose SBP benefit based on her first husband's retirement income was larger than her SBP benefit based on her second husband's could ever be, to cease making contributions to a plan his spouse would logically never choose to take advantage of. In effect, this permissive withdrawal authority simply gave pre-March 1, 1986, retirees the same right as post-March 1, 1986, retirees had to withdraw from SBP participation.[33]

A more comprehensive withdrawal procedure was added in 1998. The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1798, provided for a "discontinuation period" extending for one year from the second anniversary of the date on which the participant begins to receive retired pay. Such an election to withdraw from SBP must be accompanied by the concurrence of the spouse, except under exceptional circumstances that make the spouse "unavailable," as that term is defined in 10 U.S. Code §1448(a)(3).

The National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §653, 102 Stat. 1918, 1991-1992 (1988), granted a gratuitous annuity of $165 a month--to be adjusted over time for changes in the Consumer Price Index--to surviving spouses of members who had died before November 1, 1953, while entitled to retired or retainer pay. While not strictly a part of the SBP or RSFPP programs, the annuity was proposed, in the words of the Senate Committee on Armed Services, because the committee "recognizes that this category of so-called 'forgotten widows' had no access to a survivor benefit program because none was in effect for military retirees before November 1,

[33] See, *e.g.*, House Report No. 100-58 (Committee on Armed Services), pp. 205-206, and Senate Report No. 100-57 (Committee on Armed Services), pp. 147-148, 100th Congress, 1st Session (1987).

1953."[34] The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1800, extended the $165 monthly annuity to the surviving spouses of similarly qualified members who died before March 21, 1974, with the same provision for subsequent cost-of-living adjustments as were made in the original legislation that covered retirees deceased prior to 1953. The first such adjustment was made by the National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, 116 Stat. 2573, which increased the monthly annuity to $185.58.

Relatively major changes--at least in terms of the number of changes involved--were made to the Survivor Benefit Plan by the Military Survivor Benefits Improvement Act of 1989, enacted as Title XIV of the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, Title XIV, §§1401-1407, 103 Stat. 1352, 1577-1589 (1989). First, the basis for determining the cost--in terms of the reduction in a retiree's retired or retainer pay entitlement--to a member or former member of a uniformed service for participating in the Survivor Benefit Plan was changed from the old 2.5 percent of the first $300[35]] of the base amount of a member's prospective annuity plus 10 percent of the remainder of the base amount to a flat 6.5 percent of the base amount for all persons who first became members of a uniformed service on or after March 1, 1990. The method for determining the amount of the reduction in retired or retainer pay for SBP participation for pre-March 1, 1990, is either the new, flat 6.5 percent of the base amount or the old 2.5 percent/10 percent formula, whichever is more advantageous to the retiree. As explained by the Senate Armed Services Committee, which had sponsored the changes incorporated in the Military Survivor Benefits Improvement Act of 1989, the 6.5 percent level cost was proposed "on the basis of a cost-benefit review of SBP conducted by the Office of the Actuary of the Department of Defense," which "indicated the premium adjustment was appropriate to preserve the

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[34] Senate Report No. 100-326 (Committee on Armed Services), p. 96, accompanying S. 2355, 100th Congress, 2d Session (1988).

[35] Because of adjustments to the $300 amount made pursuant to the changes to the SBP program instituted by the survivor benefit plan amendments of 1985, Public Law 99-145, *id*., discussed in the text following footnote 22, above, the $300 figure of the original SBP formulation had grown to $337 by the time the Military Survivor Benefits Improvement Act of 1989, Public Law 101-189, Title XIV, *id*., was enacted.

design balance between member contribution and government subsidy of SBP benefits."[36] The Senate Armed Services Committee also noted:

> ... The net effect of the changes will be to reduce the cost of SBP to participants, and hopefully to increase participation in the SBP program.[37]

Second, the Military Survivor Benefits Improvement Act of 1989, Public Law 101-189, Title XIV, *id.*, §1403, 103 Stat. at 1579, changed the basis for the computation of the SBP annuity to which the survivors of certain officers who die while on active duty after becoming eligible for retired or retainer pay are entitled. Under prior practice, the SBP annuity of an officer with enlisted service who first became a member of a uniformed service before September 8, 1980, and who died while on active duty after becoming eligible for retired or retainer pay but who did not have ten years of commissioned officer service, was determined on the basis of the basic pay of the officer's highest non-commissioned grade.[38] The amendment to the SBP program made by the Military Survivor Benefits Improvement Act permits the SBP annuity for the survivors of such an officer to be determined on the basis of the grade the member held at the time of death, independently of whether the member would have been entitled to retired or retainer pay based on that grade at the time of death. The Senate Armed Services Committee characterized this amendment to the SBP program as a "clarification."[39]

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[36] Senate Report No. 101-81 (Committee on Armed Services), p. 180, accompanying S. 1352, 101st Congress, 1st Session (1989). Cf. House Report No. 101-331 (Committee of Conference), p. 659, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[37] Senate Report No. 101-81 (Committee on Armed Services), p. 180, accompanying S. 1352, 101st Congress, 1st Session (1989). *cf.* House Report No. 101-331 (Committee of Conference), p. 659, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[38] The retired or retainer pay entitlement of any member--including all officers, whether with prior enlisted service or not--who first became a member of a uniformed service on or after September 8, 1980, is determined, under 10 U.S.C. §§1401(a) and 1407, on the basis of the high-36-month-average-basic-pay of the member.

[39] Senate Report No. 101-81 (Committee on Armed Services), p. 181, accompanying S. 1352, 101st Congress, 1st Session (1989).

Finally, and substantively the most important of the amendments made to the SBP program by the Military Survivor Benefits Improvement Act of 1989, Public Law 101-189, Title XIV, *id*., §1404, 103 Stat. at 1579-1586, was the prospective adoption--effective October 1, 1991--of the Supplemental Survivor Benefit Plan, codified as Subchapter III of Chapter 73, Title 10, United States Code, 10 U.S.C. §§1456-1460b. Under the Supplemental Survivor Benefit Plan, participants in the normal Survivor Benefits Plan are entitled to provide a "supplemental annuity" for a spouse or former spouse "beginning when the participant dies or when the spouse or former spouse becomes 62 years of age, whichever is later, in order to offset the effects of the two-tier annuity computation under the Survivor Benefit Plan." 10 U.S.C. §1456, as added by the Military Survivor Benefits Improvement Act of 1989, Public Law 101-189, Title XIV, *id*., §1404, 103 Stat. 1580-1581. The supplemental annuity allows a participant in the SBP program to provide a level, 55 percent annuity to his or her surviving spouse, thus effectively overcoming the reduction of the normal SBP 55 percent annuity to 35 percent when the participant's surviving spouse becomes eligible for Social Security benefits. Thus, when a participant's surviving spouse became eligible for Social Security benefits, rather than having his or her SBP annuity reduced, any Social Security benefits received would be additions to the surviving spouse's level SBP annuity.

In support of its proposal, the Senate Committee on Armed Services noted:

> A recommended provision ... would also establish a supplemental option to the current SBP benefit structure. Currently, SBP recipients are entitled to 55 percent of SBP designated retired pay until age 62, at which point the benefit is reduced to 35 percent of SBP designated retired pay beyond age 62. The supplemental option would allow participants to elect a level benefit of 55 percent of SBP designated retired pay after age 62.... The committee believes the supplemental option fills a need by certain SBP participants for additional coverage beyond age 62, the age at which Social Security benefits normally become available.[40]

The National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §631, 104 Stat. 1485, 1580 (1990), postponed the effective date of the Supplemental

[40] Senate Report No. 101-81 (Committee on Armed Services), pp. 180-181, accompanying S. 1352, 101st Congress, 1st Session (1989). Cf. House Report No. 101-331 (Committee of Conference), pp. 660-661, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

Survivor Benefit Plan from October 1, 1991, to April 1, 1992, in order to give the Department of Defense more time to prepare "an actuarially neutral" plan for the implementation of the Supplemental Survivor Benefit Plan.[41] As it went into effect, the SSBP offers additional annuities amounting to 5, 10, 15, and 20 percent of a member's retirement pay to survivors of members who had elected maximum SBP coverage. Premiums for SSBP, which varied according to the supplemental annuity percentage and the age of the member making the selection, were uniformly higher than the 6.5 percent paid for basic SBP coverage. For example, in 2004 the premium for a 50-year-old member selecting a maximum 20 percent annuity would be 12.26 percent.

Despite the existence of a supplemental plan to balance the Social Security offset in the basic SBP, substantial pressure developed to further soften the effect of reducing SBP benefits when the recipient began receiving Social Security at age 62. In 2001 two bills, S145 and HR548, entitled the Survivor Benefits Plan Benefit Improvement Act, aimed to reform the two-tier Social Security provision. The bills authorized elimination of the Social Security-triggered reduction in stages between 2003 and 2011; at the end of that period, beneficiaries above age 62 would begin to receive a full 55 percent SBP annuity. An argument for such reform was the fact that survivors of workers who are covered by civilian federal government retirement plans and also qualify for Social Security do not incur as great a reduction in their total incomes when Social Security benefits begin at age 62.

The 2001 bills also mandated a gradual phaseout of the supplemental SBP annuity. Between 2001 and 2004 the maximum available supplemental annuity would have been 15 rather than 20 percent; beginning in 2004, the maximum supplementary annuity would be 10 percent; then in 2011, the supplementary option would be eliminated entirely. Because premiums are higher for the supplementary annuity, members who had chosen the SSBP would save money by this consolidation of the annuity into the single 55 percent of the less costly basic program. Although the 2001 bills did not pass,

[41] *e.g.*, House Report No. 101-665 (Committee on Armed Services), pp. 282-289, accompanying H.R. 4739, 101st Congress, 2d Session (1990).

Congress continued to express concern about the equity of the program. In 2003 the House Armed Services Committee observed:

> Although Congress has enacted legislation designed to correct such inequalities, many similarly situated survivors continue to receive disparate treatment under SBP….The committee desires to correct such inequities. Accordingly, the committee directs the Secretary of Defense to review active duty SBP benefit levels awarded to survivors under different circumstances of death, the procedures used by the Department of Defense to operate the program….and to propose legislation to ensure equitable treatment for the survivors of all members….[42]

The Military Survivor Benefits Improvement Act of 1989 also incorporated an open enrollment period provision--effective for the one year period beginning October 1, 1991--to allow current members of the uniformed services to become participants in the Survivor Benefit Plan, thereby "encourag[ing] higher participation in the SBP program," and to permit "those currently enrolled in the [regular SBP] program to take advantage of the new option [under the Supplemental Survivor Benefit Plan]."[43]

The second and most recent open enrollment period, mandated by the National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, 112 Stat. 2046, extended from March 1, 1999 to February 29, 2000.

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[42] House Report No. 108-106 (Committee on Armed Services), p. 329, accompanying HR 1588, 108th Congress, 1st Session (2003).

[43] Senate Report No. 101-81 (Committee on Armed Services), p. 181, accompanying S. 1352, 101st Congress, 1st Session (1989).

**Chapter IV.C.3.**

## Commissaries

**Legislative Authority**: 10 U.S.C. §§2484, 2486, and 2685. See 10 U.S.C. §§1063 (members of the reserve component), 4621 (Army), 7601 (Coast Guard), 7606 (Navy and Marine Corps), and 9621 (Air Force).

**Purpose**: To allow items of convenience and necessity--especially items of subsistence--to be made available for purchase by military personnel[1] at convenient locations and reasonable prices. Historically, the existence of commissaries has been viewed as a supplemental institutional benefit for, and by, members of the Armed Forces. Reservists and National Guard members and their families were granted unlimited commissary privileges in 2003.[2]

**Background**: The sale of foodstuffs to service members originated with the "sutler system." Sutlers were peddlers who followed the Army from place to place at frontier posts, selling food, liquor, and general merchandise to the troops. For the purpose of making needed items available to members of the Armed Forces, this practice was far from ideal, since the sutlers were commonly understood to be more interested in making money than in providing honest service. Whiskey took up a disproportionately large percentage of sales, and many soldiers were perpetually in debt after having accepted credit offered by the sutlers.

Sutlers continued to be the main provisioners of subsistence items to members of the Armed Forces until 1866, when Congress directed the Army to provide articles for sale to officers and enlisted men at cost. Since that time, Army commissary stores have provided foodstuffs and related grocery store items at cost to members of the Armed

[1] When originally established, commissary stores were looked on as being primarily intended for the benefit of members of the Armed Forces and their dependents. Over time, however, other categories of personnel--including personnel in the non-military branches of the uniformed services and reserve forces personnel--became entitled to use them under varying circumstances.

[2] National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, 117 Stat. 1521.

Forces and their dependents. The Marine Corps opened its first commissary store in 1909; the Navy, in 1910; and the Air Force, in 1947.

In 1949, Congressman Philip J. Philbin of the House Armed Services Committee held hearings on Department of Defense resale activities, including commissary stores. From these hearings, joint service regulations, currently classified as Department of Defense Regulation 1330.17-R, evolved to govern commissary store operations. Annual oversight hearings and a number of special hearings have been held since--*e.g.*, in 1953, 1957, 1970, 1972, and 1979--all of which reached the conclusion that the military resale system is a privilege that members of the Armed Forces and their families have come to expect and rely upon and that such personnel regard the system as an important benefit accruing to service membership. In 1972, a House Armed Services Committee special subcommittee on recruiting and retention came to the independent conclusion that commissary stores are a vital factor in the retention of military personnel and encourage enlistments.

Until 1985, the general provisions of the annual Department of Defense appropriations acts contained language precluding the use of appropriated funds for certain commissary store operating expenses, including commercial transportation in the United States, utilities in the contiguous United States, operating equipment and supplies, and store losses through shrinkage, spoilage, and pilferage of merchandise. See, *e.g.*, Act of October 12, 1984, Public Law 98-473, Title I, §101(h) [Title VIII, §8010], 98 Stat. 1884, 1924-1925 (1984); Department of Defense Appropriations Act, 1984, Public Law 98-212, Title VII, §713, 97 Stat. 1421, 1440 (1983); Act of December 21, 1982 (Further Continuing Appropriations, 1983), Public Law 97-377, Title I, §101(c) [Title VII, §714], 96 Stat. 1830, 1852-1853 (1982); Department of Defense Appropriations Act, 1982, Public Law 97-114, Title VII, §714, 95 Stat. 1565, 1580-1581 (1981).

In 1984, these prohibitions were codified at 10 U.S.C. §2484 by the Department of Defense Authorization Act, 1985, Public Law 98-525, §1401(i), 98 Stat. 2492, 2619-2620 (1984). As thus codified, appropriated funds may not be used, in connection with

the operation of any commissary, to pay for the purchase of items to be sold (including transportation of such items in the contiguous United States), the maintenance of operating equipment and supplies, utilities furnished by the government (in the contiguous United States), or for any costs incurred in redeeming discount coupons.[3] As explained in the House-Senate Conference Report,[4] the limitations were enacted in response to the requirement of Section 1267 of the Department of Defense Authorization Act, 1984, Public Law 98-94, §1267, 97 Stat. 614, 705 (1983), which required the Secretary of Defense to submit to the House and Senate committees on armed services proposed legislation

> for codification into appropriate titles of the United States Code, or for incorporation into other existing laws, those provisions of law that have been enacted during the past five years as a part of the annual Department of Defense Authorization Act or the annual Department of Defense Appropriation Act under the heading 'General Provisions' and that in the opinion of the Secretary should be so codified or incorporated.
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> In establishing this requirement, the Senate Armed Services Committee noted:
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> > The committee has observed that it has been the practice of the Department of Defense to submit the same proposed legislative provisions each year in the Department of Defense Authorization Act or the Department of Defense Appropriations Act. Many of these provisions which have been enacted on an annual basis are appropriate for codification in Title 10 of the United States Code or in other parts of Federal law. Accordingly, it is the committee's view that the Secretary of Defense should evaluate each general provision that has been enacted over the last five years as part of a Defense Authorization or Appropriation Acts and submit to the Congress a legislative proposal for the codification of those general provisions which the Secretary judges to be appropriate for incorporation in the United States Code. The Committee believes that the enactment of such a codification bill would be a far more efficient manner

[3] Under 10 U.S.C. §2484(b) as added by the Department of Defense Authorization Act, 1985, Public Law 98-525, *id*., §1401(i), 98 Stat. at 2619-2620, appropriated funds may, subject to regulations, in fact be used to defray such costs if they are reimbursed to the Federal Government. (Under this provision, the Federal Government is in effect permitted to provide a revolving line of credit to commissaries to fund the prohibited categories of operating expenses pending cash generation by sale of commissary items.)

[4] House Report No. 98-1080 (Committee of Conference), p. 336, accompanying H.R. 5167, 98th Congress, 2d Session (1984). See Senate Report No. 98-500 (Committee on Armed Services), p. 265, accompanying S. 2723, 98th Congress, 2d Session (1984).

of dealing with these legislative proposals than considering the same provisions every year.[5]

The Military Construction Authorization Act, 1975, Public Law 93-552, §611, 88 Stat. 1745, 1765 (1974), amended Title 10 of the United States Code to authorize surcharges on prices charged by commissaries in order to provide funds for construction, renovation, and other improvements.[6] Appropriated funds may be used to replace or repair commissary facilities damaged or destroyed by fire, theft, explosion, enemy acts,[7] or to construct new facilities or renovate existing facilities required by installation realignment or establishment.[8]

At the request of the chairman of the Morale, Welfare and Recreation Panel of the Subcommittee on Readiness of the House Armed Services Committee, on March 31, 1989 a memorandum of the Deputy Assistant Secretary of Defense for Resource Management and Support directed the conduct of "a comprehensive, unrestrained study of the military commissary system" to "strive toward developing policies that move the system forward in an orderly and consistent manner" while examining "options for ensuring a viable commissary program."[9] In response to this direction, the DOD Study of

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[5] Senate Report No. 98-174 (Committee on Armed Services), p. 259, accompanying S. 675, 98th Congress, 1st Session (1983). See House Report No. 98-352 (Committee of Conference), p. 262, accompanying S. 675, 98th Congress, 1st Session (1983).

[6] House Report No. 93-1545 (Committee of Conference), pp. 40-41, and Senate Report No. 93-1136 (Committee on Armed Services), p. 58, both accompanying H.R. 16136, 93d Congress, 2d Session (1974).

[7] 10 U.S.C. §2854, Restoration or replacement of damaged or destroyed facilities.

[8] Department of Defense Instruction 7700.18, Commissary Surcharge, Nonappropriated Fund (NAF) and Privately Financed Construction Reporting Procedures, July 16, 2003, Enclosure 3, and Department of Defense Regulation 1330.17-R, Armed Services Commissary Regulations (ASCR), April 1987, para. 4-404.4.

[9] DOD Study of the Military Commissary System, Study Report, Volume II (Appendices), p. A-2, Office of the Assistant Secretary of Defense for Force Management and Personnel, Washington, D.C., December 18, 1989. (The Department of Defense Study of Military Commissaries was conducted by a study group headed by a steering committee chaired by the then Deputy Assistant Secretary of Defense for Military Manpower and Personnel Policy, Lieutenant General Donald W. Jones. For this reason, the study group is known as the Jones Commission, and its report is frequently referred to as the Jones Commission Report.)

the Military Commissary System, known as the Jones Commission Report),[10] was submitted to Congress on December 18, 1989. As a result of the report and recommendations of the Jones Commission, Deputy Secretary of Defense Donald J. Atwood, by Department of Defense Directive dated November 9, 1990, established the Defense Commissary Agency to provide "an efficient and effective worldwide system of commissaries for the resale of groceries and household supplies at the lowest practical price (consistent with quality) to members of the Military Services, their families, and other authorized patrons" and "a peacetime training environment for food supply logisticians needed in wartime and ... subsistence support to military dining facilities consistent with Service needs."[11] The Defense Commissary Agency was established as a Department of Defense agency to operate all commissary functions of the individual services to ensure uniform commissary practices and policies for the Armed Forces and to integrate the commissary system into the overall force management structure, specifically including "management of subsistence war readiness materiel in peacetime and wartime."[12]

In November 1997, the Defense Reform Initiative devolved the day-to-day supervision of DeCA to the Military Departments. In May 1998, Defense Reform Initiative Directive #37 established the Commissary Operating Board to oversee day-to-day supervision of DeCA. In 1998, Congress amended sections 192 and 2482 of title 10, United States Code, authorizing a special exception to the law governing the operation of Defense Agencies with regard to the supervision of the Defense Commissary Agency.[13] Implementing those provisions, the DRID #37 was revised in May 1998, providing that, "…as a corporate body, will advise on the prudent operation of DeCA and the commissary system, and assist in its overall supervision.…"[14]

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[10] See footnote 7 to this chapter, above.

[11] Department of Defense Directive 5105.55, ¶C.1.a. and b., dated November 9, 1990.

[12] Department of Defense Directive 5105.55, ¶E.1.e., dated November 9, 1990.

[13] National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, 112 Stat. 1984.

[14] Defense Reform Initiative Directive #37 Revised: Oversight of the Defense Commissary Agency, December 23, 1998.

In 2000, Congress revised 10 U.S.C. §2484, providing that the commissary system's operating expenses should be paid for with appropriated funds and that surcharge funds should be reserved to pay for infrastructure expenses. The revision specifically allowed appropriated funds to be used to pay salaries, utilities, communications expenses, purchase operating supplies and services; pay second destination transportation costs within or outside the United States, and pay any costs relating to above-store-level management of the commissary system. At the same time, 10 U.S.C. §2486 was amended to require the sales price of merchandise sold in, at or by a commissary to include only the cost of first destination transportation in the United States and the actual or estimated cost for shrinkage, spoilage, and pilferage.[15] In 2003, Congress again expressed concern with the funding of the commissary benefit when the House Armed Services Committee specifically noted, "that the value of the commissary benefit to service members is derived from consistent appropriated funding support of commissary operations. Accordingly, this section would require the use of appropriated funding to support commissary operating expenses."[16] Consequently it amended 10 U.S.C. §2484 making the use of appropriated funds for the payment of commissary expenses mandatory.[17]

An appropriated fund entity of the United States, commissary stores are exempt from sales taxes imposed by state and local governments.

**Cost**: Although commissaries are operated primarily for the benefit of active-duty personnel and their families, it is in practice impossible to determine exactly who uses and benefits from the system most. Although cost savings average between 20 and 25 percent as compared with commercial retail outlets, it is difficult to quantify how much commissary privileges are worth to the people who actually use the system. This is in part

[15] National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-59. The effective date of revision of 10 U.S.C. §§2484 and 2486 was October 1, 2001.

[16] H.R. Report 108-106, Report of the Committee on Armed Services, which accompanied H.R. 1588, the National Defense Authorization Act for Fiscal Year 2004, May 16, 2003.

[17] National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, 117 Stat. 1523.

because of the great variety of types of people using the facilities, such as active and retired military personnel and their surviving spouses, 100 percent service-connected disabled veterans and their surviving spouses, certain reserve forces personnel, active duty and retired commissioned officers of the Public Health Service, retired commissioned officers, ships' officers and members of the crews of vessels of the National Oceanic and Atmospheric Administration, and certain civilian employees of the government serving overseas, among others.

**Chapter IV.C.4.**

## Military Exchanges

**Legislative Authority**: Legislative authority for establishment and operation of military exchanges is contained in 10 U.S.C. 2481. In addition, the Armed Services Exchange Regulations, first promulgated as a Department of Defense Directive in 1949, and currently issued with the approval of the House Committee on Armed Services, provide DoD-wide instructions governing exchange operations.

**Purpose**: The Armed Forces exchange programs are vital to mission accomplishment and form an integral part of the non-pay compensation system for active duty personnel.[1] As a military resale and category C revenue-producing morale, welfare, and reaction (MWR) activity, the Armed Services exchanges have the dual mission of providing authorized patrons with articles of merchandise and services and generating nonappropriated fund (NAF) earnings.

**Background**: During the Revolutionary War, provision was made in the American Army for the appointment and control of private entrepreneurs, known as sutlers, who supplied the troops with various daily necessities, including wine and liquor, to supplement regular Army rations. Army regulations provided that each post or regiment could appoint one sutler. Each month the post or regimental sutler was assessed a charge of 10 to 15 cents per man, which was paid out of profits. The money thus raised was used to establish a special post fund--now referred to as a NAF activity--for the benefit of the troops. The War Department, by regulations, and Congress, by its approval of several acts in 1806 and 1821, recognized that soldiers needed conveniently located,

[1] When originally established, exchanges were primarily intended for the benefit of members of the Armed Forces and their dependents. Over time, however, other categories of personnel became entitled to use them: retired military personnel and their dependents; reserve component personnel and their dependents; active duty and retired commissioned officers of the Public Health Service and their dependents; active duty and retired National Oceanic and Atmospheric Administration (NOAA) wage marine personnel and their dependents; civilian employees of DoD and their dependents when serving overseas or living on DoD installations in the United States; and veterans with 100 percent service-connected disability and their surviving spouses.

on-post facilities where they could purchase food, beverages, and merchandise and find amusement and recreation.

Despite this more or less open recognition of the so-called sutler system, people were far from pleased with how it worked in practice. Because of the virtual monopoly sutlers enjoyed, they could sell shoddy merchandise at high prices without fear of losing customers. In addition, the sutlers' provision of credit for the purchase of goods frequently left the troops badly in debt, to the detriment of morale. After these and other abuses became particularly flagrant during the Civil War, in 1866 Congress passed a law abolishing the system.

In 1895, Department of the Army General Order No. 46 directed the establishment of a post exchange at every post. These exchanges were under the operational control and management of the installation commander. The present exchange system, which evolved out of the former independent exchanges at each Army post, began in 1941 as the Army Exchange Service. The effectiveness of this system was tested during the years of combat in World War II. By and large, the Army Exchange Service proved itself equal to the task of providing for the needs of the troops.

Following the establishment of the Department of the Air Force in 1947, it was decided to operate the exchanges of the Army and the Air Force on a joint basis, and the Army and Air Force Exchange Service (AAFES) was organized in 1948. On May 14, 1949, the Secretary of Defense delegated to the Secretaries of the Army and Air Force functions, powers, and duties relating to exchange service activities and authorized the joint operation of these activities.

The evolution of the present Navy Exchange System and the Marine Corps Exchanges paralleled in many ways that of the Army Exchange Service. So-called "bum boats" served Navy ships early in our nation's history, in much the same way sutlers served Army posts, providing convenience items to ship-based personnel. Navy ships' stores became full-fledged governmental activities in 1909 with the adoption of the

precursor of present 10 U.S.C. chapter 651. Navy shore-based exchanges came under the governance of the Department of the Navy in 1923. Both systems were consolidated under the Navy Ships' Stores Office in 1946 and 1947. The first Marine Corps post exchange was established in 1897; in 1912 the last Marine post trader was replaced by an exchange.

Military exchanges are nonappropriated fund instrumentalities (NAFIs) of the Department of Defense that contribute greatly to the morale of military personnel and their dependents. As instrumentalities of the Federal Government, they are entitled to the sovereign immunities and privileges of the United States, as provided in the Constitution, statutes, treaties, and agreements with foreign governments. Military exchanges receive selected appropriated fund support, but they generally are self-supporting with respect to the payment of civilian salaries, purchase of operating equipment and supplies, and maintenance of facilities and equipment.

In 1949, Congressman Philip J. Philbin of the House Armed Services Committee held hearings on DoD resale activities. From these hearings, department-wide regulations for the governance of exchanges were developed. Known as the Armed Services Exchange Regulations, they are currently codified as DoD Directive 1330.9. Hearings were held again in 1953, 1957, 1970, 1972, and 1979, each time concluding that the exchange system represents a benefit of military service upon which members of the Armed Forces[2] and their families have come to rely and that the system should be continued. Indeed, exchange privileges are generally regarded as among the most important institutionalized benefits accruing to military personnel and their families.

**Cost**: Except for salaries of a limited number of military personnel, costs of overseas transportation of exchange merchandise, and provision of utilities overseas, nearly all operating costs are covered by NAF. Although buildings built with appropriated funds are sometimes made available for exchange usage, new construction is, with minor exceptions, conducted with NAF. NAF are also used for facilities

[2] See footnote 1, above.

renovation, furniture, fixtures, and equipment, and interior maintenance and remodeling. When new facilities are constructed on government property with NAF, title to the building passes to the government immediately upon completion.

**Savings**: According to recent price surveys, exchange patrons save approximately 20 percent on overall purchases as compared with prices for the same merchandise in non-exchange stores.

**Chapter IV.C.5.**

## The Thrift Savings Plan

**Legislative Authority:** 37 U.S.C. §211, 5 U.S.C. Chapter 84.

**Purpose:** To provide active-duty and Ready Reserve members an additional source of financial stability during their time of service and an additional incentive for career commitment through long-term, tax-deferred savings.

**Background:** The Thrift Savings Plan (TSP) was established for civilian government employees by the Federal Employees' Retirement System Act of 1986, Public Law 99-335. The plan is administered by the Federal Retirement Thrift Investment Board, a small independent federal agency. The original purpose of the TSP was to provide a separate fund of retirement income for civilian government employees, similar to that provided employees of the private sector by plans commonly called "401k's." The pension systems of private enterprise and the retirement system of the Armed Forces are called "defined benefit programs" because participation is mandatory and benefits are determined strictly by a member's level and length of service at the time of retirement. By contrast, the TSP is called a "defined contribution plan" because an individual who opts to participate can select a level of contribution that is financially most advantageous, and that level can be changed at any time. Another difference between the TSP and defined sources of retirement income is the growth factor: because growth is achieved by earnings on the investment of member contributions in a range of low-risk government bonds and higher-risk private-sector funds (five such choices were available in 2004), growth rates may vary substantially from year to year. The earnings from all such investments are non-taxable until after they are withdrawn. The minimum age to withdraw without penalty is 59 ½. In 2004 employees had the option of contributing as much as 9 percent of their basic pay, a ceiling that was scheduled to increase to 10 percent in 2005.

In 1999 the Armed Services committees of both the House and the Senate voiced support for providing members of the Armed Forces a tax-deferred savings plan that would improve their long-term financial security. Thus the House committee stated:

> The committee believes that tax deferred savings plans offer the military services cost effective opportunities for enhancing retention that should be explored. Accordingly, the committee directs the Secretary of Defense, in coordination with the services of the military departments, to examine the potential for implementing a variety of options for tax deferred savings plans as supplements and alternatives to current military retirement systems. The Secretary should consider options that include government matching contributions, time-delayed vesting schemes, and plans designed to increase retention within select segments of the force, to include those members with more than 20 years of service.[1]

The Senate Armed Services Committee made more specific recommendations on this subject:

> The committee recommends a provision that would, effective July 1, 2000, authorize members of the uniformed services to participate in the Thrift Savings Plan now available to federal civil service employees….Participating in a Thrift Savings account would encourage personal savings and enhance the retirement income for service members, who currently do not have access to a 401k savings plan….If enacted, military personnel would be able to join other federal workers in a savings plan that would enhance the value of their retirement system and permit them to improve quality of life. The committee believes this provision will be an important incentive for military personnel to remain on active duty or in the Ready Reserve.[2]

Following the committee recommendations, the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, 113 Stat. 670, made military personnel in all branches, as well as the uniformed personnel of the National Oceanic and Atmospheric Administration and the Public Health Service, eligible to participate in the Thrift Savings Plan under essentially the same conditions as those governing the participation of civilian federal employees. Under the military system of participation, member contributions are not matched by the employing agency, as they are in the

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[1] House Report No. 106-162 (Committee on Armed Services), p. 364, accompanying H.R. 1401, 106th Congress, 1st Session (1999).

[2] Senate Report No. 106-50 (Committee on Armed Services), p. 323, accompanying S. 1059, 106th Congress, 1st Session (1999).

Federal Employees' Retirement System, which is the newer of the two civil service retirement systems. In addition to contributing as much as 9 percent of their basic pay to a TSP account,[3] members of the Armed Forces also may contribute any percentage, from 1 to 100, of any incentive or special pay that they receive, as long as such contributions do not exceed the monetary limits placed by the Internal Revenue Service (IRS) on total annual contributions. The 2004 IRS limit of $13,000 was scheduled to increase by $1,000 in each of the two following years.

Unlike retirement annuities, earnings from the TSP contributions of a member of the Armed Forces belong to the individual, no matter how long the term of service. Upon a member's completion of service, TSP funds can be withdrawn in whole or in part, they can be converted into "401k" funds or conventional individual retirement accounts in the private sector, or they can be moved into a civilian TSP if the individual becomes a federal employee. If the member is married, approval of the spouse is required for most types of withdrawal. In 2004, participation in the uniformed services ranged from 34 percent of Navy personnel to 16 percent of Army personnel.[4]

[3] The percentage limitation was scheduled to change at the same rate and at the same time as that for civil service employees.

[4] Federal Retirement Thrift Investment Board, March, 2004.

## Chapter V.A.

### Overview of Manpower-Related Cost Items

In addition to the various pays, allowances, and other benefits set out under Sections II, III, and IV of this edition of Military Compensation Background Papers, military personnel also receive a number of other allowances or benefits that are related to and derive from the specialized needs and requirements of the military personnel system. In some cases, these allowances or benefits are intended to offset special expenses military personnel and their dependents are required to bear as a condition of service in the military forces of the United States, and in thus offsetting expenses military personnel in fact bear, there is little question but that a benefit of significant proportion is conferred on affected personnel. With respect to such allowances and benefits, the reason they are provided to military personnel and their dependents is to try to insure that there are no artificial disincentives to career military service. Among the allowances and benefits made available to military personnel for this and similar reasons are the various reimbursements set out under Subsection C of this Section V of this edition of *Military Compensation Background Papers* as well as a few of the benefits covered under Subsection B.

Other benefits are provided to members and former members of the Armed Forces more for the convenience of the government or to assist former members in their transition back to productive employment in the civilian economy. These benefits are, in the main, covered under Subsection B of Section V of this edition of Military Compensation Background Papers.

The principles and concepts of military compensation that are exemplified by the system of manpower-related cost items covered in this Section V of Military Compensation Background Papers are focused on the overall effectiveness of the compensation system in both peace and war; on the achievement of substantial equity for members of the Armed Forces, especially, in the case of reimbursements, in the sense of establishing a compensation system that is generally competitive with compensation in

the private sector; on the interrelationship between the military manpower requirements of the United States and the compensation system considered as a whole; and on motivation of members and potential members of the Armed Forces.

## Chapter V.B.1.

### Professional Education and Training

**Legislative Authority**: 10 U.S.C. §153(a)(5)(c) and 37 U.S.C. §§203(c)(1) and 209. Also miscellaneous provisions of Title 10, United States Code.

**Purpose**: To educate and train military personnel in skills required by and for the primary benefit of the various military services and to prepare such personnel for the increasingly greater responsibilities they will be called upon to assume as they progress in their military careers.

**Background**: Professional education and training, although it often may result in a collateral benefit to the individual service member who receives it, is intended primarily to benefit the military services of the United States, enabling them to meet national security objectives. In his State of the Union address to Congress in December 1796, President Washington expressed the following rationale for professional education and training in terms that have withstood the test of time:

> However pacific the general policy of a nation may be, it ought never to be without an adequate stock of military knowledge for emergencies.... In proportion as the observance of pacific maxims might exempt a nation from the necessity of practicing the rules of the military art ought to be its care in reserving and transmitting, by proper establishments, the knowledge of that art. Whatever arguments may be drawn from particular examples superficially viewed, a thorough examination of the subject will evince that the art of war is at once comprehensive and complicated, that it demands much previous study, and that the possession of it in its most improved and perfect state is always of great moment to the security of a nation.[1]

The Act of March 16, 1802, ch. 9, §§26 and 27, 2 Stat. 132, 137 (1802), recognized the need for a "stock of military knowledge" by providing for a corps of engineers in the U.S. Army and by specifying that "the said corps, when so organized, shall be stationed at West Point in the state of New York, and shall constitute a military

[1] James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents 1789-1897*, v. 1, 21-22 (Washington, D.C.: GPO, 1900).

academy." The Act of April 29, 1812, ch. 72, 2 Stat. 720 (1812), expanded the military academy's teaching staff and established a four-year curriculum to include fields of study other than engineering. The Act of July 13, 1866, ch. 176, §6, 14 Stat. 90, 92 (1866), further reduced the academy's engineering emphasis by permitting the selection of a superintendent from any branch of the Army.

A "Naval School" was established by Secretarial regulations in 1845, and the Naval Appropriation Act of August 10, 1846, ch. 176, §4, 9 Stat. 97, 100 (1846), supported this action by appropriating $28,200 "for repairs, improvements, and instruction at Fort Severn, Annapolis, Maryland." Revised regulations of 1850 renamed the school the "United States Naval Academy." During the first few years of the Naval Academy's existence, its student body was drawn from midshipmen on active duty, many of whom had completed several years of service. The Act of July 16, 1862, ch. 173, §11, 12 Stat. 583, 585 (1862), even though it made no explicit change in the Naval Academy's status as a regulatory rather than a statutory entity, legislatively recognized its existence and title by enacting rules governing the admission, number, age limits, and dismissal of "students." The Act of May 21, 1864, ch. 93, §4, 13 Stat. 80, 85 (1864), provided the first statutory underpinning for the establishment of the Naval Academy. It followed a temporary relocation during the Civil War to Newport, Rhode Island, and provided that "the United States Naval Academy shall be returned to and established at the naval academy grounds in Annapolis...." The Act of March 3, 1873, ch. 230, §1, 17 Stat. 547, 555 (1873), prescribed a six-year course of instruction for the academy, with the first four years to be spent in academic studies and the remaining two years at sea. The Act of March 7, 1912, ch. 53 [Public Law 98, 62d Congress], 37 Stat. 73 (1912), eliminated the two years' service-at-sea requirement and established a four-year course with summer cruises and practical instruction.

The United States Air Force Academy was authorized by the Act of April 1, 1954, ch. 127 [Public Law 325, 83d Congress], §2, 68 Stat. 47 (1954); was officially activated at a temporary site at Lowry Air Force Base, Colorado, in August 1954; admitted its first

class of cadets in July 1955; and moved to its permanent location near Colorado Springs in August 1958.

Under 37 U.S.C. §203(c)(1), as amended by the National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-150, service academy cadets and midshipmen are entitled to monthly "cadet ... or midshipman pay" amounting to 35 percent of the basic pay received by an officer of grade O-1 with less than 2 years of service. In 2004, that amount was $792.54 per month. In 1977 a provision for pay levels of cadets and midshipmen was added to 37 U.S.C. §203 by Public Law 95-79. Between 1977 and 2001, this payment was prescribed as a specific amount rather than a percentage. The last two such amounts, set respectively by the authorization acts for fiscal years 1995 and 1999, were $558 and $600, prior to establishment of the percentage formula in 2001. Cadets and midshipmen are also entitled to rations in kind or commuted rations at all times.

The service academies are not the sole providers of undergraduate military education and training. Senior Reserve Officers' Training Corps (ROTC) programs at civilian educational institutions play a prominent part in such education and training and now constitute the principal source of new officers for the services.

With a few notable exceptions, such as Norwich University, the Military College of the Citadel, and the Virginia Military Institute, state and private colleges did not offer military training in the years before the Civil War. The virtual absence of such training, together with the resignation of many officers to serve with the Confederacy, resulted in a severe shortage of trained officers in the first years of the war, especially in the Union forces. The early Civil War experience was responsible for the inclusion of military instruction in the curricula of the colleges founded under the so-called "Morrill Act," the Act of July 2, 1862 (Land Grant Act of 1862), ch. 130, §4, 12 Stat. 503, 504 (1862). The Act awarded a grant of public lands to each state agreeing to use the funds from the sale of such land for "the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and

including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts...."

The Morrill Act did not make any provision for federal financial or other assistance to land-grant colleges in conducting military programs, nor did it make clear whether military training was compulsory or optional for students at the colleges. As a result, the quality of instruction at land-grant colleges was uneven. Some colleges made military instruction compulsory, others made it elective. Some made the instruction a four-year requirement, others fixed a shorter requirement. The number of hours devoted to military instruction each week varied from school to school, as did the status of professors of military science and tactics, the wearing of uniforms during instruction periods, and military course content. This situation was tolerated as long as the United States was not engaged in a major conflict, but the imminence of the nation's entry into World War I made a change imperative.

The Act of June 3, 1916 (National Defense Act of 1916), ch. 134 [Public Law 85, 64th Congress], §40, 39 Stat. 166, 191 (1916), abolished the land-grant-college system of undergraduate military education and replaced it with an ROTC structure, which, with modifications, continues to the present. The act authorized the formation of, and the furnishing of arms, equipment, and means of transportation to, ROTC units at civilian educational institutions, and provided for the assignment of Army officers to participating institutions as professors and assistant professors of military science and tactics. It specified that ROTC units be comprised of at least 100 students, required that an average of at least three hours a week be devoted to military instruction, allowed the establishment of both four-year and two-year ROTC programs, and permitted participating institutions to determine whether military courses would be compulsory or elective. It also authorized the payment of a monthly subsistence allowance during the last two years of the military course to ROTC cadets who had successfully completed the first two years. The Act of March 4, 1925, ch. 536 [Public Law 611, 68th Congress], §22, 43 Stat. 1269, 1276 (1925), brought the Navy into the ROTC system on the same basis as the Army.

The naval ROTC system was expanded to include a scholarship program by the Act of August 13, 1946, ch. 962 [Public Law 729, 79th Congress], §§3 and 4,60 Stat. 1057, 1058-1059 (1946). This naval scholarship program--popularly known as the Holloway Plan from the name of the officer who headed the board that recommended it--provided for financial assistance, including a monthly subsistence allowance and payment of tuition, books, fees, *etc*., to selected students in the four-year ROTC course. The Army did not seek, and was not granted, similar authority for its ROTC program. The Reserve Officers' Training Corps Vitalization Act of 1964, Public Law 88-647, 78 Stat. 1063 (1964), established a uniform ROTC system for all military departments. In essence, it extended the naval ROTC program, including the Holloway Plan, to all three military departments.

Members of the Senior Reserve Officer's Training Corps who have committed themselves to complete advanced training and make themselves eligible for commission as reserve officers at the end of that training receive a monthly subsistence allowance. Eligibility for the allowance begins the day advanced training begins, and it ends upon completion of that training. Barring an extension of training into an extra year, the maximum period of eligibility is 20 months; in no event can eligibility extend for more than 30 months.

In recent years, Congress has mandated two increases in the amount of the allowance for senior ROTC trainees. The National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, raised the allowance from $150 per month (the level at which it had been for the previous five years) to $200 per month. The National Defense Authorization Act for 2001 then prescribed a range of payments between $250 and $674 per month, to be specified by the Secretary of Defense as set forth in Chapter 59, volume 7A of the DoD Financial Regulation. Within that range, in 2004 members in their first year of senior training received $350 per month and those in their second year received $400 per month.

In addition to the service academies and the ROTC programs, pre-commissioning education and training is provided through a number of other officer procurement

programs. These include (1) Navy Reserve Officer and Aviation Reserve Officer Candidate Programs and Marine Corps Platoon Leader Classes, participants in which are college students with training conducted off-campus; (2) officer candidate schools in all the services; (3) various health-professional acquisition programs; and (4) enlisted degree completion and commissioning programs at civilian institutions: the Naval Enlisted Scientific Education Program, the Marine Enlisted Commissioning Education Program, and the Air Force Airman Education and Commissioning Program. Enlisted personnel who complete the latter programs also attend the officer candidate school for their respective branches of service before being commissioned. Participants in Navy Reserve officer and Aviation Reserve officer candidate programs and Marine Corps platoon officer classes are entitled to the same monthly subsistence allowance as ROTC members in advanced training. All the pre-commissioning programs, including the service academies and ROTC, require a military obligation from participating students to "pay back" the government's investment in their professional education and training.[2]

The various pre-commissioning education and training programs are by and large designed to provide a broad general education and foundation of military knowledge. Hence, most newly commissioned officers also receive formal initial or specialized area training for the specific type of duty they will be performing. Ordinarily, such training is conducted by each officer's own branch of service. Military skill progression training normally follows after a period of practical experience and is designed to enable the officer to assume more advanced responsibilities.

The next part of the officer education and training pattern is professional development education, the purpose of which is to prepare officers to cope with the different problems they may have to deal with over the course of a military career. The annual training report submitted to Congress by the Department of Defense divides the professional development service schools for officers into three educational levels--career

[2] In most cases, the "military obligation" required for pre-commissioning programs is an active duty obligation, although some Army officers may serve their obligations in reserve components.

officer professional schools, intermediate service schools, and senior service colleges.[3] The Marine Corps Amphibious Warfare Course and the Air Force Squadron Officer School, which are service-wide in scope, constitute the greatest part of professional development service schools at the "career" level, although there are more narrowly directed, specialized skill training schools as well, such as the Navy Surface Warfare Officers Course and the Army's Armor Officer Advanced Course.[4]

The Command and Staff Colleges operated by each of the services and the Armed Forces Staff College are at the "intermediate" service school level. Their purpose is to prepare officers for command and staff duties at all echelons of their respective services and in joint or allied commands. Some of these schools have a long tradition. The Army Command and General Staff College, for example, was opened in 1881 as the School of Application for Infantry and Cavalry. Other schools at this level include the College of Naval Command and Staff, the Marine Corps Command and Staff College, and the Air Command and Staff College.[5]

Each military department operates a senior service school or "war college." Also at the senior professional development level is the National Defense University, consisting of two joint-service senior service schools, The National War College, and the Industrial College of the Armed Forces. Each of these schools is designed to prepare officers for senior command and staff positions at the highest levels in the national security establishment and the allied command structure. All integrate the study of economic, scientific, political, sociological, and other factors as they relate to national security, the unifying focus being the study of national goals and national security policy. The Industrial College of the Armed Forces emphasizes the use and management of

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[3] "Military Manpower Training Report for FY 1997," submitted to Congress pursuant to 10 U.S.C. §115a(f), June 1996, Chapter VII, pp. 59-64.

[4] "Military Manpower Training Report for FY 1997," submitted to Congress pursuant to 10 U.S.C. §115a(f), June 1996, Chapter VII, p. 61.

[5] "Military Manpower Training Report for FY 1997," submitted to Congress pursuant to 10 U.S.C. §115a(f), June 1996, Chapter VII, pp. 62-63.

national resources. Most of these colleges, too, have a relatively long tradition. The Naval War College was established in 1884, the Army War College in 1901, and the National War College and the Industrial College of the Armed Forces in 1946.[6]

In addition to instruction and training provided by war colleges, command and staff colleges, and the like, professional development education may consist of post-graduate studies at the Naval Postgraduate School, the Air Force Institute of Technology, or at civilian institutions, depending on where the required education can best be obtained. The purpose of these programs is to fill essential and "validated" military positions requiring specialized advanced knowledge attainable only through graduate-level education. Under these programs, military officers undergo graduate education on a full-time, fully funded basis. An active service payback obligation is required of all officers who enter any of the programs. Under current regulations, a minimum service payback obligation of three years for the first year of schooling and one year for each following year of schooling is required of all officers entering any of the graduate-level programs.[7]

Sprinkled throughout the professional education and training pattern are programs that permit selected members to work toward associate, baccalaureate, or advanced degrees. These programs are intended to enhance members' technical qualifications and improve their general educational attainments. They also serve as a recruiting and retention incentive, as reflected by the fact that most such programs carry an additional service obligation as a "payback" for the schooling provided. To the extent possible, personnel in advanced education programs are later used to satisfy "validated" service requirements, thereby reducing the required student load in graduate education for such billets. Other full-time professional education furnishes training in a variety of job-oriented skills that can best be acquired through short-term courses, as well as training

[6] "Military Manpower Training Report for FY 1997," submitted to Congress pursuant to 10 U.S.C. §115a(f), June 1996, Chapter VII, pp. 63-64.

[7] "Military Manpower Training Report for FY 1997," submitted to Congress pursuant to 10 U.S.C. §115a(f), June 1996, Chapter VII, pp. 66-68. See also DoD Directive 1322.10 of August 31, 1990.

courses to expand the skills of health professionals and provide them with up-to-date information on the latest techniques in their fields.[8]

The enlisted professional education and training pattern is notably different from the officer pattern. Enlisted personnel do not receive pre-entry military education; their training begins at the recruit depots after they have entered into their enlistments. Recruit training is designed to give new enlisted entrants the basic knowledge and general skills they will need to perform as members of military units, to provide an orderly transition from civilian to military life, and to motivate recruits to become dedicated and productive members of the Armed Forces. Following this "introductory" and "indoctrination" training, enlisted members are normally assigned to formal initial skill training or to on-the-job training leading toward a low-level military occupational specialty. On-the-job training once predominated in enlisted initial skill training, but the increasingly complex technological demands placed on service personnel have now made more formal instruction the principal method pursued at present. After their recruit and initial skill training, the further professional education and training of enlisted personnel is usually limited, during the initial enlistment at least, to on-the-job experience. The major exception is Navy training, conducted by fleet schools, in such shipboard duties as fire fighting and damage control.[9]

Enlisted members may be assigned to skill progression training upon reenlistment,[10] but in most cases they progress in their skill areas through the acquisition of advanced practical knowledge gained on the job and without additional formal training. Furthermore, some enlisted personnel will attend NCO professional

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[8] "Military Manpower Training Report for FY 1997," submitted to Congress pursuant to 10 U.S.C. §115a(f), June 1996, Chapter VII, pp. 68-70.

[9] "Military Manpower Training Report for FY 1997," submitted to Congress pursuant to 10 U.S.C. §115a(f), June 1996, Chapters III and V, pp. 14-22, 33-41.

[10] "Military Manpower Training Report for FY 1997," submitted to Congress pursuant to 10 U.S.C. §115a(f), June 1996, Chapter V, pp. 39-41.

development training programs to prepare them for increased supervisory and leadership responsibilities.[11]

Normally, few enlisted personnel attend regularly programmed specialized courses after mid-career; however, on occasion new equipment or systems are introduced, and senior enlisted personnel may be formally trained in operation and maintenance techniques. Selected senior enlisted personnel attend schools, such as the Army Sergeants Major Academy, which are, on the NCO level, similar in purpose to the intermediate and senior service schools in the officer education system.[12]

**Cost**: For the cost of professional education and training from 1972 to 1976, see Table V-1 of *Military Compensation Statistics Tables*, volume II of this edition.

[11] "Military Manpower Training Report for FY 1997," submitted to Congress pursuant to 10 U.S.C. §115a(f), June 1996, Chapter VII, pp. 64-66.

[12] "Military Manpower Training Report for FY 1997," submitted to Congress pursuant to 10 U.S.C. §115a(f), June 1996, Chapter VII, pp. 64-66.

**Chapter V.B.2.**

## Veterans' Educational Assistance (GI Bill)

**Current Legislative Authority**: Chapters 30, 32, 34, and 35, Title 38, United States Code (38 U.S.C. §§3001-3036, 3201-3243, 3451-3493, and 3500-3566, respectively), Chapter 107, Title 10, United States Code (10 U.S.C. §§2141-2149), and Chapter 1606, Title 10, United States Code (10 U.S.C. §§16131-16137).

**Purpose**: As set out in 38 U.S.C. §3451, in creating the Veterans' Educational Assistance Program, Congress intended to (1) enhance and make more attractive service in the Armed Forces, (2) extend the benefits of higher education to qualified and deserving young people who might not otherwise be able to afford it, (3) provide vocational readjustment and restore lost educational opportunities to those service men and women whose careers had been interrupted or impeded by active duty after January 31, 1955, and (4) aid such persons in attaining the vocational and educational status they might normally have aspired to and attained had they not served their country. All of the educational assistance programs covered by this chapter share these purposes.

**Background**: To assist the speedy and successful reintegration of returning veterans, particularly drafted veterans, into civilian life, Congress has over the years enacted a series of laws, popularly known as "GI Bills," covering veterans of World War II, the Korean conflict, the Post-Korean "Cold War" Period, and the period of Southeast Asia hostilities, respectively. A major aim of these "bills" was, and is, to provide education and training opportunities to affected personnel.

The World War II educational benefit consisted of payments by the government on behalf of a veteran pursuing a course of education or training, for books, tuition, and customary fees, not to exceed $500 for an ordinary school year. In addition, a subsistence allowance was paid directly to the veteran. The period of entitlement to education benefits was determined by the length of the veteran's World War II service, with a four-

year maximum period of entitlement. With minor exceptions, this program ended July 25, 1956.

The education benefits made available to veterans of the Korean conflict, unlike the World War II program, did not permit payment to the educational institution for tuition, books, etc., but limited the benefit to the stipend paid directly to the veteran. The period of entitlement to educational benefits was determined by the length of the veteran's Korean conflict service, with the maximum period of entitlement generally being three years. For the purpose of this program, the "Korean Conflict" was considered to have started June 27, 1950, and to have ended January 31, 1955, except that, for persons on active duty on January 31, 1955, the ending date was postponed until the date of such person's first discharge or release from active duty after January 31, 1955. Under any circumstances, however, payment of educational assistance based on Korean-conflict service terminated January 31, 1965. About 2.4 million veterans were trained under this educational benefit program.

Education benefits were first provided to dependents of veterans with the enactment of what was referred to as the “War Orphans’ Educational Assistance Act of 1956.” On September 2, 1958, Public Law 85-857 consolidated all of the laws administered by the Veterans’ Administration into one act. The consolidation of Title 38 of the U.S.C., “Veterans’ Benefits”, established Chapter 35, the “War Orphans’ Educational Assistance Program.” PL 85-857 extended monthly education benefits ($110 for full-time students) for a maximum of 36 months to the children 18 to 23 years of age of the veterans of World War I, World War II, and the Korean Conflict who died as a result of service connected activity. PL 85-857 also extended benefits to provide restorative training to overcome or lessen the effects of a physical or mental disability that interfered with educational attainment. PL 88-361 later extended education benefits of the program to children of living veterans rated permanently and totally disabled who sustained their disability as a result of service-connected activity.

The name of the program was changed to its current name, “Survivors’ and Dependents’ Educational Assistance Program (DEA),” on October 15, 1976, with the enactment of PL 94-502. This law increased the maximum entitlement from 36 to 45

months. The law also extended the period of eligibility for children from five to eight years.

The Veterans' Readjustment Benefits Act of 1966, as amended, Public Law 89-358, 80 Stat. 12 (1966), which added Chapter 34, Veterans' Educational Assistance, to Title 38, United States Code, is the basic "GI Bill" for veterans of the post-Korean "Cold War" and the period of Southeast Asia hostilities. Under the Veterans' Readjustment Benefits Act of 1966, Public Law 89-358, *id*., an educational assistance allowance could be paid by the Veterans' Administration[1] to (1) an other-than-dishonorably-discharged veteran who had served on active duty for more than 180 days any part of which occurred after January 31, 1955, and before January 1, 1977, or who, regardless of length of service, had been discharged or released from active duty between such dates for a service-connected disability or (2) an individual who had served more than 180 days during that period in an active-duty status for so long as he continued on active duty without a break therein.

The period of entitlement to educational benefits under this program was determined by the length of the veteran's active service during the post-Korean period and the period of Southeast Asia hostilities, with entitlement to assistance for one and one-half months (or the equivalent in part-time assistance) accruing for each month of active service after January 31, 1955. However, once a veteran had served a period of 18 months or more on active duty after January 31, 1955, and had been released from such service under conditions that would satisfy his active duty obligation, he was entitled to educational assistance for a period of 36 months. Veterans' Education and Employment Assistance Act of 1976, Public Law 94-502, §203, 90 Stat. 2383, 2386 (1976), increased the 36-month limit to 45 months for all training.

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[1] The Veterans Administration was redesignated as the Department of Veterans Affairs by the Department of Veterans Affairs Act, Public Law 100-527, §2, 102 Stat. 2635 (1988). Pursuant to that act, from and after March 15, 1989, all references in any federal law, executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Veterans Administration is statutorily deemed to refer to the Department of Veterans Affairs. Department of Veterans Affairs Act, Public Law 100-527, *id*., §10, 102 Stat. at 2640-2641; also see, 38 U.S.C.A. §301 note.

As a general rule, an educational allowance could not be paid beyond a date 10 years after a veteran's last discharge or release from active duty after January 31, 1955. Qualifying educational institutions included approved public and private secondary schools, junior or senior colleges, and vocational, scientific, or correspondence schools. Additionally, an allowance could be paid for apprenticeship and other on-the-job training, cooperative and farm cooperative programs, and refresher or other deficiency, preparatory, or special assistance courses. Monthly rates for educational assistance allowances varied depending on the type of training the recipient had chosen (institutional or cooperative), the amount of time the recipient spent on the program (full time, three-fourths time, or half-time), and the number of dependents the recipient had. Rates of assistance, as increased by the Veterans' Benefits Improvement Act of 1984, Public Law 98-543, §202(1), 98 Stat. 2735, 2741 (1984), were as follows:

| **Type of Program** | **No Dependents** | **One Dependent** | **Two Dependents** | **Amount per Additional Dependent** |
|---|---|---|---|---|
| *Institutional:* | | | | |
| Full-Time | $376 | $448 | $510 | $32 |
| 3/4 Time | 283 | 336 | 383 | 24 |
| Half-Time | 188 | 224 | 255 | 17 |
| *Cooperative:* | 304 | 355 | 404 | 23 |

The educational assistance allowance for an individual who pursued a program of education while on active duty was computed by reference to the charges for tuition and fees made by the institution to similarly-circumstanced non-veterans enrolled in the same program, or $376 per month for a full-time course, whichever was the lesser. A person training less than half-time was paid at the rate of tuition and fees not to exceed the half-time rate. A veteran enrolled in a program of education exclusively by correspondence was paid an allowance computed at the rate of 55 percent of the charge the institution required of non-veterans for the course or courses. For full-time apprenticeship or other on-the-job training, a veteran was entitled to a training assistance allowance the amount of which depended on how long the training lasted and the number of dependents the

veteran had. This program terminated on December 31, 1989, having trained about 8.2 million veterans.

The Veterans' Education and Employment Assistance Act of 1976, Public Law 94-502, §404, 90 Stat. 2383 (1976), provided for the so-called "Post-Vietnam Era Veterans' Educational Assistance Program" (VEAP), codified as Chapter 32, Title 38, United States Code, 38 U.S.C. §§3201-3243. As adopted, VEAP provided educational assistance to all members of the Armed Forces first entering military service on or after January 1, 1977 and before July 1, 1985, whereas the preexisting GI bill continued to apply to all personnel who first entered the service before that date.

Although VEAP was in many respects similar to earlier veterans' educational assistance programs, it differed in several important respects. Whereas earlier programs had been more or less automatic in their application, VEAP was voluntary and contributory, with contributions by a service member being a condition of entitlement. The Department of Defense matched a service member's contributions on a $2 for $1 basis. The maximum educational benefit available under basic VEAP was $8,100--$2,700 of which was contributed by the service-member. The service member's contribution could be made monthly, at rates varying from $25 to $100, or in a lump sum, but no matter how the contribution was made, it could not exceed $2,700 in the aggregate.

Under VEAP, a service member accrued benefits at the rate of one month of educational assistance for each month of contributions, up to a total of 36 months of benefits.[2] The amount of benefits depended on the total of the contributions made by the member. For a member who made the maximum contribution of $2,700 over a 36- month period,[3] the monthly VEAP benefit, payable over 36 months, was $225.[4] In contrast to

[2] For a member who made a lump-sum contribution, the number of months of benefits payable were computed by assuming the contribution was made in monthly installments of $100 each.

[3] See footnote 2, above.

earlier GI bill programs, the amount of the benefit does not vary with the number of a service member's dependents. Like earlier programs, however, benefits are payable to members on active duty.

The Veterans' Education and Employment Assistance Act of 1976, Public Law 94-502, *id.*, viewed veterans' educational assistance benefits as serving a number of purposes. As expressly reflected in the language of the act itself, the educational assistance program was established in part "to promote and assist the all-volunteer military program of the United States by attracting qualified men and women to serve in the Armed Forces," as well as to enable members and former members to obtain educations they otherwise might not have been able to afford.[5] The legislative history of the act makes clear, however, that cost saving was also important in the adoption of VEAP. The Senate Committee on Veterans' Affairs, which considered the bill, expanded on these varied themes in its report:

> ... In an attempt to balance the legitimate concerns about budgetary expenditures with the many advantages our Nation receives from GI bill expenditures, the reported bill creates a new post-Vietnam era veterans' educational assistance program.... The new program will result in reduced future expenditures of GI bill moneys while, at the same time, helping assure a viable military force and continuing the important educational investments by our Nation in the youth of our country....
>
> It is apparent to the Committee that the Nation needs to provide some form of readjustment assistance for those who serve and those who will serve in the Armed Forces....
>
> The Committee believes that ... the benefits [made available under VEAP] will facilitate the transition from military to civilian life that each service person must ultimately make....
>
> Another important factor contributing to the Committee's determination to provide an alternative to the termination of the GI bill is its desire to continue

[4] In addition to the basic VEAP program outlined above, the Department of Defense was authorized to make such additional contributions as the "Secretary deems necessary or appropriate to encourage persons to enter or remain in the Armed Forces. .. ." This supplemental benefit program, sometimes called UltraVEAP or the Army College Fund, was available only to service members enlisting in critical skills in the Army. Under regulations promulgated by the Department of Defense, the maximum benefit that could be accrued under this program was $20,100.

[5] 38 U.S.C. §3201.

> to assist deserving young men and women in obtaining an education they might not otherwise be able to afford....Termination of the current GI bill, without providing a suitable alternative .... would impede the upward mobility of our Nation's minorities and disadvantaged....
>
> The Committee recognizes that the GI bill, although originally devised as a readjustment program, has been successfully utilized as a recruiting incentive....
>
> The Committee believes that terminating the GI bill, without providing an alternative postservice educational benefits program, would impair the military's ability to attract sufficient numbers of quality recruits....
>
> The Committee also recognizes that postservice educational benefits have been utilized by the Armed Forces to attract young men and women into the military. Educational opportunities are a major attraction for quality accessions...."[6]

Under an amendment to VEAP made by the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Public Law 99-576, §309(a)(2), 100 Stat. 3248, 3270 (1986), persons who first entered military service after June 30, 1985, are not eligible to participate in the Program, although the Program still applies to all persons who entered military service between January 1, 1977, and June 30, 1985. To receive benefits, a person must have made some contribution before April 1, 1987.

The Veterans' Educational Assistance Act of 1984, enacted as Title VII of the Department of Defense Authorization Act, 1985, Public Law 98-525, Title VII, §§701-709, 98 Stat. 2492, 2553-2572 (1984), established two new educational assistance programs for military personnel and former military personnel. One of the programs, termed the "All-Volunteer Force Educational Assistance Program,"[7] was enacted as new Chapter 30 to Title 38, United States Code (Veterans' Benefits), and the other, termed "Educational Assistance for Members of the Selected Reserve,"[8] was enacted as an amendment to Chapter 106 of Title 10, United States Code (Armed Forces). As explicitly stated at 38 U.S.C. §3001 as enacted and codified by §702 (a)(1) of the 1985 Authorization Act, Public Law 98-525, *id*., §702(a)(1), 98 Stat. at 2553-2554, and as amended by the New GI Bill Continuation Act, Public Law 100-48, §5, 101 Stat. 331,

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[6] Senate Report No. 94-1243 (Committee on Veterans' Affairs), pp. 60-72, accompanying S. 969, 94th Congress, 2d Session (1976).

[7] Presently titled the Montgomery GI Bill--Active Duty.

[8] Presently titled the Montgomery GI Bill--Selected Reserve.

331-332 (1987), the purposes of the All-Volunteer Force Educational Assistance Program were:

> (1) to provide a new educational assistance program to assist in the readjustment of members of the Armed Forces to civilian life after their separation from military service;
>
> (2) to extend the benefits of a higher education to qualifying men and women who might not otherwise be able to afford such an education;
>
> (3) to provide for vocational readjustment and to restore lost educational opportunities to those service men and women who served on active duty after June 30, 1985;
>
> (4) to promote and assist the All-Volunteer Force program and the Total Force Concept of the Armed Forces by establishing a new program of educational assistance based upon service on active duty or a combination of service on active duty and in the Selected Reserve (including The National Guard) to aid in the recruitment and retention of highly qualified personnel for both the active and reserve components of the Armed Forces;
>
> (5) to give special emphasis to providing educational assistance benefits to aid in the retention of personnel in the Armed Forces; and
>
> (6) to enhance our Nation's competitiveness through the development of a more highly educated and productive work force.

The All-Volunteer Force Educational Assistance Program,[9] as originally enacted, consisted of a number of integrated provisions. The basic benefit accrued at the rate of $300 per month for military personnel who either served on active duty for three years or who serve on active duty for two years followed by four years in the Selected Reserve. Individuals who served on active duty for less than three years received $250 per month. In all cases, the benefits were, and continue to be, payable for the equivalent of a maximum of 36 full-time months. New entrants are automatically covered unless they decline to participate.

Under amendments to the program enacted in the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §337(a), 105 Stat. 75, 90 (1991), as itself subsequently amended by the Veterans

[9] See footnote 7 to this chapter, above.

Reconciliation Act of 1993, enacted as Title XII of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, §12009(a), 107 Stat. 312, 415 (1993), the Secretary of the Department of Veterans Affairs is authorized to make annual cost-of-living adjustments to the basic benefits to keep pace with inflation. The Veterans Education and Benefits Expansion Act for 2001, Public Law 107-103, 115 Stat. 977, prescribed that beginning in 2005 the Secretary make those yearly adjustments according to the yearly percentage changes in cost of living, as measured by the Consumer Price Index (CPI). The 2002 legislation prescribed specific dollar amounts for such increases to be made in the intervening years 2002 through 2004. As specified in the enactment of the program, allowances continue to fall into two categories: one for individuals with a three-year obligation and a lesser one for those with a two-year obligation. In 2004 the first category received $985 per month and the second category received $800 per month. Those figures are the basis for computing the CPI-based annual cost-of-living adjustments to begin in 2005.

The Montgomery GI Bill—Active Duty, which is the active duty phase of the All-Volunteer Force Educational Assistance Program, gives the Secretary of Defense discretion to increase the amount of the basic benefit by a prescribed amount for individuals in critical or difficult-to-recruit-for skills. In 1996 the basic amount of such an allowance was $400, with individuals who first become members of the Armed Forces after November 28, 1989 receiving $700. The National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, 112 Stat. 2029, eliminated the distinction in amounts based on date of entry into service, establishing a uniform allowance of $950 per month for individuals in this overall category.

Initially, the Montgomery GI Bill--Active Duty provided for benefits to be paid for attendance at institutions of higher learning as well as for pursuit of non-college-degree courses at institutions of higher learning. Subsequently, the Active Duty program was amended by the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Public Law 99-576, §301(a), 100 Stat. 3248, 3267-3268 (1986), to authorize payment of benefits for apprenticeship training, other on-job training, and

correspondence study. The Veterans' Benefits and Program Improvement Act of 1988, Public Law 100-689, §108, 102 Stat. 4161, 4169-4170 (1988), further amended the Active Duty program to authorize benefits for cooperative training. The Veterans' Benefits Amendments of 1989, Public Law 101-237, §422, 103 Stat. 2062, 2088-2090 (1989), authorized benefits for flight training during the period October 1, 1990, through September 30, 1994.

As originally enacted, the Montgomery GI Bill--Active Duty applied to persons who first became members of the Armed Forces or who first entered on active duty on or after July 1, 1985, but before July 1, 1988. During this period, personnel eligible for the new Program were prohibited from the participating in VEAP.

Experience with the Montgomery GI Bill--Active Duty generally proved favorable, and the authority was made permanent by the New GI Bill Continuation Act, Public Law 100-48, §3, 101 Stat. 331 (1987). In approving the permanent extension of authority for educational assistance, the House Armed Services Committee summarized the purposes of and experience under the program, as well as with the similar program for inactive-duty forces, as follows:

**PRIOR LEGISLATION**

> In 1976 Congress approved legislation (Public Law 94-502) ending educational assistance under the Vietnam-era GI Bill for individuals entering military service on or after January 1, 1977.
>
> Those with post-Vietnam-era service were instead eligible for the Veterans' Educational Assistance Program (VEAP) which, unlike the Vietnam-era benefit, required a contribution by the service member. Under this contributory program, the Government matched the service member's contribution of up to $2,700 on a two-for-one basis (or a Government contribution of up to $5,400), for a maximum educational benefit of $8,100. To make the program more attractive, the Army decided to supplement the basic benefit with substantial "kickers" for enlistment in critical skills, principally the combat arms, under the Army College Fund.
>
> With the exception of the Army College Fund which the Army advertised and marketed widely, VEAP was a dismal failure. Participation rates were low, and many who originally signed up subsequently decided to disenroll. Congress, therefore, decided to rethink the issue and subsequently in Title VII of the Department of Defense Authorization Act, 1985 (Public Law 98-525) approved a

three-year test of a new educational assistance program, commonly called the new GI Bill.[10]

## NEW GI BILL

The New GI Bill was designed to use educational benefits as a way to attract and retain high quality young men and women in the Nation's Armed Forces--in both the active and reserve components. The structure of the program is as follows:

Active duty personnel:

Applicable to all new entrants onto active duty from July 1, 1985, through June 30, 1988.

Basic benefit of $300 per month for 36 months in exchange for an enlistment of three years or longer (or $250 per month for 36 months for two-year enlistment).

Kicker authority up to $400 per month for critical skills.

Basic benefit paid by the Veterans Administration on a pay-as-you-go basis.

Kickers (and Reserve program) funded by the Department of Defense on accrual basis.

Participants' pay is reduced by $100 per month for first 12 months; service member is in program unless the individual declines to participate.

Reserve and Guard personnel:

Applicable to all who enlist, reenlist, or extend an enlistment in a reserve component from July 1, 1985, to June 30, 1988.

Entitlement of $140 per month for 36 months in exchange for a six-year commitment in the Selected Reserve.

No member contribution required.

Funded by the Department of Defense on an accrual basis.

Based on the information available to date, the committee is convinced the New GI Bill is a highly successful program. The committee will not restate the wealth of back-up data provided in Part I of the report on H.R. 1085 [which was enacted as the New GI Bill Continuation Act, Public Law 100-48, 101 Stat. 331 et seq. (June 1,. 1987)] filed by the Committee on Veterans' Affairs. Participation rates by service members have far exceeded even the most optimistic predictions when this legislation was formulated two and half [sic] years ago. Witnesses before the committee have uniformly endorsed the continuation of the New GI

[10] Title VII of the Department of Defense Authorization Act, 1985, Public Law 98-525, §§701-709, 98 Stat. 2492, 2553-2572 (1984), which dealt with, among other things, the educational assistance program for members of the Selected Reserve, was retitled "Montgomery GI Bill Act of 1984" by the New GI Bill Continuation Act, Public Law 100-48, §2, 101 Stat. 331 (1987).

> Bill as a vital tool to maintaining the outstanding recruiting and retention results currently experienced by the services.
>
> The Army's success during fiscal year 1986, the first year of experience under the New GI Bill, illustrates the importance of a viable educational assistance program. In fiscal year 1986, the active Army--the service that has traditionally experienced the greatest difficulty in meeting its recruiting goals--recruited 91 percent high school graduates, with only four percent in Mental Category IV, the lowest Mental Category eligible for enlistment. In the Army Reserve, Mental Category I-IIIA recruits, the cream of the crop in recruiting, increased 24 percent and six-year enlistments increased 28 percent during the first year of the New GI Bill in comparison to the previous year.
>
> The committee believes the test program has been an unqualified success and, therefore, recommends that the June 30, 1988, expiration date for the New GI Bill be eliminated, thus making the program permanent.[11]

In addition to establishing the All-Volunteer Force Educational Assistance Program, the Veterans' Educational Assistance Act of 1984 also established an experimental educational assistance benefit specifically tailored for members of the Selected Reserve, including the National Guard. Under this later program, now called the Montgomery GI Bill--Selected Reserve, which was adopted as an amendment to Chapter 106 of Title 10, United States Code, 10 U.S.C. §§2131-2138, members of the Selected Reserve received a $140 per month entitlement for up 36 months of benefits for full-time institutional training. Lesser amounts were authorized for less than full-time training. To qualify, an individual was required to enlist, reenlist, or extend an existing enlistment for a six-year period in the Selected Reserve. The program was limited to high school graduates or persons who had received equivalency certificates by the completion of the required period of initial active duty for training. Like the Montgomery GI Bill--Active Duty, the program for members of the Selected Reserve originally applied during the period of July 1, 1985, to June 30, 1988, but it too was extended and made permanent by

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[11] House Report No. 100-22, Part 2 (Committee on Armed Services), pp. 2-3, accompanying H.R. 1085, 100th Congress, 1st Session (1987). As indicated in the report of the House Committee on Armed Services, quoted above, a more extensive discussion of the purposes of the New GI Bill and the experience thereunder antedating enactment of the New GI Bill Continuation Act, Public Law 100-48, 101 Stat. 331 (1987), is found in the Report of the House Committee on Veterans' Affairs, House Report No. 100-22, Part 1 (Committee on Veterans' Affairs), accompanying H.R. 1085, 100th Congress, 1st Session (1987). See, in particular, pages 2-11 of House Report No. 100-22, Part 1.

the New GI Bill Continuation Act.[12] [13] Under amendments to the program enacted in the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §337(b), 105 Stat. 75, 90 (1991), the Secretary of the Department of Veterans Affairs was authorized to make annual cost-of-living adjustments, based on changes in the CPI, to the basic benefit to keep pace with inflation. For fiscal year 2004, such adjustments had brought the full-time educational benefit under the Montgomery GI Bill--Selected Reserve to $282 per month.

Like the Montgomery GI Bill--Active Duty, the Montgomery GI Bill--Selected Reserve initially provided for benefits to be paid for attendance at institutions of higher learning as well as for pursuit of non-college-degree courses at institutions of higher learning. Subsequently, the Selected Reserve program was amended by the Veterans' Benefits Amendments of 1989, Public Law 101-237, 103 Stat. 2062 (1989), to authorize payment of benefits for apprenticeship training, other on-job training, correspondence study, and cooperative training to reserves who enlisted, reenlisted, or extended an enlistment by six years after September 30, 1990. The Veterans' Benefits Amendments of 1989, Public Law 101-237, id., §422(b), 103 Stat. at 2089-2090, also authorized flight training benefits during the period October 1, 1990, through September 30, 1994, for reserves who enlisted, reenlisted, or extended an enlistment by six years after September 30, 1990.

Expanding on Congress's frequently expressed concern about attracting and retaining "quality recruits" for the Armed Forces, the Department of Defense Authorization Act, 1981, Public Law 96-342, Title IX, §§901-906, 94 Stat. 1077, 1111-

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[12] Unlike earlier GI Bill entitlements, the Department of Defense, rather than the Veterans' Administration, is required to fund a major portion of the costs associated with the All-Volunteer Force Educational Assistance Program as well as the program for members of the Selected Reserve. In particular, the Department of Defense pays all costs above the basic benefit for the All-Volunteer Force Educational Assistance Program as well as all costs of the Selected Reserve program. Funding for these programs is done on an accrual accounting basis through the Department of Defense Educational Benefits Fund, established by Section 706 of the Department of Defense Authorization Act, 1985, Public Law 98-525, §706, 98 Stat. 2568-2570 (1984). See, *e.g.*, 10 U.S.C. §2006.

[13] For a more complete description of the educational assistance program for members of the Selected Reserve, see "Educational Assistance for Members of the Selected Reserve" in Chapter II.E.2.d., "Reserve Affiliation, Enlistment and Reenlistment Bonuses, Special Unit Pay, and Educational Assistance," above.

1117 (1980), established an educational assistance test program, partially codified at 10 U.S.C. §§2141-2149, in an effort to determine the effectiveness of offering educational benefits as incentives to recruitment of enlisted personnel. In essence, the test program consisted of three different elements--a tuition/stipend program, a loan repayment program, and a noncontributory VEAP program--each of which is discussed below.

* THE TUITION/STIPEND PROGRAM. This offered tuition benefits and a living allowance (available only to those who took advantage of the program after separation from the service) in the maximum amount of $15,600. Such benefits were available only to members enlisting or reenlisting for service on active duty after September 30, 1980, and before October 1, 1981. In order to take advantage of such benefits, a member must have completed at least 24 months of his service obligation. At the first reenlistment point after the enlistment that established the member's entitlement, a reenlisting member had the option of either cashing in his remaining benefits at 60% of their value or transferring the full value thereof to dependents. If the benefits were not cashed in, a member retained the right to use or transfer them for 14 years after separation from the service.[14]

* THE LOAN REPAYMENT PROGRAM. This program authorized the Department of Defense to repay Guaranteed Student Loans or National Direct Student Loans of certain members enlisting or reenlisting in the Selected Reserve of the Ready Reserve of an armed force or for service on active duty after September 30, 1980, and before October 1, 1981. A member must have successfully completed one year of service in a qualifying occupational specialty to be entitled to benefits. For members meeting the entitlement criteria, including those established by the Secretary of Defense, loans could be repaid at the rate of 33 1/3 % or $1,500 of the outstanding principal, whichever was greater, for each year of qualifying service. The Department of Defense Authorization Act, 1982, Public Law 97-86, §406, 95 Stat. 1099, 1106-1107 (1981), adopted December 1, 1981, extended the qualifying date from October 1, 1981, to October 1, 1983.

* THE NONCONTRIBUTORY VEAP PROGRAM. This program essentially mirrored the normal VEAP program, described above, except that the Department of Defense paid the service member's contribution. Members eligible for this program included members enlisting or reenlisting in the Armed Forces after September 30, 1980, and before October 1, 1981, who elected to participate in VEAP and who met the selection criteria promulgated by the Secretary of Defense.

> ... [T]he current recruiting and retention situation warrants expeditious action. The implementation of an effective educational assistance program may

[14] This eligibility limit was extended from ten years to 14 years by the National Defense Authorization Act for Fiscal Year 2003, Public Law 107-314, 116 Stat. 2576.

well be the best approach for the volunteer force to attract personnel of needed quality.[15]

In keeping with Congress's expressed intention to test the effectiveness of educational benefits as recruitment and retention incentives for the Armed Forces, the Secretary of Defense is required to submit periodic reports on the "implementation and operation of the [test] educational assistance programs" established by the Department of Defense Authorization Act, 1981, Public Law 96-342, Title IX, §§901-906, 94 Stat. 1077, 1111-1117 (1980).

Veterans who were eligible for Old GI Bill benefits (Title 38, United States Code, Chapter 34) as of December 31, 1989, and who served on continuous active duty for three years after June 30, 1985, may also eligible for educational benefits without having any reductions in their basic pay. To be eligible for benefits, such individuals must have served on active duty sometime between October 19, 1984, and July 1, 1985, and continued on active duty without a break through their qualifying period. The full-time rate for these veterans is $604.62 per month. In addition, certain veterans who have been involuntarily separated from active duty or who voluntarily separate from the service under special separation incentive programs may be eligible for educational benefits.

[15] House Report No. 96-1222 (Committee of Conference), p. 100, and Senate Report No. 96-895 (Committee of Conference), p. 96, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

**Chapter V.B.3.**

## GI Bill
## (Home Loan Assistance)

**Legislative Authority**: Chapter 37, Title 38, United States Code (38 U.S.C. §§3701-3736).

**Purpose**: To assist veterans and their families in obtaining and financing adequate housing by providing loan guarantees as an equivalent to down payments and ensuring that guaranteed loans are made available at reasonable rates of interest.

**Background**: Over the years, Congress has enacted a series of laws--popularly known as "GI Bills"--covering veterans of World War II, the Korean Conflict, the post-Korean period, the period of Southeast Asia hostilities, and the Persian Gulf Conflict to assist the speedy and successful reintegration of returning veterans, particularly draftees, into civilian life. One of the more important programs of the GI Bills is the Housing Assistance Program administered by the Department of Veterans Affairs.[1]

The Housing Assistance Program was first established by the Servicemen's Readjustment Act of 1944, ch. 268 [Public Law 346, 78th Congress], Title III, §§500-503, 58 Stat. 284, 291-293 (1944). It authorized loan guarantees for the purchase and construction of homes, farms, and business property to be made to any member of the Armed Forces discharged or released from federal military service (i) under conditions other than dishonorable either after completion of 90 or more days of active service following September 15, 1940, or (ii) as a result of injury or disability incurred in line of duty. Although the benefits provided by the original act have been modified, expanded, and liberalized over the ensuing years, the basic structure of the program has remained essentially unchanged.

[1] The Veterans Administration was redesignated as the Department of Veterans Affairs by the Department of Veterans Affairs Act, Public Law 100-527, §2, 102 Stat. 2635 (1988). Pursuant to that act, from and after March 15, 1989, all references in any federal law, executive order, rule, regulation, delegation of authority, or any document of or pertaining to the Veterans Administration is statutorily deemed to refer to the Department of Veterans Affairs. Department of Veterans Affairs Act, Public Law 100-527, *id*., §10, 102 Stat. at 2640-2641; also see, 38 U.S.C.A. §301 note.

Under the Housing Assistance Program, World War II benefits were made available to former members of the Armed Forces with qualifying service between September 16, 1940, and July 25, 1947; Korean Conflict benefits were made available for service between June 27, 1950, and January 31, 1955, inclusive; Vietnam benefits for service between August 5, 1964, and May 7, 1975, inclusive; and Persian Gulf benefits for service "on active duty for 90 days or more at any time during the Persian Gulf War."[2] Entitlement to VA home loan benefits does not expire until used.

The Veterans' Housing Act of 1970, Public Law 91-506, 84 Stat. 1108 (1970), extended eligibility to persons who served for more than 180 days in an active-duty status any part of which occurred after January 31, 1955, and to persons who served more than 180 days in an active-duty status without a break in service. Subsequent legislation established eligibility for veterans of other peacetime periods, including service between World War II and the Korean Conflict, between the Korean Conflict and the Vietnam Era, and the Post-Vietnam period.

In summary, veterans of wartime periods[3] must have served a minimum of 90 days of active duty to qualify, and peacetime veterans must have served more than 180 days. However, individuals separated from enlisted service that began after September 7, 1980, or from officer service that began after October 16, 1981, must in most cases have served two years to be eligible.[4]

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[2] Persian Gulf War eligibility was established by the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §341, 105 Stat. 75, 92 (1991). The term "Persian Gulf War" is defined at 38 U.S.C. §101(33), as added by the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, *id*., §332(2), 105 Stat. at 88, as "the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law."

[3] For this purpose, "wartime periods" include World War II, the Korean Conflict, the Vietnam era, and the Persian Gulf War.

[4] Until 1980, the Veterans Administration, now the Department of Veterans Affairs (see footnote 1 to this chapter, above), also had authority to provide direct government loans in areas where private capital was not readily available. Funding for the Direct Loan Program was discontinued in September 1980.

The Housing Assistance Program guarantees up to 40 percent of the face value of a loan, not to exceed $36,000, for loans of more than $56,250 and less than $144,000. For loans of less than $45,000, the program provides 50 percent of the face value. A flat rate of $22,500 is available for loans of $45,000 to $56,250. For loans of more than $144,000 taken for the purpose of constructing a home, the maximum allowable is the lesser of 25 percent of the face value or $60,000. Between 1992 and 2004, only the last of these stipulated allowance levels was changed by legislation. The most recent change was made by the Veterans Education and Benefits Expansion Act of 2001, Public Law 107-103, which raised the maximum amount from $50,750 to $60,000. The program is financed by the Loan Guaranty Revolving Fund.

A brief description of the principal features of the loan guaranty program administered by the Department of Veterans Affairs follows:

## PRINCIPAL FEATURES OF DEPARTMENT OF VETERANS AFFAIRS' LOAN GUARANTY PROGRAM

The program provides a loan guarantee by the United States in the amount of 50 percent of the loan if the loan amount is less than $45,000; a flat rate of $22,500 for loans of $45,000 to $56,250; for loans of $56,250 to $144,000, 40 percent of the loan or $36,000, whichever is smaller; and, for loans above $144,000, $60,000 or 25 percent of the loan amount, whichever is less, if the loan is to purchase or construct a home or to refinance the outstanding balance of an existing VA loan to a lower interest rate.

These amounts are available to (1) purchase or construct a dwelling to be owned and occupied by the veteran as a home; (2) purchase a farm on which there is a farm dwelling to be owned and occupied by the veteran as a home; (3) construct on owned land a farm residence to be owned and occupied by the veteran as a home; (4) repair, alter, or improve a farm residence or other owned dwelling occupied by the veteran as a home; (5) refinance existing mortgage loans which are secured of record on a dwelling or farm residence owned and occupied by the veteran as his or her home; (6) purchase a

one-family residential unit in an approved condominium housing development or project; (7) improve a home through energy efficiency improvements; (8) refinance to a lower interest rate the outstanding balance on an existing loan guaranteed, insured, or otherwise made under the VA loan guarantee program; (9) to purchase a manufactured home to go on a lot owned by the veteran or to purchase a manufactured home and lot on which it will be placed, or to refinance existing loans relating to the same type of transaction; or (10) to purchase a home to be occupied by a veteran and make energy efficiency improvements.

The program also provides a loan guarantee by the United States for the purchase of a mobile home or mobile home lot in an amount not to exceed 40 percent of the loan or $20,000, whichever is less.

**Participation**: The number of loans guaranteed for all veterans and for active duty members since 1981, by fiscal year, are as shown on the following page:

| Fiscal Year | Total Loans Closed | Loans Guaranteed For Active Duty Members |
|---|---|---|
| 1981 | 187,628 | 27,889 |
| 1982 | 103,439 | 20,072 |
| 1983 | 245,122 | 43,285 |
| 1984 | 251,588 | 50,585 |
| 1985 | 178,931 | 35,721 |
| 1986 | 313,769 | 54,633 |
| 1987 | 479,491 | 72,249 |
| 1988 | 234,709 | 41,605 |
| 1989 | 189,705 | 38,945 |
| 1990 | 196,600 | 40,061 |
| 1991 | 180,852 | 36,266 |
| 1992 | 265,895 | 58,257 |
| 1993 | 383,067 | 73,844 |
| 1994 | 602,220 | 99,994 |
| 1995 | 263,102 | 52,825 |
| 1996 (first half) | 150,366 | 28,808 |

**Note:** Administrative costs include salaries, employee travel and other contractual services, but do not reflect general overhead such as agency-wide administrative and housekeeping costs, supplies, utilities, rent, furniture, fixtures, etc.
Source: Department of Veterans Affairs.

**Chapter V.B.4.**

## Homeowners Assistance Program (HAP)

**Legislative Authority**: Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754, §1013, 80 Stat. 1255, 1290-1292 (1966), as amended, classified to 42 U.S.C. §3374.

**Purpose**: The Homeowners Assistance Program (HAP) is designed to assist eligible military and federal civilian employee homeowners to help offset real estate losses suffered by such individuals as a result of the closure of Department of Defense or Coast Guard bases or installations or other reduction actions.

**Background**: Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754, §1013, 80 Stat. 1255, 1290-1292 (1966), as amended, authorized the Secretary of Defense to provide assistance to eligible military or civilian employee homeowners by payment of partial compensation for losses sustained in the private sale of a dwelling, by payment of the costs of judicial foreclosure, or by purchasing of a dwelling by the government. Such assistance is available to certain military personnel and civilian employees who are the owners and occupants of one- or two-family dwellings located at or near Department of Defense or Coast Guard installations ordered to be closed in whole or in part after November 1, 1964, including reductions in the scope of operations at such installations occurring after October 28, 1969. As a condition of personal eligibility for benefits under the homeowners assistance program, the Secretary of Defense must find that the service or employment of the employee in question has been or will be terminated as the result of the closure or reduction action, and that as a result of the actual or pending closure or reduction action there is no present market for the sale of such dwellings upon reasonable terms and conditions.

The Military Construction Authorization Act, 1971, Public Law 91-511, §612, 84 Stat. 1204, 1225 (1970), amended the Demonstration Cities and Metropolitan

Development Act, Public Law 89-754, *id*., effective October 28, 1969, to provide that consideration may be given to the cumulative effect on the local real estate market of all closure or reduction actions in the same area. The Military Construction Authorization Act, 1973, Public Law 92-545, §601, 86 Stat. 1135, 1150-1151 (1972), also amended the Demonstration Cities and Metropolitan Development Act, effective November 30, 1970, to authorize assistance to personnel at overseas bases who previously were not eligible because they were not assigned to a unit involved in the closure or reduction action or because they owned on-base housing. The Military Construction Authorization Act, 1974, Public Law 93-166, §513(b), 87 Stat. 661, 679 (1973), approved November 29, 1973, further amended the Demonstration Cities and Metropolitan Development Act, as to closures announced after April 1, 1973, to authorize assistance to certain military and civilian personnel who were previously not eligible because they were involved in routine transfers not connected with the closure action. Most recently, the Coast Guard Authorization Act of 1988, Public Law 100-448, §11(2), 102 Stat. 1836, 1842-1843 (1988), amended the Demonstration Cities and Metropolitan Development Act to include closures of Coast Guard bases and installations within the scope of protection offered by the Homeowners Assistance Program.[1]

**Eligibility Criteria**: To qualify for benefits under HAP, a member of an armed force must have been (1) the owner-occupant of the dwelling with respect to which assistance is sought or have vacated the dwelling within the six-month period before the closure announcement as a result of having been ordered to occupy on-base housing and (2) either (a) serving at or near the Department of Defense or Coast Guard base or installation when the announcement of the closure or reduction was made, or (b) transferred from the base or from a duty station in the area of the base or installation during the six-month period immediately preceding the announcement, or (c) transferred from the base or from a duty station in the area of the base or installation during the three-year period immediately preceding the announcement and, in connection with the

[1] See, *e.g*., House Report No. 100-855 (Committee of Conference), p. 19, accompanying H.R. 2342, 100th Congress, 2d Session (1988), and House Report No. 100-154 (Committee on Merchant Marine and Fisheries), pp. 8 and 27, accompanying H.R. 2342, 100th Congress, 2d Session (1988).

transfer, informed of a future, programmed reassignment to the installation. In addition, the applicant for assistance must either have been required to relocate because of a transfer beyond a normal commuting distance from the dwelling for which benefits are sought or have become unemployed and be unable to meet mortgage payments and related expenses with respect to the dwelling for which benefits are sought.

**Benefits Available**: Any one of three benefits is available to a service member under HAP, at the member's election. The three options are:

* A cash payment for losses sustained in the private sale of the dwelling, equal to the difference between (i) 95 percent of the fair market value of the property before the announcement and (ii) the fair market value at the time of sale or the actual sale price, whichever is higher; or

* Reimbursement for amounts paid as a result of foreclosure of the mortgage on the property, or payment by the Government of such amounts if not paid by the applicant; or

* Sale of the property to the Government at 90 percent of its fair market value before the announcement or for the full amount of the outstanding mortgages, whichever is higher.

**Administration**: DoD Directive 5100.54 of December 29, 1967, assigns responsibility for administration of the Program; DoD Instruction 4165.50 of February 11, 1972, contains detailed instructions for its administration, management, and execution.

**Chapter V.B.5.**

## Enlisted Aides

**Legislative Authority**: 10 U.S.C. §981. (For the Navy and Marine Corps, also see 10 U.S.C. §7579; for the Army and Air Force, see 10 U.S.C. §§3013 and 8013, respectively (derived from general powers of the Secretaries of the Army and Air Force). Cf. 10 U.S.C. §§3639 and 8639.)

**Purpose**: To relieve certain general and flag officers occupying especially demanding and sensitive positions from having to perform various routine duties and chores, by providing enlisted "aides" to assist them and thereby to allow the affected officers to carry out their respective primary duties and responsibilities more effectively.

**Background**: A report prepared by the United States General Accounting Office asserts that "enlisted aides have been provided to officers of the United States Armed Forces since the Revolutionary War."[1] The earliest identifiable legislative authority bearing on the provision of such "aides" is the Act of July 6, 1812, ch. 137, §5, 2 Stat. 784, 785 (1812), which allowed officers the pay, rations, and clothing of a private soldier for as many "waiters" as they might keep, not to exceed a number fixed by regulations. Somewhat later, the Act of March 30, 1814, ch. 37, §§9 and 10, 3 Stat. 113, 114 (1814), specified the number of "servants" for which officers might receive allowances, rather than having that number fixed by regulations. The number of allowances for servants authorized in the 1814 act ranged from one for either a company officer commanding a separate post or detachment or a staff officer captain to four for a major general.

It may be inferred from the language of the early statutes that Congress contemplated the employment of civilian servants by officers and that the purpose of providing the allowance was to subsidize, or defray the costs of, such private employment. Apparently, however, the practice of using enlisted personnel as servants

[1] "*Enlisted Aide Program of the Military Services*, Report to the Congress by the Comptroller General of the United States," p. 8, April 18, 1973.

arose despite Congress's original intendment. The Act of July 17, 1862, ch. 200, §3, 12 Stat. 594 (1862), recognized the practice by providing that "whenever an officer of the Army shall employ a soldier as his servant he shall, for each and every month during which said soldier shall be so employed, deduct from his own monthly pay the full amount paid to or expended by the Government per month on account of said soldier." At the same time, the act did not disturb the servants' allowances to which officers were entitled. Thus, the provision in question appears to have been aimed at preventing an officer from simultaneously receiving money to subsidize the employment of a servant while at the same time having the cost-free service of one or more enlisted members. Since servants' allowances were based on the pay and allowances of a private soldier, an officer would have had to deduct more than the amount of his allowance from his own pay if he employed a soldier of a higher grade as a servant.

The Act of July 15, 1870 (Army Appropriations Act, 1871), ch. 294, 16 Stat. 315 (1870), established a salary system for Army officers and eliminated servants' allowances. It also provided that "the pay and allowances of the enlisted men of the Army shall remain as now fixed by law until the 30th of June, 1871; and it shall be unlawful for any officer to use any enlisted man as a servant in any case whatever." Army Appropriations Act, 1871, ch. 294, *id.*, §14, 16 Stat. at 319. The prohibitory part of this provision was later enacted into permanent law as Revised Statute 1232, the source of current Sections 3639 and 8639 of Title 10, United States Code, which continue to prohibit Army and Air Force officers from using enlisted members as "servants."

For many years it was considered that the prohibition in the Army Appropriations Act, 1871, ch. 294, *id.*, and Revised Statute 1232 constituted an absolute bar on the use of enlisted personnel in a service capacity in Army officers' quarters and messes. However, World War II conditions caused a new approach to be taken. Although the statute remained unchanged, a different interpretation was applied which maintained that the prohibition intended by Congress was to be determined by the object of the enlisted member's employment--that is, whether the employment was a military task beneficial to the Army or a personal service for an officer or group of officers. This interpretation was

upheld by an Army Board of Review, which in an opinion dated May 23, 1945, concluded:

> The statute in question (RS 1232 [Revised Statutes §1232 (1878)]) is one which obviously places a restriction upon officers using enlisted men as servants. It does not restrict or attempt to prevent an enlisted man from rendering a personal service to an officer if the enlisted man so chooses; it was obviously not designed to prevent the use of enlisted men for military purposes. The sole purpose of the statute is to prevent the use of enlisted men as personal servants. If the work in question is to be performed in the capacity of a private servant to an officer (against the enlisted man's will) then, under any circumstances, it is exactly contrary to the statute. If, on the other hand, the service is rendered as a military necessity and not in the capacity as a servant, it is not exacted unlawfully merely because an officer or group of officers benefit thereby.[2]

In a decision of September 16, 1955, the United States Court of Military Appeals reached a similar conclusion in regard to the distinction between "personal servants" and "enlisted aides," though it disavowed the Army Board of Review's implication that an enlisted member may volunteer to serve as a personal servant and thus cloak an otherwise proscribed assignment with legality. The court stated in pertinent part:

> The word "servant" has a myriad of meanings, but as used in the context of the original act, we conclude Congress intended to give it the meaning of one who labors or exerts himself for the personal benefit of officers. Certainly it could not have intended to prevent an enlisted man from laboring for officers in the furtherance of their official duties. As enacted originally, the Act suggests that Congress was interested in having the enlisted men of the Army earn their pay in the performance of military duties, and not as personal servants attending to the physical comforts of their individual superior officers....
>
> A construction which would apply the proscription to the kind of work done, and not to its ultimate purpose, would so circumscribe the military community that the preparation for, or the waging of, war would be impossible. In some degree at least, most enlisted men from the time they are inducted into the military service, spend some of their working hours performing tasks for commissioned officers, and in many cases the labors directly benefit the officer. Many of the tasks are equivalent to those performed by servants.[3]

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[2] United States v. Semioli, 53 BR 65 (1945).

[3] United States v. Robinson, 6 USCMA 347, 20 CMR 63 (1955).

The Army Appropriations Act, 1871, ch. 294, *id.*, and Revised Statute 1232 applied only to the Army, and no similar statutory prohibition was placed against the use of naval enlisted personnel as servants until the Act of March 3, 1933 (Naval Service Appropriations Act, 1934), ch. 213 [Public Law 429, 72d Congress], 47 Stat. 1521, 1530 (1933), specified that none of the funds appropriated therein were to be made available "for the pay, allowances, or other expenses of any enlisted man or civil employee performing service in the residence or quarters of an officer or officers on shore as a cook, waiter, or other work of a character performed by a household servant." The House Appropriations Committee explained the purpose of the provision in these terms:

> It has been the practice for many years to detail enlisted men rated as stewards, cooks, and mess attendants to the residences or quarters of commanding officers of the more important shore activities....
>
> While it may be argued that officers occupying such positions should provide their own servants, and that view certainly cannot be controverted with respect to many of the details, it is questionable whether or not officers occupying such positions as the Chief of Naval Operations and the Superintendent of the Naval Academy, whose positions make necessary a considerable amount of official entertaining, should be required to defray the expenses of servants the need for whom is occasioned solely by the official stations of the incumbents of such positions. If this need be recognized as an appropriate expense of the Government in the two instances cited, perhaps the better way to handle the situation would be through a special allowance for the employment of civilian servants.
>
> With the pressure for more enlisted men for duty on shipboard and the ever present need for rigid economy, the committee has taken the position that the present practice can not be longer or at least at this time justified and has included on page 24 of the bill a provision designed to stop the practice. The committee is advised that no enlisted men in the Army are detailed in the capacity of servants in the residence or quarters of officers of the Army.[4]

The Act of March 15, 1934 (Naval Service Appropriations Act, 1935), ch. 69 [Public Law 122, 73d Congress], 48 Stat. 403, 411-412 (1934), continued the prohibition against the use of appropriated funds to pay enlisted personnel assigned to domestic

[4] House Report No. 2075 (Committee on Appropriations), p. 13, accompanying H.R. 14724, 72d Congress, 2d Session (1933).

service in officer residences and quarters on shore, but excepted from the prohibition "the public quarters occupied by the Chief of Naval Operations, the Superintendent of the Naval Academy, the Commandant of the Marine Corps, and messes temporarily set up on shore for officers attached to seagoing vessels, to aviation units based on seagoing vessels, and to landing forces and expeditions." The Act of June 24, 1935 (Naval Service Appropriations Act, 1936), ch. 291 [Public Law 163, 74th Congress], 49 Stat. 398, 408 (1935), relaxed the prohibition further by permitting, in addition to the previous year's exceptions, the use of appropriated funds to pay not more than 40 enlisted personnel performing domestic service "at such places as shall be designated by the Secretary of the Navy." The easing of the prohibition in both the 1935 and 1936 Naval Service Appropriations Acts resulted from amendments added by the Senate Appropriations Committee. The committee's reports on the bills offer no explanation for its action in this regard.

The prohibition against the use of appropriated funds to pay enlisted personnel assigned to domestic service in officer residences or quarters on shore, subject to the stated exceptions, was continued in each annual naval appropriation act through fiscal year 1946, though by 1946 the limit on the number of personnel who could be assigned at places designated by the Secretary of the Navy had been raised to 300. It was brought to the Navy's attention in 1946 that the naval appropriations bill requested funds for a number of items for which there was no authority in permanent law, and it was suggested that the Navy take action to obtain permanent authority for them. This suggestion resulted in a legislative proposal introduced as S. 1917, 79th Congress, 2d Session (1946). Among other things, this bill provided that "[e]nlisted naval personnel may be assigned to duty in a service capacity in officers' messes and public quarters, under such regulations as the Secretary of the Navy may prescribe, where the Secretary finds the use of such personnel for such work is desirable for military reasons...." This provision was enacted as part of the Act of August 2, 1946, ch. 756 [Public Law 604, 79th Congress], §16(b), 519, 60 Stat. 853, 859 (1946), and is the source of current Section 7579 of Title 10, United States Code.

The House and Senate reports on S. 1917, 79th Congress, 2d Session (1946), spoke briefly of the Navy enlisted aide authority, both merely stating that "Subsection 16(b) is designed to take the place of the present proviso ... at the end of `Pay and Allowances' in the appropriation `Pay and subsistence of naval personnel.'"[5] In fact, with respect to authority for enlisted aides, the 1946 act stood the preexisting law on its head. It transformed what had at first been an outright prohibition against the specified employment of enlisted personnel and later a prohibition subject to certain exceptions into affirmative authority for such employment. It permitted the assignment of enlisted personnel to "officers messes" without any qualification as to the type of officers messes to which they could be assigned. In addition, it removed the limitation on the number of enlisted aides who could be assigned in officers' quarters and residences on shore. In place of these limitations, the 1946 act imposed a new restriction on such assignments by authorizing them only when "desirable for military reasons." Finally, the 1946 act made a subtle shift in emphasis by replacing the vaguely pejorative "service as a cook, waiter, or other work of a character performed by a household servant" with "duty in a service capacity."

The current legislative provisions bearing on the use of enlisted personnel in a service capacity make no distinction between enlisted personnel assigned to officers' quarters and those assigned to officers' messes. Original DoD Directive 1315.9 governing the assignment of enlisted personnel to duty in public quarters and on the personal staffs of general and flag officers was issued on February 2, 1960, and identified personnel so assigned as "enlisted aides." That term has since come to mean only those personnel covered by DoD Directive 1315.9, and not those assigned to officers' messes. Congressional oversight of the enlisted aide issue has ever since taken place in the context of this understanding.

The enlisted aide program was not a particularly controversial issue in the years following World War II until, starting in November 1972, it became the subject of review by the Congress, the General Accounting Office, the Internal Revenue Service, and the

[5] House Report No. 2549 (Committee on Naval Affairs), p. 7, and Senate Report No. 1173 (Committee on Naval Affairs), p. 6, accompanying S. 1917, 79th Congress, 2d Session (1946).

Office of the Secretary of Defense. On November 20, 1972, a member of the Senate asked the General Accounting Office to study the enlisted aide program. On April 18, 1973, the Comptroller General submitted a report (B-177516) to Congress on the program. The report made no recommendation concerning the need for the program or the number of persons assigned to it but did note that some aides were occasionally given tasks they were not supposed to do. It suggested that the regulations be revised to include a specific list of the tasks aides should or should not be called upon to perform and that every aide and each officer assigned aides be furnished a copy of the regulations. Revised policy guidance was issued on August 16, 1973, by the Department of Defense. The new policy reduced the number (1,722) of aides assigned in December 1972 to a maximum of 1,245 effective March 1, 1974, specified that only volunteers be assigned as enlisted aides, outlined the duties aides may perform, and based the assignment of aides on (1) the occupancy of public quarters, (2) the size and age of the public quarters, and (3) the representational responsibilities of an officer's duty assignment.

On June 8, 1973, the Internal Revenue Service advised a member of Congress in response to her inquiry that the value of services performed by enlisted aides did not have to be included in an officer's gross income for tax purposes as long as the aides were used only in an authorized manner to benefit the officer primarily in his official capacity.

Congressional action taken on the Department of Defense Appropriation Authorization Act, 1974, Public Law 93-155, 87 Stat. 605 (1973), reduced the enlisted aide ceiling to 675, although this ceiling was not reflected in the act itself. The report of the House-Senate Committee of Conference describes how the new ceiling was imposed:

> In approving manpower authorizations for the Department of Defense the House Committee on Armed Services specified in its report that the present total of enlisted aides, 1,722, was excessive, and that the number should be reduced to 1,105.
>
> The Senate bill contained a provision, Section 1103, which would limit use of enlisted aides to no more than two for four-star officers and no more than one for three-star officers plus one additional aide for the Chiefs of Staff of each service. The Senate provision reduced the limit of aides to 218. The House

> conferees were able to convince the Senate conferees that the limitation in the Senate bill was too restrictive and that language in the law is not required.
>
> The Senate therefore recedes on its language and the conferees agree that the number of enlisted aides shall be limited to a total of no more than 675 with the distribution for authorization of use of such aides among the military departments to be determined by the Secretary of Defense.[6]

Neither the Department of Defense Appropriation Authorization Act, 1975, Public Law 93-365, 88 Stat. 399 (1974), nor any formal action taken by Congress effected a change in the existing 675 enlisted aide ceiling, but the conference report on the act required a report from the Secretary of Defense on the need for such aides, in these terms:

> Section 704 of the Senate amendment contained a provision that only 218 enlisted men be assigned on a temporary basis to perform the duties of enlisted aides. The House bill did not address the issue.
>
> The Senate conferees expressed the belief that the enlisted aide program was still being abused, there were too many unnecessary social activities engaged in by high ranking military personnel, and that curtailment of authority for aides would help curtail unnecessary functions.
>
> The House conferees pointed out that the Congressional action taken during fiscal year 1974 reduced the number of aides from 1,722 to 675. The latter number was to be put in effect beginning July 1, 1975, and had not been given an opportunity to work. The House conferees were insistent that the agreement of last year be permitted to operate, at least on an experimental basis, before further reductions are made. The Senate conferees insisted that last year's action was insufficient. The Senate conferees agreed to yield on the number limitation provided the matter receives further scrutiny.
>
> The conference, therefore, directs the Secretary of Defense to study the need for enlisted aides to provide military assistance to senior military officials and to report to Congress the results of the study within 90 days. It was further agreed by the conferees that the House or Senate Armed Services Committee, or both, would hold hearings as soon as possible.[7]

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[6] House Report No. 93-588 (Committee of Conference), p. 43, accompanying H.R. 9286, 93d Congress, 1st Session (1973).

[7] House Report No. 93-1212 (Committee of Conference), pp. 44-45, accompanying H.R. 14592, 93d Congress, 2d Session (1974).

The Secretary of Defense submitted the report called for in the conference report on November 1, 1974. In the meantime, however, the Senate had on August 21, 1974, accepted a floor amendment to the fiscal year 1975 Defense Appropriation Bill which provided that none of the funds it appropriated could be used to support more than 218 enlisted aides. The House-Senate Conference Committee agreed to the amendment but not the limit. As enacted, the Department of Defense Appropriation Act, 1975, Public Law 93-437, §848, 88 Stat. 1212, 1232 (1974), provided that none of the funds appropriated could be used to support more than 500 enlisted aides.

The Department of Defense Appropriation Authorization Act, 1976, Public Law 94-106, §820, 89 Stat. 531, 544-545 (1975), specified that, notwithstanding any other provisions of law, the number of enlisted personnel who may be assigned as enlisted aides during any fiscal year could not exceed the total of four times the number of officers serving in pay grade O-10 and two times the number of officers serving in pay grade O-9 at the end of the fiscal year. On October 1, 1975, the Assistant Secretary of Defense for Manpower and Reserve Affairs allocated 390 enlisted aides to the services under the formula--114 to the Army, 140 to the Air Force, 114 to the Navy, and 22 to the Marine Corps. The report of the House-Senate Conference Committee expands on the intent of the provision:

> Section 912 of the Senate amendment contained a provision specifying that enlisted aides could only be assigned to four and three star general and flag officers of the Armed Forces in the following allocation: three aides for the Chairman of the Joint Chiefs of Staff, the Chiefs of Staff of the Armed Forces, and the Commandant of the Marine Corps; two for other officers in the rank of general or admiral; and one for officers in the rank of lieutenant general or vice admiral. This would result in a total of approximately 204 aides compared to the current number of 500.
>
> The House bill contains no such provision. The conferees agreed that a provision in the law controlling the number of enlisted personnel assigned to officers staffs as aides was appropriate. However, the conferees consider that the assignment of these aides should be based not on the rank of the particular officer, but rather on the officer's position and its incumbent responsibilities. While the number of aides is to be determined by a formula based upon the total number of four star officers (four for each), and three star officers (two for each),

> the Secretary of Defense is given the authority to allocate these aides as he deems appropriate. The assigned duties of the officers should be the controlling factor.
>
> This formula for determining the number of aides will result in 396 aides for fiscal year 1976. Generals of the Army and admirals of the fleet are not considered in this formula; however this omission is not intended to alter the current practice of assigning aides to these officers.[8]

The Department of Defense Appropriation Act, 1976, Public Law 94-212, §745, 90 Stat. 153, 175 (1976), provided that none of the funds appropriated could be used to support more than 396 enlisted aides for fiscal year 1976. The report of the House-Senate committee of conference explains the provision:

> The Senate receded to the House language which provides a total of 396 enlisted aides. The Senate language had reduced the total to 250. The House language was in conformance with that approved in the fiscal year 1976 Defense Authorization Act.[9]

The Department of Defense Appropriations Acts for fiscal years 1977 through 1982 established a ceiling of 300 enlisted aides. Department of Defense Appropriation Act, 1977, Public Law 94-419, §748, 90 Stat. 1279, 1299 (1976) (for fiscal year 1977); Department of Defense Appropriation Act, 1978, Public Law 95-111, §849, 91 Stat. 886, 908 (1977) (for fiscal year 1978); Department of Defense Appropriation Act, 1979, Public Law 95-457, §848, 92 Stat. 1231, 1252 (1978) (for fiscal year 1979); Department of Defense Appropriation Act, 1980, Public Law 96-154, §748, 93 Stat. 1139, 1160 (1979) (for fiscal year 1980); Department of Defense Appropriation Act, 1981, Public Law 96-527, §747, 94 Stat. 3068, 3089 (1980) (for fiscal year 1981); and Department of Defense Appropriation Act, 1982, Public Law 97-114, §746, 95 Stat. 1565, 1586 (1981) (for fiscal year 1982).

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[8] House Report No. 94-488 (Committee of Conference), pp. 72-73, accompanying H.R. 6674, 94th Congress, 1st Session (1975).

[9] House Report No. 94-710 (Committee of Conference), p. 60, accompanying H.R. 9861, 94th Congress, 1st Session (1975).

No appropriation act for the Department of Defense was passed for fiscal year 1983, but the limitations on the number of enlisted aides were continued in effect for that year through passage of a multi-departmental continuing appropriation act. Act of December 21, 1982 (Continuing Appropriations, 1983), Public Law No. 97-377, Title I, §101(c) [Title VII, §745], 96 Stat. 1830, 1858 (1982). The Department of Defense Appropriation Act, 1984, Public Law 98-212, §742, 97 Stat. 1421, 1446 (1984), continued the enlisted aides ceiling of 300 for fiscal year 1984. For fiscal year 1985, the same ceiling was maintained by the Act of October 12, 1984 (Continuing Appropriations, 1985), Public Law 98-473, Title I, §101(h) [Title VIII, §8034], 98 Stat. 1837, 1930 (1984).

The limitation on the number of enlisted aides was formally codified at 10 U.S.C. §981(b) by the Department of Defense Authorization Act, 1985, Public Law 98-525, §1401(c)(1), 98 Stat. 2492, 2615 (1984). As explained in the House-Senate Conference Report,[10] the limitations were codified in response to the requirement of Section 1267 of the Department of Defense Authorization Act, 1984, Public Law 98-94, §1267, 97 Stat. 614, 705 (1983), for the Secretary of Defense to submit to the House and Senate Committees on Armed Services proposed legislation

> ... for codification into appropriate titles of the United States Code, or for incorporation into other existing laws, those provisions of law that have been enacted during the past five years as a part of the annual Department of Defense Authorization Act or the annual Department of Defense Appropriation Act under the heading `General Provisions' and that in the opinion of the Secretary should be so codified or incorporated.

In establishing this requirement, the Senate Armed Services Committee noted:

> The committee has observed that it has been the practice of the Department of Defense to submit the same proposed legislative provisions each year in the Department of Defense Authorization Act or the Department of Defense Appropriations Act. Many of these provisions which have been enacted

[10] House Report No. 98-1080 (Committee of Conference), p. 336, accompanying H.R. 5167, 98th Congress, 2d Session (1984). See Senate Report No. 98-500 (Committee on Armed Services), p. 265, accompanying S. 2723, 98th Congress, 2d Session (1984).

on an annual basis are appropriate for codification in Title 10 of the United States Code or in other parts of Federal law. Accordingly, it is the Committee's view that the Secretary of Defense should evaluate each general provision that has been enacted over the last five years as part of a Defense Department Authorization or Appropriation Acts and submit to the Congress a legislative proposal for the codification of those general provisions which the Secretary judges to be appropriate for incorporation in the United States Code. The Committee believes that the enactment of such a codification bill would be a far more efficient manner of dealing with these legislative proposals than considering the same provisions every year.[11]

With the codification of the limitation on the number of enlisted aides, it is no longer necessary to impose annual limitations through the appropriations process.[12]

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[11] Senate Report No. 98-174 (Committee on Armed Services), p. 259, accompanying S. 675, 98th Congress, 1st Session (1983). See House Report No. 98-352 (Committee of Conference), p. 262, accompanying S. 675, 98th Congress, 1st Session (1983).

[12] In deliberations on the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, 106 Stat. 2315 (1992), the Senate proposed a reduction in the number of statutorily permitted enlisted aides from 300 to 240 "consistent with the 20 percent reduction in general and flag officers mandated by the National Defense Authorization Act for Fiscal Year 1991." S. 3114, §562, 102d Congress, 2d Session (1992); see Senate Report No. 102-352 (Committee on Armed Services), pp. 205-206, accompanying S. 3114, 102d Congress 2d Session (1992). The Senate provision was eliminated in conference, with the conferees noting:

... The conferees expect the Secretary of Defense [sic] to review the current practices and numbers with regard to the assignment of enlisted aides, and to report the results of the review to the Committees on Armed Services of the Senate and House of Representatives by April 1, 1993. The conferees expect the review to consider the existing limit on the number of enlisted aides that are authorized and the overall reduction in the number of general and flag officers. In this regard, the conferees expect the Committees on Armed Services to consider and take appropriate action on the recommendations of the Department of Defense in this area next year.

House Report No. 102-966 (Committee of Conference), pp. 711-712, accompanying H.R. 5006, 102d Congress, 2d Session (1992).

Notwithstanding the directory language of the committee of conference, the statutory limit on the number of enlisted aides remains at 300.

## Chapter V.C.1.

### Travel and Transportation Allowances

**Legislative Authority**: 37 U.S.C. §§404-412.

**Purpose**: To provide members of the uniformed services who perform travel on public business under competent orders with transportation and subsistence or with allowances to reimburse them for their costs of obtaining transportation and subsistence.

**Background**: Travel and transportation allowances for members of the Armed Forces fall into three main categories: (1) member travel, (2) dependent travel, and (3) transportation of household goods. Such allowances are provided either in cash or in kind. The authorization of these allowances for military personnel who perform ordered travel on government business is at bottom premised on the notion that, where travel is performed on government orders for the convenience of the government, the government should bear the reasonable and necessary expense of such travel and transportation and defray the incidental costs members may incur to subsist themselves while in a travel status. For these purposes, the cost of subsistence includes the costs of food, lodging, and various related expenses. A wide variety of allowances is authorized in this connection, a brief description of some of the more prominent of which follows.

***Member Travel***

Permanent change of station transportation may be furnished a member either (1) in kind (including government transportation requests), (2) by reimbursement for common carrier transportation purchased at a member's own expense, or (3) by payment of a monetary allowance, in lieu of transportation (MALT), and per diem. Subsistence is furnished a member who receives transportation either in kind or through reimbursement by means of a per diem allowance designed to refund, on an average and reasonable basis, the costs of such subsistence. In short, a member in a PCS travel status is furnished the components of transportation or reimbursement either through a combination of transportation and reimbursement plus constructive per diem.

Temporary change of station transportation may be furnished a member either (1) in kind, (2) by reimbursement for common carrier transportation purchased at a member's own expense, or (3) by payment of an allowance designed simply as a payment in lieu of transportation. Subsistence for such travel may be furnished an affected member either (1) in kind, (2) by payment of a per diem allowance, (3) by a combination of (1) and (2) under which per diem is reduced for food and/or lodging furnished in kind, or (4) by reimbursement for actual and necessary subsistence expenses incurred by the member. Per diem rates are based on locality. The "lodgings-plus-per diem method is used to compute the reimbursements of the traveler's actual lodgings cost (not to exceed a pre-established locality maximum) and provides a set amount to cover meals and incidental expenses (M&EI). Reimbursement on an actual expense basis can be authorized only when unusual conditions cause the actual meal and lodging costs to exceed the maximum per diem allowance, or in situations where the traveler has no alternative but to incur lodging costs that absorb all or nearly all of the maximum per diem allowance. In short, a member in a temporary duty travel status is furnished the components of transportation and subsistence through a combination of transportation, reimbursement, or a constructed per diem, or, in some cases, reimbursement of actual subsistence expenses.

The existing provisions of Titles 10 and 37, United States Code, that cover travel and transportation allowances derive from the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949). These provisions are not self-executing but instead merely authorize the payment of certain amounts, within specified limits, under regulations to be prescribed by the Secretaries of the uniformed services, including three non-DoD Secretaries. In practice, the six Secretaries exercise their regulation promulgation authority through the Per Diem, Travel and Transportation Allowance Committee (a uniform services committee), and the regulations issued under its authority are contained in Volume 1 of the Joint Travel Regulations (JFTR). Regulations properly prescribed in the JFTR have the same force and effect as a statute enacted by Congress. The Secretaries may, through the JFTR, prescribe lesser travel and transportation allowances than authorized by Titles 10 and 37, but they may not exceed any limits contained in Title 37 nor prescribe any allowance not contemplated by statute.

No discretionary travel or transportation allowance exists for military personnel unless and until it has been prescribed in the JFTR, even if authorized by statute.

Member travel was originally provided as a matter of policy and regulation, rather than under explicit authority of law, and was limited to transportation in kind or to reimbursement of actual expenses. The Act of March 3, 1835, ch. 27, §2, 4 Stat. 755, 757 (1835), authorized a mileage allowance of 10 cents a mile to pay for all transportation and subsistence expenses for Navy officers ordered to make a permanent change of station (PCS). The Act of August 14, 1848, ch. 173, 9 Stat. 304, 305 (1848), appropriated funds for a mileage allowance for Army officers. The allowance stemming from this tacit authorization was set at 10 cents a mile for those same expenses by Army regulations. The Act of July 17, 1862, ch. 200, §7, 12 Stat. 594, 594-595 (1862), was the first permanent statutory authority for the Army mileage allowance and established a rate of 6 cents a mile except when the between-station travel required a crossing of the Rocky Mountains, when the rate was 10 cents per mile. The Act of July 15, 1870 (Army Appropriation Act, 1871), ch. 294, §24, 16 Stat. 315, 320 (1870), changed the dual 6-cent/10-cent Army mileage allowance to a single rate of 10 cents per mile. The Act of June 30, 1876, ch. 159, 19 Stat. 65 (1876), reduced the Navy allowance from 10 to 8 cents a mile. The mileage allowance remained at 8 cents per mile until the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §303, 63 Stat. 802, 813-815 (1949). Even after adoption of the Career Compensation Act of 1949, however, the mileage allowance was limited by regulations to 6 cents per mile for travel performed before July 1, 1974, when it was increased to 8 cents per mile. Subsequently, the mileage allowance was further increased to 10 cents per mile. Effective October 1, 1980, the ~~Secretaries~~ of the various military departments were given authority to prescribe mileage allowance rates under the Military Personnel and Compensation Amendments of 1980, Public Law 96-343, §5, 94 Stat. 1123, 1126 (1980). Pursuant to this grant of authority, the Per Diem, Travel and Transportation Allowance Committee promulgated a mileage allowance rate of 18.5 cents per mile, but Congress refused to approve such a rate through the appropriations process. Currently, members performing government-ordered travel are not allowed a mileage allowance but are paid per diem and either reimbursed

for transportation or paid a monetary allowance in lieu of transportation (MALT) for the use of their privately owned vehicle (POV) while traveling PCS.

The Defense Department Authorization Act for Fiscal Year 1986, Public Law 99-145, provided that members who travel by POV receive a MALT at the same rate as that set by the General Services Administration for civilian employees. That rate for members traveling alone on PCS orders is 15 cents per mile. For other MALT rates, see the section of this chapter on dependent travel. Public Law 99-145 also established a flat per diem rate of $50 to cover other expenses. The National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, increased that rate to the standard CONUS per diem rate.

The Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §12, 42 Stat. 625, 631 (1922), was the first legislation to authorize a per diem allowance for military personnel. Per diem is authorized on a daily basis for the time required to travel between permanent duty stations or in connection with temporary duty, and for periods spent at a temporary duty station. The Joint Service Pay Readjustment Act of 1922 fixed the maximum per diem allowance in the United States at $6 a day. The increases in this maximum rate in subsequent legislation to some extent compensate for the nation's changing food-and-lodging cost patterns:

| **Date of Legislation** | **Maximum U.S. Per Diem Allowance** |
|---|---|
| June 26, 1943 | $7 |
| October 12, 1949 | 9 |
| March 27, 1962 | 12 |
| June 27, 1962 | 16 |
| December 31, 1969 | 25 |
| May 29, 1976 | 35 |
| September 1, 1980 | 50 |

On the other hand, when the rates remain fixed for substantial length of time, the relationship between the per diem rate and the costs the per diem intended to defray was eroded.

The last specific dollar increase--to $50 per day--was authorized by the Department of Defense Authorization Act, 1981, Public Law 96-342, §807(a), 94 Stat. 1077, 1096 (1980). This same act authorized reimbursement for "actual and necessary expenses" for extra high-cost areas or "unusual circumstances" up to a maximum of $75 per day. The National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §614(a)(1), 100 Stat. 3816, 3879 (1986), eliminated the dollar restrictions from Title 37, United States Code, and effectively provided that per diem for members of the uniformed services is to be paid at rates provided in Section 5704 of Title 5, United States Code.

A member ordered to perform temporary duty away from his permanent duty station is authorized under the JFTR to per diem at a rate, determined by the location, for the time required to perform the travel, and to either per diem, subsistence in kind, or a combination of the two, for periods spent at a temporary duty station, plus either transportation in kind, reimbursement for the cost of transportation, or a mileage rate of 37.5 cents a mile for the officially determined distance of the ordered travel.[1]

***Dependent Travel***

The Act of May 18, 1920, ch. 190 [Public Law 210, 66th Congress], §12, 41 Stat. 601, 604 (1920), authorized transportation in kind for the dependents of military personnel ordered to make a permanent change of station. The Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §12, 42 Stat. 625, 631 (1922), gave such personnel a choice between transportation in kind or reimbursement of actual transportation expenses for their dependents. The Act of April 27, 1946, ch. 240 [Public Law 368, 79th Congress], §2, 60 Stat. 126, 126-127 (1946), added another option by authorizing a monetary allowance of 4 cents a mile for dependents 12 years of age and over and 2 cents a mile for those at least 5 but under 12 years of age, in lieu of transportation in kind or reimbursement of actual expenses.

[1] The 37.5 cent rate applies to travel by privately owned automobile. Other rates are authorized for travel by privately owned motorcycle or privately owned airplane.

Current law provides that a member ordered to make a permanent change of station may, in addition to his own transportation or allowances, be authorized transportation in kind, reimbursement therefor, or a monetary allowance in lieu of transportation, plus per diem for dependents. The MALT rates are 17 cents per mile when the member is accompanied by one dependent, 19 cents per mile when accompanied by two dependents, and 20 cents per mile when accompanied by three or more dependents. The dependent per diem rates are 75 percent of the member rate (as determined from JFTR tables) for dependents 12 years and older, and 50 percent of the member rate for dependents younger than 12.

***Household Goods***

The Army Appropriation Act of August 23, 1842, ch. 183, §1(11), 5 Stat. 508, 509 (1842), provided funds for transporting the household effects of Army personnel. This appropriation was renewed year after year, but a permanent law authorizing such transportation was not adopted until 1946. The Act of May 18, 1920, ch. 190 [Public Law 210, 66th Congress], §12, 41 Stat. 601, 604 (1920), stated that "personnel of the Navy shall have the same benefit of all existing laws applying to the Army and Marine Corps for the transportation of household effects." Although this provision was somewhat unclear, since the Army's authority to ship household goods was dependent on its annual appropriations rather than on permanent law, it was construed to mean that Navy personnel had the same household effects authorization granted Army and Marine Corps personnel by Army regulations. The Act of August 2, 1946, ch. 756 [Public Law 604, 79th Congress], §205, 60 Stat. 853, 860 (1946), finally adopted specific statutory authority for the shipment of household effects for the personnel of all branches of service.

Permanent law currently provides in broad terms that a member ordered to make a permanent or temporary change of station is authorized transportation (including packing, crating, drayage, temporary storage, and unpacking) for his baggage and household effects, or reimbursement therefor. Different limitations were prescribed by the JFTR for permanent-change-of-station orders and temporary-change-of-station orders. Annual Department of Defense appropriation acts for years limited the amount of household

goods transportable under this authority to a maximum net weight of 13,500 pounds in connection with any one permanent change of station.[2] Under the JFTR, the 13,500-pound limit applied to officers in pay grade O-6 and above. This amount was gradually scaled down, by pay grade, to 7,000 pounds for enlisted personnel in pay grade E-4 (with over 2 years service). Enlisted personnel in pay grade E-4 (with 2 years of service or less), E-3, E-2, and E-1 were authorized a maximum weight allowance of either 5,000 pounds or 1,500 pounds, depending on whether they had dependents or not. The National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, 115 Stat. 1144, increased the weight allowances of grades E-1 through E-4; for the three lowest grades, the maximums became 5,000 pounds without dependents and 8,000 pounds with dependents. For grade E-4, irrespective of time in service, the new maximums were 7,000 pounds without dependents and 8,000 pounds with dependents. For all pay grades, additional amounts could be shipped at the member's own expense. All JFTR limitations were, and continue to be, explicitly made subject to such additional regulations as the individual services may prescribe.

The National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §602(a)(2), 102 Stat. 1918, 1976 (1988), adopted statutory weight limits for household goods shipments by pay grade and dependency status. The following table shows those limits in pounds, as modified by the National Defense Authorization Act for Fiscal Year 2002:[3]

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[2] The 13,500 pound limitation was increased to 18,500 pounds in 1986, but no additional funds were appropriated to cover the higher costs associated with the increase. Accordingly, the JFTR continued the 13,500 pound limitation until the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §602(a)(2), 102 Stat. 1918, 1976-1977 (1988), effectively overrode the regulatory limitation and established statutory weight limits by pay grade. For details on the amendments made by the 1989 National Defense Authorization Act, see the following paragraph in the main body of the present chapter.

[3] For an explanation of the reasons underlying adoption of the new and higher weight allowances for the shipment of household goods, see House Report No. 100-563 (Committee on Armed Services), pp. 251-252, accompanying H.R. 4264, and Senate Report No. 100-326 (Committee on Armed Services), p. 93, accompanying S. 2355, 100th Congress, 2d Session (1988). Cf. House Report No. 100-753 (Committee of Conference), p. 403, accompanying H.R. 4264, and House Report No. 100-989 (Committee of Conference), p. 405, accompanying H.R. 4481, 100th Congress, 2d Session (1988).

| Pay Grade | Without Dependents | With Dependents | Temporary Allowance |
|---|---|---|---|
| O-10 to O-6 | 18,000 | 18,000 | 2,000 |
| O-5 | 16,000 | 17,500 | 1,500 |
| O-4 | 14,000 | 17,000 | 1,000 |
| O-3 | 13,000 | 14,500 | 1,000 |
| O-2 | 12,500 | 13,500 | 800 |
| O-1 | 10,000 | 12,000 | 800 |
| W-5 | 16,000 | 17,500 | 800 |
| W-4 | 14,000 | 17,000 | 600 |
| W-3 | 13,000 | 14,500 | 600 |
| W-2 | 12,500 | 13,500 | 600 |
| W-1 | 10,000 | 12,000 | 600 |
| E-9 | 12,000 | 14,500 | 500 |
| E-8 | 11,000 | 13,500 | 400 |
| E-7 | 10,500 | 12,500 | 400 |
| E-6 | 8,000 | 11,000 | 400 |
| E-5 | 7,000 | 9,000 | 400 |
| E-4 | 7,000 | 8,000 | 400 |
| E-3 | 5,000 | 8,000 | 400 |
| E-2 | 5,000 | 8,000 | 400 |
| E-1 | 5,000 | 8,000 | 400 |

These weight allowances apply to both permanent and temporary changes of station. In practice, however, because the allowances are subject to such regulations as may be adopted under the JFTR, weight allowances for temporary changes of station are less than those for permanent changes of station.[4] For temporary change of station orders, weight allowances range from 400 pounds for pay grade E-1 to 2,000 pounds for pay grade O-10.

For JFTR purposes, the term "household goods" does not include property such as a motor vehicle or a mobile home owned by a member or his dependents, and these items may not be shipped under a member's weight allowance. Under certain conditions,

[4] Under further amendments made to the weight limitations shown above by the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, 103 Stat. 1352, 1447 (1989), the Secretaries of various military departments are authorized to permit a higher weight allowance for members below pay grade O-6 if application of the limitations prescribed would result in “significant hardship” to the member or the member’s dependents, provided that in no event may the weight allowance authorized exceed 18,000 pounds, the maximum weight allowance authorized for members in pay grades O-6 to O-10. The National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, allows the Secretary concerned to permit a weight allowance above 18,000 pounds to allow shipment of consumables that cannot be reasonably obtained at the new duty station.

however, such property may be transported at government expense or the member may be reimbursed for all or part of the cost. See, *e.g.*, 37 U.S.C. §409 (house trailers and mobile homes) and 10 U.S.C. §2634 (privately owned vehicles).

A member who is ordered to make a permanent change of station to, from, or between places outside the United States or upon an official change in the home port of the vessel to which assigned, may be, subject to some restrictions concerning vehicle weight, and service or foreign-government rules, authorized to have one motor vehicle owned by him or his dependents, for his or his dependents' personal use, shipped to the port serving the new duty station.

A member who would otherwise be authorized to have his household goods transported at government expense may elect, in place of such transportation, to receive an allowance for the transportation of a mobile home, to be used as a residence by the member and his dependents, within the contiguous United States, within Alaska, or between the contiguous United States and Alaska. In general, this allowance is in lieu of transportation of baggage and household goods. The amount of the allowance may not exceed what it would have cost the government to move the member's weight allowance of household goods. The member must pay excess costs, if any. Also, a member who is assigned to a duty station outside the United States, including Alaska, may have a mobile home moved in the United States, or Alaska, for use by his dependents.

***General***

As noted throughout this chapter, the Secretarial regulations implementing the travel and transportation allowances authority of Title 37 impose grade and other limitations in some areas of travel and transportation allowances that are not required by the statutory authority on which they are based, and they prescribe certain allowances that are less than the maximums authorized in the controlling statutes. It may accordingly appear that the Secretaries could remove limitations or increase allowances merely by administratively changing the regulations. This is in fact the case, but only in a strict legal sense. As a practical matter, a change of this nature requires the approval of Congress

because of its oversight responsibility and its "power of the purse." Any proposal to change travel and transportation eligibility or to increase one or more allowance rates creates a need for funds that Congress must appropriate, and on occasion Congress has in fact refused to appropriate funds for certain travel and transportation allowances that are facially authorized by statute.

**Cost**: Temporary duty travel and transportation costs are paid by local commands from operations and maintenance funds, and costs for civilian and military personnel are maintained in a form that resists disaggregation. A breakdown between officer and enlisted personnel is not normally made in permanent change of station data.

**Cost:** For the cost of travel and transportation allowances from 1972 to 1995, see Tables V-2 of *Military Compensation Statistics Tables*, volume II of this edition.

## Chapter V.C.2.

### Clothing Issue and Replacement Allowances

**Legislative Authority**: 37 U.S.C. §§415-419.

**Purpose**: To provide clothing, or the commuted value thereof, to enlisted members of the Armed Forces adequate to enable them to satisfactorily perform their duties, and to reimburse officers for their purchase of required uniforms and equipment.

**Background**: It is well established that when an individual enlists in an armed force, the government assumes as obligation to clothe (as well as feed and shelter) him during his term of service under an enlistment contract. There is no comparable "contractual" obligation with respect to officers. These principles were expressed in the testimony on the bill, H.R. 5007, 81st Congress, 1st Session (1949), that became the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), as follows:

> Whenever an officer goes into the service, he does so knowing he will be required to subsist himself. Any time a man enlists in the service, the law requires that the Government subsist that man. And, if the Government does not subsist that man, then we will have to reimburse him for that food. Under his contract, they agree to feed him, clothe him, and shelter him. But there is no contract with the officer.[1]

Even though there is no established "contractual" obligation to clothe officers, Congress has from time to time authorized the payment of uniform allowances to them. Until recently, such allowances were payable principally to reserve officers to reimburse them for costs incurred in procuring required uniforms and equipment. Effective September 15, 1981, the payment of an initial uniform allowance in the maximum amount of $200 was authorized for all officers--regular and reserve--by the Defense Officer Personnel Management Act (DOPMA), Public Law 96-513, §412, 94 Stat. 2835, 2905 (1980). The reason for extending such allowances to regular officers, in addition to

[1] Hearings of March 18, 1949, on H.R. 5007 before Subcommittee No. 2 of the House Armed Services Committee, p. 1667, 81st Congress, 1st Session (1949).

the reserve officers and certain other limited classes of officers set out in former 37 U.S.C. §415(e) who were entitled to such allowances before enactment of DOPMA, was to remove provisions felt to be discriminatory against regular officers.[2] The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-150, increased the initial uniform allowance from $200 to $400 and the additional uniform allowance, paid upon re-entry into active duty after more than two years, from $100 to $200.

Under present law and implementing regulations,[3] [4] members of the Armed Forces are entitled to the following clothing and uniform allowances:

* *Regular and Reserve officers* are entitled, by express statutory authority, to the following special clothing allowances:

> (1) *Uniform Allowances*. All officers commissioned or appointed in the regular or reserve components of an armed force are entitled to an initial uniform reimbursement or allowance of $400 on being called to active duty or active duty for training. Officers do not receive an annual clothing replacement or maintenance allowance, however. Reserve officers, officers of the Army or Air Force without component, and ROTC graduates appointed in regular components are entitled to an additional active duty uniform allowance of not more than $200 each time they enter on active duty for more than 90 days, provided (1) they are not entering upon active duty within two years after completion of a period of active duty of more than 90 days and (2) they have not received an initial uniform reimbursement or allowance of more than $400 within the preceding two years. Prior to enactment of the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §663(a), 103 Stat. 1352, 1465 (1989), reserve officers were also entitled to not more than $50 as

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[2] House Report No. 96-1462 (Committee on Armed Services), p. 111, accompanying S. 1918, 96th Congress, 2d Session (1980). (Section 412 of DOPMA repealed 37 U.S.C. §415(e).)

[3] See Chapters 5 and 6 of Part 3 of the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, concerning entitlements to uniform and clothing allowances for enlisted personnel and officers, respectively. Also see 37 U.S.C. §415 as amended by DOPMA and 37 U.S.C. §§416-418, generally.

[4] The clothing allowance authority relative to enlisted members of the Armed Forces is very broad, allowing the President to "prescribe the quantity and kind of clothing to be furnished annually ... [and to] prescribe the amount of a cash allowance to be paid ... if clothing is not so furnished." 37 U.S.C. §418. The substance of the clothing allowance provisions relative to enlisted members is, accordingly, found in implementing executive orders and departmental regulations. See, *e.g.*, *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶30502.

reimbursement for the purchase of required uniforms and equipment upon completion of each period of four years of service in an active status in one of the reserve components of the Armed Forces, provided they had not become entitled to a uniform allowance or reimbursement during the preceding four years. The 1990/1991 National Defense Authorization Act, Public Law 101-189, *id.*, repealed this authority, on the recommendation of the Department of Defense, on the grounds that the clothing allowance entitlement for reserve officers was "obsolete."[5] [6]

(2) *Civilian Clothing Allowances*. Under amendments to the clothing allowance entitlements provisions made by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §611, 101 Stat. 1019, 1093 (1987), officers of the Armed Forces assigned to permanent duty stations outside the United States who are required to wear civilian clothing "all or a substantial portion of the time in the performance of ... official duties" may be paid "a civilian clothing allowance" in an amount not to exceed the rates authorized for enlisted members, as set out below.[7] [8]

* *Enlisted members*, under DoD regulations issued pursuant to 37 U.S.C. §418 and Executive Order 10113, as amended, are authorized:

(1) *An Initial Clothing Issue or Initial Cash Allowance*, or a combination thereof, to furnish them with uniform and clothing items in the quantities customarily required

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[5] Senate Report No. 101-81 (Committee on Armed Services), p. 164, accompanying S. 1352, and House Report No 101-331 (Committee of Conference), p.591, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

[6] A save-pay provision permitted officers who would, but for repeal of the authority, have become entitled to the $50 allowance in the one-year period following enactment of the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §663(b), 103 Stat. 1352, 1465-1466 (1989), to nevertheless receive the allowance. (The 1990/1991 Authorization Act was enacted November 29, 1989.)

[7] The provision of authority to pay officers of the Armed Forces a civilian clothing allowance was adopted by Congress at the urging of the Department of Defense to enable officers required to wear civilian clothing because of assignment to "high threat overseas areas where the wearing of civilian attire is mandatory," Senate Report No. 100-57 (Committee on Armed Services), p. 145, accompanying S. 1174, 100th Congress, 1st Session (1987), see House Report No. 100-446 (Committee of Conference), p. 641, accompanying H.R. 1748, 100th Congress, 1st Session (1987), to defray the cost of purchasing and maintaining such clothing. As such the officer civilian clothing allowance authority is quite similar in purpose to the enlisted civilian clothing allowance authority covered more fully below.

[8] The initial authority to pay an officer civilian clothing allowance was adopted as an entitlement, but the authority to pay the allowance was made discretionary with the Secretary of Defense by amendments made to 37 U.S.C. §419 by the National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §625, 102 Stat. 1918, 1984 (1988). The amendment was said to have been made in clarification of the original intent underlying adoption of the officer civilian clothing allowance authority. House Report No. 100-989 (Committee of Conference), p. 409, accompanying H.R. 4481, 100th Congress, 2d Session (1988). *cf.* House Report No. 100-753 (Committee of Conference), p. 408, accompanying H.R. 4264, 100th Congress, 2d Session (1988).

for wear in their branch of service. The amount of this allowance varies according to service branch and sex. For example, in 2004 the initial clothing allowance for an enlisted male in the Army was $1,211.64, while the allowance for a female in the Navy was $1,549.48.

(2) *A Cash Clothing Replacement Allowance.*[9] This replacement allowance is payable to enlisted members annually at the end of their anniversary month of active duty. This allowance is divided into (i) a "basic" replacement allowance, which is intended to defray the cost of replacement of uniquely military items that would normally have to be replaced during the first three years of active duty, and (ii) a "standard" replacement allowance, which is intended to defray the cost of replacement of uniquely military items that would have to be replaced after completion of three years of active duty. Department of Defense Directive 1338.5, March 9, 1998, stipulates that the basic replacement allowance entitlement be 70 percent of the standard allowance. The basic allowance begins to accrue the day after completion of six months of active duty, and continues through the end of the 36th month of active duty; in most cases, the standard replacement allowance entitlement begins on the day following completion of 36 months of active duty. Both allowances are adjusted regularly to account for changing costs; they vary by service branch and the sex of the individual. For example, in 2004 the basic replacement allowance for a male in the Air Force was $216, while the allowance for a female in the Navy was $478.80.[10]

Initial and replacement issues and allowances are designed to provide funds for replacement of the clothing and equipment that enlisted personnel require in the performance of their duties under normal conditions. However, such allowances do not cover special circumstances that require a member to possess additional quantities or special items of clothing or wear articles not customarily worn by other enlisted members of the same service. The types of special clothing allowances are as follows:

* *A Special Initial Clothing Allowance* payable to members attaining a status that requires the wearing of individual uniform clothing different from the uniforms customarily required for the majority of enlisted personnel of the same service.

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[9] Formerly, in addition to initial clothing issues and allowances enlisted members of the Armed Forces received allowances referred to as "clothing maintenance allowances." This terminology has been changed, and enlisted members now receive "clothing replacement allowances." As provided in Paragraph 30501 of the *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, this allowance is "authorized for replacement of clothing." The changes in question were all made administratively, without any need for congressional action.

[10] Department of Defense, Defense Finance and Accounting Service, "Military Pay." <http://www.dfas.mil/money/milpay>

Currently, this allowance applies mainly to chief petty officers of the Navy and is payable upon a member's being advanced to that status or when the member first enlists or reenlists in that capacity.

* *A Special Cash Clothing Replacement Allowance* payable to members who have received a special initial clothing allowance. This entitlement accrues on the day following an affected member's completion of 36 months of active duty.

* *A Supplementary Clothing Allowance* payable to enlisted members assigned to specified duties in which they are required to have additional quantities or special items of clothing not normally required for the majority of enlisted personnel of the same armed force. This allowance is applicable to personnel such as recruiters and military police, those regularly assigned as escorts, and those assigned to locations where climatic conditions require special articles of clothing. There is no corresponding replacement allowance for the supplementary clothing allowance.

* *A Civilian Clothing Allowance* payable to members who are required to wear civilian clothing in the performance of their official duties. Examples include intelligence or counterintelligence duties, and duty in a foreign country where the host government prohibits or discourages the wearing of uniforms by non-indigenous military or naval personnel. As of October 2003, the initial payment of this allowance was $834.57, followed by an annual replacement payment of $278.19. For temporary duty of 15 days in any 30-day period, the allowance was $278.19, and for temporary duty of 30 days in a 36-month period the allowance was $556.38.

**Cost**: For the cost of clothing allowances from 1972 to 2004, see Tables V-3, *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter V.C.3.**

## Overseas Station Allowances

**Legislative Authority**: 37 U.S.C. §405.

**Purpose**: To help defray the additional costs for food, lodging, and related incidental expenses incurred by members of the uniformed services and their dependents as a result of assignment to permanent duty outside the United States.

**Background**: "Overseas station allowances" is the collective title of the payment authorized by law as "a per diem, considering all elements of the cost of living to members ... and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses, to ... a member who is on duty outside of the United States or in Hawaii or Alaska, whether or not he is in a travel status." 37 U.S.C. §405(a). This *per diem* now consists of three main components: (1) a housing allowance; (2) a cost of living allowance; and (3) a temporary lodging allowance.

Authority to pay overseas station allowances to military personnel was initially granted with a minimum of Congressional review and with little Congressional expression as to the purpose to be served. The origin of the allowances is traceable to a provision in the Act of July 2, 1942 (Army Appropriation Act, 1943), ch. 477 [Public Law 649, 77th Congress], §1, 56 Stat. 611 (1942), which authorized the expenditure of funds appropriated for "Contingencies of the Army" for the "actual and necessary expenses or per diem in lieu thereof as may be determined and approved by the Secretary of War, of military and civilian personnel in and under the Military Establishment on special duty in foreign countries." The Second Supplemental National Defense Appropriation Act, 1943, ch. 629 [Public Law 763, 77th Congress], §102, 56 Stat. 990, 993 (1942), provided that Navy appropriations for fiscal year 1943 were available to make similar payments to military and civilian personnel of the naval establishment. A Navy representative explained the need for overseas allowances in these terms:

> ... The reason it is necessary to make provision for these personnel is that the cost of living in many places abroad has risen steeply and rapidly. It is estimated that in London the average rental costs are about 63 percent higher than in Washington, and other costs are about 41 percent higher.... In Chun[g]king, China, the costs of everything are reported by our naval attache as rising vertically. Rentals are high, but food is higher. A State Department estimate in July indicates that rental was 123 percent higher than in Washington and it is understood that the State Department is granting special allowances to their personnel assigned to Chun[g]king....[1]

In the years immediately following fiscal year 1943, the expenditure of funds for station allowances was authorized in annual appropriations acts for personnel on special duty in foreign countries under the headings "Travel of the Army" and, for the Navy, "Transportation and Recruiting." It was brought to the attention of the Navy in connection with its 1946 appropriation bill that the bill requested funds for a number of items for which there was no authority in permanent law. Since such items were subject to a point of order, even though the appropriations had in the past been made without a point of order having been raised, it was suggested that the Navy take action to obtain permanent authority for them. The result was proposed legislation introduced as Senate Bill S. 1917, 79th Congress, 2d Session (1946). As passed by the Senate, the bill did not address overseas station allowances. A Title II was, however, later added to the bill by the House, and this title did deal with such allowances. Among other things, it authorized payment of actual and necessary cost-of-living expenses, or a per diem in lieu thereof, to members of the Armed Forces on duty "outside the continental United States or in Alaska." Though Title II was rather broad in scope and affected all branches of service, the hearings on it were brief, and a single Navy officer was the only person who testified in favor of passage. The Naval Affairs Committee explained its addition of Title II thusly:

> The eighth committee amendment would add Title II to the bill. This title consists of amendments to the Pay Readjustment Act. The general authority to make the payments authorized in Title II have been contained from time to time in the Naval Appropriation Acts and in the Appropriations Acts for the other armed

[1] Hearings before a Subcommittee of the House Appropriations Committee on the Second Supplemental National Defense Appropriation Bill for 1943, pp. 93-94, 77th Congress, 2d Session (1942). The representative went on to list 37 other foreign countries in which rental or other living costs were 25 percent or more in excess of Washington rates.

> services. It appears appropriate to codify these legislative provisions as amendments to the Pay Readjustment Act. They embody no substantial changes from the authority which has been carried for several years in appropriation measures.[2]

As amended by the addition of so-called Title II, S. 1917 was adopted in the Act of August 2, 1946, ch. 756 [Public Law 604, 79th Congress], §203, 60 Stat. 853, 859 (1946), entitled "An Act to enact certain provisions now included in the Naval Appropriation Act, 1946, and for other purposes," thus creating the first permanent overseas station allowances authority for all branches of service. Despite what was said in the House Report, the 1946 act made a fairly substantial change in the conditions of eligibility for station allowances, since it permitted payments to personnel on duty "outside the continental United States or in Alaska," whereas the appropriation acts had authorized payment only to those on duty in "foreign countries."

Section 303(b) of H.R. 5007, 81st Congress, 1st Session (1949), the bill later enacted as the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §303(b), 63 Stat. 802, 814 (1949), restated this station allowances authority but in somewhat different terms. It established oversea station allowances as *per diem* payments, thereby withdrawing the previously existing authority to defray actual expenses. Further, it expressly provided that the extra living costs experienced overseas by dependents, as well as by members themselves, be included in computing the amount of the allowance entitlement. The proposed modifications to the overseas station allowances received scant attention in both House and Senate hearings.[3]

Section 303(b) of H.R. 5007, 81st Congress, 1st Session (1949), was enacted in the Career Compensation Act of 1949, ch. 681, *id*., exactly as initially drafted, and it is the source of the existing overseas station allowance provisions of Title 37, United States

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[2] House Report No. 2549 (Committee on Naval Affairs), p. 11, accompanying S. 1917, 79th Congress, 2d Session (1946).

[3] See, *e.g*., Hearings before a Subcommittee of the House Armed Services Committee on H.R. 2553, p. 1711, 81st Congress, 1st Session (1949); and Hearings before the Senate Armed Services Committee on H.R. 5007, p. 280, 81st Congress, 1st Session (1949).

Code.[4] As enacted, the law authorized the payment of overseas station allowances under regulations to be prescribed by the Secretaries of the various services. Since the law classifies overseas station allowances as "travel and transportation" allowances, the Secretarial regulations are prescribed in Volume 1 of the *Joint Federal Travel Regulations* (JFTR). The JFTR divides station allowances into three main components: (1) a housing allowance, frequently referred to as overseas housing allowance (OHA), designed to reimburse military personnel for overseas housing costs in excess of their basic allowance for quarters, the level of which is to be based on data from overseas commands; (2) a cost of living allowance (COLA) designed to reimburse members for the overseas costs of goods and services other than housing in excess of similar costs in the United States, also to be based on data gathered by overseas commands and the State Department; and (3) a temporary lodging allowance (TLA) designed to partially reimburse members when they and/or their dependents are required to use public hotels or restaurants at an overseas duty station while awaiting or after vacating permanent housing. An interim housing allowance, designed to reimburse a member for expenses incurred for renting non-government family housing before arrival of the member's dependents at a new permanent duty station, formerly was a separate fourth component but has been combined with the overseas housing allowance provision. The amount of these different allowances varies geographically because the excess costs on which they are based vary from one foreign locality to another. The OHA and COLA also include intra-pay-grade differentials for each locality, on the theory that a member's standard of living is related to his level of income. And, because dependents' expenses are to be taken into account in determining the level of the allowances, the overseas housing allowance contains a within-grade differential based on dependency status and the COLA contains a series of within-grade differentials based on number of dependents.

[4] Section 303(b) of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §303(b), 63 Stat. 802, 814 (1949), was classified to 37 U.S.C. §253(b). See 37 U.S.C. §253(b) (1952). Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the overseas station allowance provisions were codified at 37 U.S.C. §405, *id*., 76 Stat. at 473.

In December 1967, the Comptroller General of the United States ruled that the JFTR method of using basic allowance for quarters as the basis for computing the overseas housing allowance did not conform to the law, because BAQ purportedly represented a lesser amount than average housing costs in the United States and its use therefore overstated the excess cost of overseas housing by the difference between BAQ and actual United States housing costs. The Comptroller General further ruled that the JFTR practice of fixing the overseas housing allowance and COLA components of the overseas station allowance independently of each other did not comply with the law, which required that the total allowance (housing plus cost of living) be based on overall costs. Hence, if either housing or living costs were less in any overseas area than in the United States, the excess costs in the applicable component had to be reduced by the cost "savings" in the other component, at least under the Comptroller General's theory.

Disagreeing with this interpretation, the Department of Defense requested that Congress review the question of overseas station allowances in general and the level at which they were fixed in particular. Congress having agreed to such a review, implementation of the Comptroller General's decision was deferred pending hearings. After completion of its review, Congress adopted the Act of October 22, 1970, Public Law 91-486, 84 Stat. 1085 (1970), which validated the system used by the Secretaries of the military departments to compute overseas housing and cost of living allowances and added a provision to remove any doubt about the propriety of such computational methods.

The overseas station allowance program received further attention in the Department of Defense Authorization Act, 1985, Public Law 98-525, §602(e), 98 Stat. 2492, 2536 (1984). Before January 1, 1985, all manifestations of overseas station allowances, specifically including overseas housing allowances, were available to Armed Forces personnel stationed in Alaska and Hawaii--as well as to personnel stationed in Tokyo, London, Rome, *etc*. Without disturbing other aspects of the overseas station allowance program, the 1985 Authorization Act withdrew overseas housing allowance entitlements from Armed Forces personnel stationed in Alaska and Hawaii. At the same time as authority to make overseas housing allowance payments to Armed Forces

personnel in Alaska and Hawaii was being withdrawn, however, authority to make variable housing allowance payments was being extended.

The 1985 Department of Defense Authorization Act, Public Law 98-525, *id*., made substantial amendments to the Variable Housing Allowance program (VHA) previously in effect. Among other things, these changes created a totally new statutory provision—37 U.S.C. §403a--for dealing with VHA generally. See Chapter II.B.2., "Housing Allowances," above. Among other things, the amendments to the VHA program *qua* VHA[5] were intended, and expected, to save substantial amounts of money for the federal treasury.[6] In proposing amendments to the VHA program, both the original House and Senate bills--H.R. 5167 and S. 2723, respectively, 98th Congress, 2d Session (1984)--recommended that members of the Armed Forces stationed in Alaska and Hawaii be made eligible for VHA in lieu of overseas housing allowances.[7] The provision in question was deleted in Senate floor action but was restored in conference.[8] Although the reason for substituting VHA authority for overseas housing allowances in Alaska and Hawaii is not clearly articulated anywhere in the legislative history of the 1985 Authorization Act.

While the 1985 Authorization Act, Public Law 98-525, *id*., changed the overseas housing allowance program as applied to members of the Armed Forces stationed in Alaska and Hawaii, it did not affect other aspects of the overseas station allowance program for such personnel. Compare, *e.g*., 37 U.S.C. §405(a) ("[T]he Secretaries may

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[5] That is, to the VHA program without regard to any other programs, such as the overseas station allowances program.

[6] See, *e.g.*, House Report No. 98-691 (Committee on Armed Services), pp. 290, 292, accompanying H.R. 5167, and Senate Report No. 98-500 (Committee on Armed Services), pp. 435, 436, accompanying S. 2723, 98th Congress, 2d Session (1984).

[7] See, *e.g.*, House Report No. 98-691 (Committee on Armed Services), p. 256, accompanying H.R. 5167, and Senate Report No. 98-500 (Committee on Armed Services), p. 205, accompanying S. 2723, 98th Congress, 2d Session (1984).

[8] See House Report No. 98-1080 (Committee of Conference), p. 295, accompanying H.R. 5167, 98th Congress, 2d Session (1984).

authorize the payment of a per diem ... to ... a member who is on duty outside of the United States or in Hawaii or Alaska.") with 37 U.S.C. §405(b) ("A station housing allowance may not be prescribed under this section for a member who is on duty in Hawaii or Alaska."). Thus, the only overseas station allowance not available to Armed Forces personnel stationed in Alaska and Hawaii is the overseas housing allowance.

Pursuant to the Department of Defense Authorization Act, 1980, Public Law 96-107, §807, 93 Stat. 803, 813-814 (1979), the Secretaries of the various military departments were granted discretionary authority to pay overseas housing allowances in advance. As explained in the relevant Congressional report, the reason for the adoption of advance payment authority was to enable affected members to meet the added costs that overseas housing allowances were intended to defray at the time the expenses were incurred "in order to minimize the financial impact on service members assigned to high-cost overseas areas."[9]

The National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §622, 103 Stat. 1352, 1446-1447 (1989), prospectively amended the overseas station allowance program to authorize, effective September 1, 1990, the Secretaries of the various military departments to make up-front, lump-sum payments "for nonrecurring expenses incurred by the member in occupying private housing outside the United States." In effect, the new authority extended to any housing-related costs that might be incurred by a member occupying housing overseas, independently of when the costs may be incurred. As explained by the House-Senate Conference Committee:

> The House bill contained a provision ... that would authorize the lump-sum payment for the nonrecurring up-front costs incurred by military service members moving into private housing overseas. The provision would apply with respect to expenses incurred after August 31, 1990.
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> . . .

[9] House Report No. 96-166 (Committee on Armed Services), p. 139, accompanying H.R. 4040, 96th Congress, 1st Session (1979).

> The amendment would expand lump-sum payment authority to other than initial housing costs, for example, modification to protect against a terrorist threat.[10]

Pursuant to amendments to the overseas station allowance program made by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §622(a), 107 Stat. 1547, 1683 (1993), the category of "nonrecurring expenses" for which lump-sum payments were authorized was expanded to include any losses sustained by a member on the refund of a rental deposit (or other deposit made by a member to secure housing) as a result of currency fluctuations.[11]

The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1776, effectively changed the computation of the overseas housing allowance. Prior to 1997, 37 U.S.C. §405 defined the "station housing allowance" as the difference between the basic allowance for quarters (BAQ) and the actual cost of housing in the location of assignment. This formula was eliminated when Public Law 105-85

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[10] House Report No. 101-331 (Committee of Conference), p. 586, accompanying H.R. 2461, 101st Congress, 1st Session (1989). Also see House Report No. 101-121 (Committee on Armed Services), p. 276, accompanying H.R. 2461, 101st Congress, 1st Session (1989):

> ... Many amenities to which Americans are accustomed when moving into a new residence, such as light fixtures, kitchen cabinets and basic appliances like stoves or refrigerators are frequently not provided by foreign landlords.
>
> As a result, service members moving into off-base quarters overseas are often faced with substantial up-front cash outlays just to make housing facilities livable. In addition, service members must pay a large finder's fee or other charges in some areas to local realtors in order to locate housing or obtain utility service. Currently, reimbursement for these up-front overseas housing costs is amortized over the life of the overseas tour in monthly OHA payments. Under the OHA system, service members cannot receive a lump-sum payment for up-front costs because current law only authorizes such payments on a per diem basis. The committee recognizes that in situations where overseas tours are cut short and because of the low value of the dollar against some foreign currencies, many service members never fully recover these expenditures. In addition, many lower ranking personnel must go into substantial debt to buy these essential items. As an outgrowth of this concern, [the amendment] would authorize a lump sum [sic] payment for the nonrecurring up-front costs of moving into private overseas housing, effective September 1, 1990. In providing this authorization, the committee expects that the services will require military members to account for their actual expenses by furnishing receipts or other evidence so that the amount of this payment will not exceed the actual amount of incurred expenses.

[11] See House Report No. 103-200 (Committee on Armed Services), p. 295, accompanying H.R. 2401; Senate Report No. 103-112 (Committee on Armed Services), p. 155, accompanying S. 1298; and House Report No. 103-357 (Committee of Conference), p. 684, accompanying H.R. 2401, 103d Congress, 1st Session (1993).

consolidated the BAQ with the overseas housing allowance, creating a single allowance that varies according to local costs. See Chapter II.B.2, "Housing Allowances," above.

**Current allowance authorized**: The rate of overseas housing allowance authorized varies from country to country, depending on the local cost of living and the special types of nonrecurring expenses that may be encountered in the country in question. Without regard to nonrecurring expenses for which reimbursement is authorized, in 2004 basic monthly overseas rental allowance rates for representative locations were: for an O-1 with dependents, $750 in Veracruz, Mexico; $2,310 in Manila, the Philippines; $2,930 in Geneva, Switzerland, and $6,732 in Tokyo, Japan.[12] The overseas cost-of-living rate is a percentage by which basic pay amounts are multiplied to achieve earning parity with local costs. For example, in 2004 the multiplier for Algeria was 102 percent; for Antwerp, Belgium it was 148 percent; and for Buenos Aires it was 116 percent.

**Cost**: For the cost of overseas station allowances from 1972 to 2004, see Table V-4 of *Military Compensation Statistics Tables*, volume II of this edition.

[12] Defense Technical Information Center, Per Diem, Travel and Transportation Allowance Committee, "Overseas Housing Allowance (OHA)." <http://www.dtic.mil/perdiem/allooha.html>

**Chapter V.C.4.**

## Cost of Living Allowance for the Continental United States (CONUS COLA)

**Legislative Authority**: 37 U.S.C. §403b.

**Purpose**: To partially offset differentially higher non-housing living costs experienced by members of the uniformed services in different parts of the United States.

**Background**: The National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §602(a)(1), 108 Stat. 2663, 2779-2781 (1994), adopted a new provision[1] authorizing the payment of a "cost-of-living allowance" to a member of the uniformed services (i) "assigned to a high cost area in the continental United States," (ii) "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," or (iii) "assigned to duty in the continental United States if ... 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 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." 37 U.S.C. §403b(b)(1)-(3). For the purpose of the cost-of-living allowance, "a high cost area" is an area in the United States in which the "uniformed services cost of living ... exceeds the average cost of living ... by at least the threshold percentage," with the "threshold percentage" being determined by the Secretary of defense in consultation with the service Secretaries at a rate "not ... less than 8 percent". 37 U.S.C. §403b(c). The actual amount of the cost-of-living allowance payable to a particular member equals the product of the member's "average spendable income", determined only with respect to his regular military compensation, and the amount by which the difference between the "uniformed services cost of living" for the particular area in question and the "average cost of living in the continental United States" (both

[1] Codified at 37 U.S.C. §403b, immediately following the provision authorizing a variable housing allowance, 37 U.S.C. §403a.

measured as percentages) exceeds the "threshold percentage." 37 U.S.C. §403b(d). Both "average spendable income" and the "uniformed services cost of living" are determined without reference to housing costs, which are theoretically compensated for by the basic allowance for housing.[2] 37 U.S.C. §403b(g) and (h)(3). In administering the provision, the "threshold percentage" is to be adjusted every year so that the total amount of the cost-of-living allowance actually paid to all members of the uniformed services does not exceed the amount appropriated to all the uniformed services for that purpose. 37 U.S.C. §403b(c).

In explaining the reasons for the new entitlement, the House Armed Services Committee noted:

> Members of the Armed Forces move around the country as a requirement of their service. Over a career, a service member is likely to be assigned to a variety of low, medium, and high-cost areas. Currently, military compensation is adjusted only to reflect differences in local housing costs; there is no pay element to compensate members stationed in the Continental United States (CONUS) for variations in non-housing costs which have increased in the last 10 years.
>
> The Seventh Quadrennial Review of Military Compensation (QRMC) found that CONUS non-housing costs vary from 5 percent below to 19 percent above the national average. It is impossible [*sic*, possible?] for a service member to move from an average-cost to a high-cost area and suffer a more severe loss in purchasing power than would result from a reduction in rank. QRMC analysis further showed that once a member is assigned to one of the very high cost areas, he or she has little chance of offsetting the loss in buying power through subsequent moves to low cost areas.
>
> During manpower budget overview hearings this year, the committee heard repeated testimony about the financial hardships experienced by service members in high-cost locations, particularly recruiters and other members assigned to independent duty that placed them at considerable distance from the nearest on-base facilities.
>
> Therefore, the committee recommends ... the establishment of a CONUS COLA to partially defray the added non-housing costs incurred by service members assigned to high cost areas....[3]

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[2] See Chapter II.B.2., hereof, "Housing Allowances," above.

[3] House Report No. 103-499 (Committee on Armed Services), p. 249, accompanying H.R. 4301, 103d Congress, 2d Session (1994). See House Report No. 103-701 (Committee of Conference), p. 712, accompanying S. 2182, 103d Congress, 2d Session (1994).

As originally enacted, no cost of living allowance could be paid to any member of the uniformed services earlier than 90 days following submission by the Secretary of defense of a report to Congress detailing how the program would be administered and what procedures would be established to "prevent uncontrolled growth" in costs under the program in future years. National Defense Authorization Act for Fiscal Year 1995, Public Law 103-337, §602(b), 108 Stat. 2663, 2781-2782 (1994).

The cost of living allowance program for the continental United States is frequently referred to by the acronym "CONUS COLA."

**Current rate of pay authorized**: The amount of the cost of living allowance authorized by 37 U.S.C. §403b varies depending on an eligible member's duty station and the location of the member's dependents.

**Cost**: For the cost of the cost-of-living allowance in the continental United States from 1996 to 2004, see Table V-5 of *Military Compensation Statistics Tables*, volume II of this edition.

**Chapter V.C.5.**

## Family Separation Allowance (FSA)

**Legislative Authority**: 37 U.S.C. §427.

**Purpose**: To partially reimburse, on average, members of the uniformed services involuntarily separated from their dependents for the reasonable amount of extra expenses that result from such separation, and to reimburse members who must maintain a home in the United States for their dependents and another home overseas for themselves for the average expenses of maintaining the overseas home.

**Background**: The Department of Defense recognizes that a member is obligated to provide his family with a separate home when, because of duty assignment or health limitations of dependents,[1] he is unable to reside with them. Even if the member is himself furnished food and lodging by the government at his duty station, such separate living arrangements typically result in a myriad of small but collectively substantial expenses that would not have to be paid if the family were living together. For example, a member's spouse may have to pay for varied odd jobs around the home, automobile and appliance maintenance and repair, yard upkeep, and the like, that would ordinarily be taken care of by the member if not assigned to a remote duty station. In addition, a spouse may have to pay for someone to perform various chores that would normally be taken care of by either the spouse or the member were the member not so assigned, such as hiring a baby-sitter while shopping. In addition, when not at home, a member typically pays more for laundry and other cleaning that would normally be done as a part of the family laundry. Exchanging letters and packages similarly involves additional costs directly attributable to family separation. An occasional telephone call may increase separation costs even more.

[1] The National Defense Authorization Act for Fiscal Year 2002 , Public Law 107-107, 115 Stat. 1134, added the provision that a member retains eligibility for a family separation allowance when a dependent's health limitation causes the member to elect an unaccompanied tour where such an election normally would preclude eligibility.

To help defray the cost of such incidental expenses, the Uniformed Services Pay Act of 1963, Public Law 88-132, §11, 77 Stat. 210, 217 (1963), authorized the payment of a $30 monthly family separation allowance (FSA) to members in pay grades E-5 and above, as well as to members in pay grade E-4 with over four years of service, who were involuntarily separated from their dependents for more than 30 days, whether inside or outside the United States. This allowance is commonly referred to as "Type II" FSA--hereafter, "FSA-II"--to distinguish it from another category authorized for a different purpose. The original FSA-II, with its flat $30 rate, was obviously not intended as a direct reimbursement for actual expenses. Rather, it was designed to reimburse, on an average basis, the miscellany of non-quantifiable added expenses that result from family separation.

As indicated by the Senate Committee on Armed Services:

> The rationale for the family [separation] allowance is that enforced separations of servicemen from their families cause added household expenses where the member is absent for any extended period of time. This condition results in an inequity as compared to those members whose dependents are authorized to accompany them. The extra expenses include such matters as home and automobile maintenance, increased child care costs, etc.[2]

By the latter part of the 1970s, the Department of Defense became convinced that denial of FSA-II to members in pay grades E-1, E-2, E-3, and E-4 (with less than four years of service) was essentially inequitable. Citing the original purpose of the Uniformed Services Pay Act of 1963, Public Law 88-132, *id.*, *i.e.*, "to partially reimburse members involuntarily separated from their dependents for the average extra expenses that result from the separation," the Department of Defense took the position that the existing law establishing the FSA-II entitlement "denies it to those members least able to meet the additional costs of maintaining two households" and accordingly urged that the entitlement be extended to "help to reduce the financial hardship of married junior

[2] Senate Report No. 88-387 (Committee on Armed Services), p. 25, accompanying H.R. 5555, 88th Congress, 1st Session (1963).

enlisted personnel who are serving unaccompanied tours at overseas locations."[3] The Senate Armed Services Committee, accepting the recommendations of the Department, agreed to extend the entitlement to junior enlisted personnel but in doing so expressed a somewhat different purpose--namely, the "hope that the payment of this additional allowance for unaccompanied tours will encourage married junior enlisted personnel to serve overseas on unaccompanied tours," thereby reducing "the large numbers of dependents overseas" and the attendant costs.[4] The extension of FSA-II to junior enlisted personnel was effected by the Department of Defense Authorization Act, 1981, Public Law 96-342, §809(a), 94 Stat. 1077, 1097 (1980).

For the purpose of administering the family separation allowance (Type II) entitlements of 37 U.S.C. §427, FSA-II is divided into FSA-R, FSA-S, and FSA-T. FSA-R applies to members for whom government transportation of dependents is not authorized and the dependents do not live at or near the member's permanent duty station or home port;[5] FSA-S applies where the member is on duty aboard a ship, when the ship is away from home port continuously for more than 30 days; and FSA-T applies to members assigned to temporary additional duty away from their permanent duty station continuously for more than 30 days.[6]

When bachelor government quarters are not available at an overseas duty station, a member so assigned must obtain private living accommodations for himself at his own

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[3] Senate Report No. 96-826 (Committee on Armed Services), p. 134, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

[4] Senate Report No. 96-826 (Committee on Armed Services), p. 133, accompanying H.R. 6974, 96th Congress, 2d Session (1980).

[5] FSA-R does not apply to a member who, after September 30, 1986, "elects to serve a tour of duty unaccompanied by his dependents at a permanent station to which the movement of his dependents is authorized at the expense of the United States...." See 37 U.S.C. §427(b)(3) as added by the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §618(a)(4), 100 Stat. 3816, 3880-3881 (1986). Also see the National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, *id*., §618(b), 100 Stat. at 3881, for savings provisions applicable to persons receiving FSA-R on September 30, 1986, whose continuing entitlement would otherwise have been terminated by the instant amendment.

[6] *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, DOD 7000.14-R, ¶ 30304.

expense. A member whose dependents are not permitted at the overseas station is thus required to maintain two homes: one in the United States for the member's family, and one overseas. In addition to establishing FSA-II, the Uniformed Services Pay Act of 1963, Public Law 88-132, §11, 77 Stat. 210, 217 (1963), also established so-called "Type I" FSA--hereafter, "FSA-I"[7]--to reimburse the relatively few personnel finding themselves in this situation. Under the Uniformed Services Pay Act of 1963, FSA-I is equal to the monthly "without-dependents" BAH for the member's grade. In other words, it provides a member with dependents who is separated from his family with the same cash allowance to obtain housing for himself as is provided a similar member without dependents who must obtain private quarters at his own expense. FSA-I is not an actual-expense reimbursement: its purpose is to help defray, on an average basis, the extra expense incurred by a member in maintaining a second home at an overseas duty station where his dependents are not permitted and where no bachelor quarters are available for assignment to him. With the extension of FSA-II to junior enlisted personnel by the Department of Defense Authorization Act, 1981, Public Law 96-342, §809(a), 94 Stat. 1077, 1097 (1980), all members entitled to FSA-I are automatically eligible for FSA-II at the same time, since both kinds of extra expenses covered by the two types of FSA occur in these circumstances. A member entitled to FSA-I is also eligible, on the same basis as any unmarried member, for applicable overseas station allowances. See Chapter V.C.3., "Overseas Station Allowances," above.

The legislative history of the Uniformed Services Pay Act of 1963, Public Law 88-132, *id*., stressed the home maintenance and repair jobs a member/husband would do if he were home as being typical of the extra expenses FSA-II was created to offset, but the law made no reference to the family residential situation. Nonetheless, the Comptroller General, relying heavily on the "handyman" emphasis of the legislative history, ruled in 1968 that the law allowed payment of FSA-II only to a member who maintained a separate residence, subject to his own management and control, for his dependents. This ruling resulted in stripping the FSA-II allowance from a large number

[7] Codified at 37 U.S.C. §427(a).

of personnel who would otherwise have been eligible for it. For example, it made a member ineligible when his wife lived with her parents or parents-in-law during family separation resulting from the member's assignment to a distant duty station. The Act of December 7, 1970, Public Law 91-529, §1, 84 Stat. 1839 (1970), was enacted specifically to remedy this effect of the Comptroller General's ruling. This act, which was made retroactive to the date FSA-II payments were first authorized, expressly stated that FSA-II was payable even though a member did not maintain a residence for his dependents that was both subject to his management and control and that he was likely to share with them as a common household when his duty assignment permitted. It thus made clear that the types of expenses the allowance was intended to reimburse were not limited to the "handyman" kind, but that the purpose of the allowance was to help defray the full range of miscellaneous expenses that result from family separation.

The Uniformed Services Pay Act of 1963, Public Law 88-132, *id.*, intentionally provided that an entitlement to cash BAQ was a condition precedent to entitlement to FSA-II. This was aimed at members whose dependents occupied family-type government quarters during the period of separation, on the theory that they had no significant extra expenses for home maintenance and repair. As the full array of family separation expenses came into clearer focus, however, Congress decided that this bar was not justified. Act of December 7, 1970, Public Law 91-533, §1, 84 Stat. 1392 (1970), also enacted on December 7, 1970, accordingly eliminated the BAQ and FSA-II entitlement pairing.

The Department of Defense Authorization Act, 1986, Public Law 99-145, §607, 99 Stat. 583, 639 (1985), increased FSA-II to $60.00 per month. As explained in the report of the Senate Committee on Armed Services:

> This allowance was enacted in 1963, and the amount of $30 per month has not changed since that time. The Fifth Quadrennial Review of Military Compensation reaffirmed the need for this allowance, and recommended that the monthly rate be increased to $60 per month. For the second year in a row, the defense budget includes a request to increase the Family Separation Allowance from $30 to $60 per month.

> The committee believes that the Family Separation allowance (Type II) should be increased. Section 505 [of the Senate Bill, S. 1029] increases this allowance from $30 to $60 per month as proposed by the Department of Defense.[8] [9]

The National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §625, 105 Stat. 1290, 1379 (1991), again increased FSA-II, this time to $75 per month. The Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §302, 105 Stat. 75, 80 (1991), had temporarily authorized an increase in FSA-II from $60 to $75 for "the period beginning January 15, 1991, and ending on the first day of the first month beginning on or after the date 180 days after the end of the Persian Gulf Conflict," and the changes to the FSA-II program made by the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §625, *id.*, was intended to make the temporary increase permanent.[10] [11]

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[8] Senate Report No. 99-41 (Committee on Armed Services), p. 192, accompanying S. 1029, 99th Congress, 1st Session (1985). Cf. Senate Report No. 99-118 (Committee of Conference), p. 428, and House Report No. 99-235 (Committee of Conference), p. 428, accompanying S. 1160, 99th Congress, 1st Session (1985).

[9] Pursuant to 37 U.S.C. §1008(b), the President is required to conduct "a complete review of the principles and concepts of the compensation system for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation system. The Ninth Quadrennial Review of Military Compensation was convened in 1999, pursuant to Presidential directive, and its report and recommendations were submitted to Congress in late 2001. For the recommendations and supporting rationale of the *Fifth Quadrennial Review* concerning the family separation allowance (Type II), see "*Executive Summary*, Report of the Fifth Quadrennial Review of Military Compensation," p. VI-12 (January 1984), and "*Special and Incentive Pays*, Report of the Fifth Quadrennial Review of Military Compensation, Volume III, pp. 729-738 (November 1983).

[10] House Report No. 102-60 (Committee on Armed Services), p.248, accompanying H.R. 2100; Senate Report No. 102-113 (Committee on Armed Services), p. 226, accompanying S. 1507; and House Report No. 102-311 (Committee of Conference), p. 551, accompanying H.R. 2100, 102d Congress, 1st Session (1991).

[11] In addition to making permanent the rate of FSA-II temporarily authorized by the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, §302, 105 Stat. 75, 80 (1991), the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102-190, §611(b), 105 Stat. 1290, 1376 (1991), repealed the prohibition on payment of FSA "in time of war or national emergency ... declared by Congress." The prohibition was repealed to prevent potential "pay inequities in future conflicts like Operation Desert Storm." House Report No. 102-60 (Committee on Armed Services), p. 248, accompanying H.R. 2100, 102d Congress, 1st Session (1991). *cf.* House Report No. 102-311 (Committee of Conference), p. 248, accompanying H.R. 2100, 102d Congress, 1st Session (1991).

The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1795, raised the family separation allowance from $75 per month to $100 per month. In response to the great increase in family separation situations caused by Operation Enduring Freedom and Operation Iraqi Freedom, the Wartime Supplemental Appropriations Act of 2003, Public Law 108-11, 117 Stat. 570, mandated a temporary increase in the allowance to $250 per month. The National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, 117 Stat. 1500, extended this increase through calendar year 2004. This outcome was a compromise between Senate and House positions on the question: the Senate Armed Services Committee recommended a permanent increase for all members, while the House called for application of the higher amount only to members involved in Operation Enduring Freedom and Operation Iraqi Freedom.

**Current rates of family separation allowance authorized**: Family separation allowance is currently authorized at the following rates:

FSA-I: Payable monthly to a member at the same rate as the basic allowance for housing for members in the same pay grade without dependents.

FSA-II: $250 per month.

**Cost**: For the cost of family separation allowances from 1972 to 2004, see Tables V-6 of *Military Compensation Statistics Tables,* volume II of this edition.

## Chapter V.C.6.

### Dislocation and Departure Allowances

**Legislative Authority**: 37 U.S.C. §§405a and 407.

**Purpose**: To partially reimburse members of the uniformed services for the average expenses they incur in relocating their households incident to a permanent change of station (dislocation allowance) or as a result of unexpectedly having to evacuate their dependents from an overseas area to a safe haven or designated place (departure allowance).

**Background**: The nature of military service gives rise to a number of permanent changes of duty station or other forced household relocations over the course of a full military career. The household relocations attendant on such changes of station in turn give rise to a number of individually small but collectively sizeable expenses that members of the Armed Forces must defray, such as loss of rent deposits, abandonment or forced sale of household goods that must be replaced, added wear and tear on household goods in transit, disconnecting and reconnecting telephone service, added costs for food and lodging after household goods have been shipped from an old duty station but before the member and the member's dependents actually leave, the same sorts of costs at a member's new duty station before household goods arrive, the purchase of miscellaneous furnishings for a new home, and similar expenses. Until 1955, expenses of this nature incurred by military personnel were not subject to reimbursement.

The Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(12), 69 Stat. 18, 21-22 (1955), recognized that duty station changes and resultant household relocations reflect personnel management decisions of the Armed Forces and are not subject to the control of individual members. The Career Incentive Act of 1955 accordingly provided for the payment of a special allowance--termed "dislocation allowance" (DLA)--to help defray the cost of the various incidental relocation expenses incurred by members ordered to make a permanent change of station under such unexpected circumstances. 37 U.S.C. §407. In concept, DLA is not a direct

reimbursement for the actual added expenses involved in a particular household relocation; rather, it is designed to reimburse, on average, such extra expenses. Until October 1, 1985, DLA was equal to a member's basic allowance for quarters for one month. The Department of Defense Authorization Act, 1986, Public Law 99-145, §611(a), 99 Stat. 583, 639 (1985), increased DLA from one month's BAQ to two. The increase was proposed in response to the belief of the House Armed Services Committee that "the current levels [of DLA] are inadequate to meet the many miscellaneous expenses associated with PCS [permanent change of station] moves."[1] Despite the increase in the authorization, until enactment of the Department of Defense Appropriations Act, 1990, Public Law 101-165, 103 Stat. 1112 (1989), successive appropriations acts in terms specifically prohibited payment of DLA in any amount in excess of one month's basic allowance for quarters.[2] The National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, increased the DLA from two month's BAQ to two and one-half months effective January 1, 1997. The National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, authorized partial DLA of $500 for members ordered to occupy or vacate government family-type housing.

In 1967 the House Armed Services Committee expressed the view that members without dependents generally incur relocation expenses--similar to those incurred by members with dependents--when assigned to a new duty station where they are not furnished government quarters. The Act of December 16, 1967 (Uniformed Services Pay Act of 1967), Public Law 90-207, §1(4), 81 Stat. 649, 651-652 (1967), provided a measure of relief for such personnel by authorizing the payment of DLA incident to the permanent change of station of a member without dependents, if the member is not assigned to government quarters at the new duty station. 37 U.S.C. §407(a)(3).

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[1] House Report No. 99-81 (Committee on Armed Services), p. 225, accompanying H.R. 1872, 99th Congress, 1st Session (1985). See Senate Report No. 99-41 (Committee on Armed Services), pp. 192-193, accompanying S. 1029, 99th Congress, 1st Session (1985).

[2] *e.g.*, Act of December 22, 1987 (Continuing Appropriations, 1988), Public Law 100-202, §8066, 101 Stat. 1329, 1329-73 (1987), and Department of Defense Appropriations Act, 1989, Public Law 100-463, §8054, 102 Stat. 2270, 2270-26 (1988). Both the Department of Defense Appropriations Act, 1990, Public Law 101-165, 103 Stat. 1112 (1989), and the Department of Defense Appropriations Act, 1991, Public Law 101-511, 104 Stat. 1856 (1990), were silent on the issue and the rate was increased to the equivalent of two months BAQ effective October 1, 1989.

The National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1797, changed the basis for computing annual adjustments in the DLA. Using as a basis the BAQ-based DLA rates that were in place on December 31, 1997, adjustments in ensuing years are based on the average percentage change in basic pay, not the housing allowance. Because of the tie-in between DLA and basic pay, a change in basic pay also results in a change in DLA. Under present law, DLA rates may be expected to increase each year as annual pay raises occur. See Chapter II.B.1., “Basic Pay,” above.

The October 1962 evacuation of military dependents from Guantánamo Bay, Cuba, and the evacuation of dependents from Vietnam in the mid- to late-1960s and the early 1970s made it apparent that military personnel incur household relocation expenses when not provided with government quarters at their new stations, and that such expenses are similar to those for which members with dependents are paid DLA upon a permanent change of duty station. The Act of May 22, 1965, Public Law 89-26, §1(1), 79 Stat. 116, 116-117 (1965), accordingly extended a special allowance authorization, codified at 37 U.S.C. §405a, to members whose command-sponsored dependents are ordered to leave an overseas area for a "safe haven" or other specially designated place. This allowance--similar in concept to DLA--is authorized in such amount "as the Secretary concerned determines necessary to offset the expenses incident to the departure."[3] This allowance is extraordinary in nature and is in addition to any other allowances authorized by any provision of Title 37 of the United States Code. See 37 U.S.C. § 405a, generally.

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[3] Under the Act of May 22, 1965, Public Law 89-26, §1(1), 79 Stat. 116, 116-117 (1965), the allowance was made available only for an "evacuation." The Foreign Service Act of 1980, Public Law 96-465, §2303(e), 94 Stat. 2071, 2165 (1980), made the allowance available whenever a "departure," rather than an "evacuation," was ordered. As explained in the relevant Congressional report:

> The [Senate Foreign Relations Committee] believes that it is in the interests of both the Government and the employee to provide more flexible requirements in this area.... [T]he Government can more easily order departures from posts abroad of nonessential personnel when a crisis occurs without ordering a full-scale evacuation.

Senate Report No. 96-913 (Committee on Foreign Relations), p. 103, accompanying S. 3058, 96th Congress, 2d Session (1980). (The National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §1343(b)(3), 100 Stat. 3816, 3995 (1986), changed the title heading for 37 U.S.C. § 405a from "Travel and transportation allowances: evacuation allowances" to "Travel and transportation allowances: departure allowances.")

Pursuant to the Uniformed Services Pay Act of 1981, Public Law 97-60, §124, 95 Stat. 989, 1003 (1981), DLA and departure allowances may be paid in advance. The reason for allowing such advance payment of DLA and departure allowances was to "help alleviate the financial burdens currently encountered by military members experiencing government directed relocations by making the appropriate allowances available at the time the expenses are incurred, and reducing their interim out-of-pocket costs."[4] In essence, this authority put members of the Armed Forces on equal footing with their counterparts in the Foreign Service, who had been given advance payment authorization in the Foreign Service Act of 1980, Public Law 96-465, §2303, 94 Stat. 2071, 2164-2165 (1980).

**Current amount of allowance authorized**: The current level of dislocation and departure allowances authorized are as follows:

> *Dislocation allowance:* The amount of dislocation allowance payable to a member entitled to that allowance under the conditions set out in 37 U.S.C. §407 equals the amount in effect December 31, 1997 (equal to two and one-half months' basic allowance for quarters for a member in the same pay grade and with the same dependency status), adjusted by the annual average percentage increases in basic pay for the respective ensuing years.
>
> *Departure allowance:* The amount of departure allowance payable to a member entitled to that allowance under the conditions set out in 37 U.S.C. §405a is based on the number and ages of dependents and the circumstances of the departure. Dependents are authorized travel and transportation costs and a percentage of their lodgings cost plus the *per diem* that a TDY member would receive.

**Cost**: For the cost of dislocation and departure allowances from 1972 to 2004, see Table V-7 of *Military Compensation Statistics Tables*, volume II of this edition.

[4] Senate Report No. 97-146 (Committee on Armed Services), p. 13, accompanying S. 1181, 97th Congress, 1st Session (1981).

**Chapter V.C.7.**

## Separation Travel and Transportation Allowances

**Current Legislative Authority**: 37 U.S.C. §404(a)(3), (c)(1)(C), and (f) and §406(a) and (g).

**Statutory Implementing Regulations**: Chapters 4, 7 and 8, *Joint Federal Travel Regulations* (JFTR).

**Purpose**: To defray the expenses incurred, upon separation, by service members returning to their homes or the places from which they originally entered military service from civilian life.

**Background**: The policy of returning a service member to his home upon discharge, either actually or constructively, is traditional. Statutes authorizing such a policy have been in existence continuously since 1799. A lucid explanation of the purpose of such statutes and of the character of separation travel was provided nearly a hundred years ago by the United States Court of Claims in Major Sherburne's Case, 16 Ct. Cl. 491 (1880). In delivering the opinion of the Court, Judge Nott stated, in pertinent part:

> This being the method, time out of mind, of compensating officers of the Army while in the service, there was also a payment for traveling expenses allowed to both officers and soldiers upon their discharge from the service by the Acts 3rd March, 1799, 11th January, 1812, 29th January, 1813.
>
> But this payment was not of the nature of wages for service. On the contrary it was a payment to be made after all service had ceased, and was of the nature of indemnity. When an ordinary employee binds himself by contract for work and service, he is free to designate the place of his discharge, and if, without its being designated, his employer should discharge him at a distant or unreasonable place, the law would award him such damages as would make him whole. In the case of persons entering the military service, they can prescribe no such condition and are liable to be sent by their employer to the most remote places of the earth, and are likewise liable to be discharged at any place, or at any moment. In a country with so vast a territory as ours this would often work great wrong to the individual and would result in great inequality of justice throughout

> the Army generally. One soldier enlisted and domiciled in Washington might be discharged in Washington; another enlisted and domiciled in Florida might be discharged in Alaska. It has never been the policy of the government to deal out anything but even-handed justice to its soldiers, and if there be any one rule of policy which has been more invariably adhered to than another, it has been the rule of returning an officer or soldier to his home, either positively by his actual discharge there, or constructively by commutation for traveling expenses and time, or by pay with transportation and rations in kind.
>
> These things were a part of the moral compact between the government and its soldiers when the Act 1870 was passed. Pay might be increased or diminished, allowances might be added or taken away, traveling expenses might be commuted in money or transportation be furnished in kind, but morally there rested upon the government the obligation of paying a soldier while he remained in the service, and of returning him to his home when his service ended.
>
> This obligation, so far as the knowledge of the Court extends, the government has never sought to evade.

A more recent indication of Congressional policy in this regard is contained in the House report accompanying H.R. 16243, 93d Congress, 2d Session (1974), enacted as the Department of Defense Appropriation Act, 1975, Public Law 93-437, 88 Stat. 1212 (1974):

> For many years the Congress has authorized travel allowances or transportation to military personnel separated from the military services. This long-standing policy demonstrates the intent of the Congress to defray the expenses encountered by a serviceman in returning to his home or to the place where he entered the service from civilian life.[1]

Separation travel allowances include transportation of the member and his dependents and household goods, or reimbursement for such transportation, from the place he is separated to his home. A summary description of separation travel allowances and procedures is set out following the cost figures below.

[1] House Report No. 93-1255 (Committee on Appropriations), p. 43, accompanying H.R. 16243, 93d Congress, 2d Session (1974).

## SUMMARY OF SEPARATION TRAVEL BENEFITS

1. A member retired (or transferred to the Fleet Reserve or Fleet Marine Corps Reserve) with pay; or immediately following at least eight years of continuous active duty with no single break of more than 90 days, discharged with severance or separation pay or involuntarily released to inactive-duty with readjustment or separation pay; or retired for physical disability or placed on the temporary disability retired list without regard to length of service, is authorized:

* Travel allowances from the member's last duty station to a home of his selection. The allowance actually provided may consist of transportation in kind, reimbursement for transportation procured from a common carrier at the member's own expense, or a monetary allowance in lieu of transportation (MALT), plus a per diem allowance. Travel to whatever home is "selected" by the member must normally be completed within one year after termination of active duty. Members who had 18 or more years of active service as of November 1, 1981, are authorized to select a home any place in the world; all other members are generally limited in their home selection to places within the United States, except for members first called or ordered to active duty from a place outside the United States.

* Dependents' in-kind transportation, reimbursement for the actual cost of dependent transportation procured by common carrier at a member's own expense, or a monetary allowance in lieu of transportation (MALT), plus a per diem allowance for each dependent. The allowances are payable from the location of the member's last permanent duty station, or the place to which the dependents were transported at government expense, to a home selected by the member (which must be the same home selected by him for the purpose of his own travel allowance authorization). Travel to the selected home must normally be completed within one year after termination of active duty.

* Shipment of household goods at government expense, subject to weight limitations prescribed by pay grade, from the member's last or any previous permanent duty station, from a designated place in the United States from storage, or any combination thereof, to the home selected by the member (which must be the same home selected by him for the purpose of his own travel allowance entitlement), or to non-temporary storage for a period not to exceed one year. The household goods must normally be turned over to a transportation officer or carrier for shipment within 1 year following termination of active duty.

2. A member separated from the service or released from active duty under honorable conditions who is not covered by the preceding paragraph is authorized:

* Travel allowances from the member's last duty station to the member's home of record or the place from which the member was ordered to active duty, as the member may elect. The allowance actually provided may consist of transportation in kind, reimbursement for transportation procured from a common carrier at the member's own expense, or a monetary allowance in lieu of transportation (MALT), plus a *per diem* allowance.

* Travel and transportation allowances for travel of dependents not to exceed the authorization from the member's permanent duty station, or place to which the member's dependents were last transported at government expense, to the place elected by the member under the previous paragraph. The allowance actually provided may consist of transportation in kind, reimbursement for the actual cost of dependent transportation procured by common carrier at the member's own expense, or a monetary allowance in lieu of transportation (MALT), plus a *per diem* allowance for each dependent. This authorization terminates unless travel is completed before the 181$^{st}$ day following separation or release from active duty.

* Shipment of household goods at government expense, subject to weight limitations determined by pay grade, from (1) the member's last or any previous

duty station, (2) a designated place to which transported at government expense, or (3) a place of authorized storage, to the place elected by the member under the conditions stated above. Authorization for shipment normally terminates if the household goods are not turned over to a transportation officer or a designated representative prior to the expiration of the 180th day following separation or release from active duty.

Under amendments to the separation travel provisions set out immediately above effected by the Uniformed Services Pay Act of 1981, Public Law 97-60, §121(a)(4), 95 Stat. 989, 999-1000 (1981), separation travel allowances are payable only for travel actually performed. 37 U.S.C. §404(f)(1). In addition, unless the member served on active duty for at least 90 percent of the time for which he initially enlisted or otherwise agreed to serve, the travel and transportation authorized is limited to the provision of transportation in kind by the least expensive mode of common carrier transportation available, or a monetary allowance in lieu thereof that does not exceed the cost of the authorized transportation in kind. 37 U.S.C. §404(f)(2).

3. Under amendments made to the separation travel and transportation allowance provisions of Title 37, United States Code, by the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §503, 104 Stat. 1485, 1558 (1990), during the five-year period beginning October 1, 1990, members of the Army, Navy, Air Force, or Marine Corps on active duty or full-time National Guard duty on September 30, 1990, who are involuntarily discharged, released from active duty, or denied reenlistment are authorized the same separation travel and transportation allowances as members retired (or transferred to the Fleet Reserve or Fleet Marine Corps Reserve) with pay, discharged with severance or separation pay, or involuntarily released to inactive duty with readjustment or separation pay, immediately following at least eight years of continuous active duty with no single break of more than 90 days, or retired for physical disability or placed on the temporary disability retired list without regard to length of service, as covered under Paragraph 1 of this Summary of Separation Travel Benefits, above. The extension of such allowances to personnel on active duty on September 30, 1990, who are

involuntarily separated from active duty service stemmed largely from Congress's perception of the altered nature of the military threats facing the United States in light of the changes taking place in Eastern Europe and the Soviet Union during the 1990s. As stated by the House Committee on Armed Services:

> The changing nature of the Soviet threat seems indisputable. The conventional threat to NATO is greatly diminished and cannot be revived. The Soviet global conventional threat has also declined, although not as precipitously as in Europe. Although the Soviet Union continues to modernize its strategic forces, the risk of nuclear war has receded. Moreover, Soviet military spending is clearly on the decline. The growing economic crisis in the Soviet Union raises serious doubt that Soviets can maintain its [sic] current pace of weapons modernization and adds significant uncertainty about what the Soviet threat will look like in the future.
>
> The policy guidelines under which the committee acted were:
>
> (1) Cuts in personnel and weapons should be made where the threat has decreased.
>
> (2) Men and women leaving the force must be treated fairly.
>
> . . .
>
> The committee recommends reducing active end strength by 129,500 below fiscal year 1990 levels--a reduction of 91,895 below the President's budget request.
>
> . . .
>
> To assist members being released from active duty as a result of the force drawdown, the committee recommends a comprehensive package of transition benefits to assist separating personnel and their families in readjusting to civilian life. The committee's recommendations include separation pay, continued medical coverage, pre-separation counseling, employment assistance and job training information, continued use of commissaries and exchanges, the opportunity for a dependent child to complete the school year in a Department of Defense overseas dependents school, the option to elect coverage in the Montgomery G.I. Bill, and post-separation transportation of household goods to home of choice, rather than home of record.
>
> . . .
>
> Section 503 [of H.R. 4739, the bill ultimately enacted, with amendments, as the National Defense Authorization Act for Fiscal Year 1991] would amend sections 404 and 406 of title 37, United States Code to entitle all service members involuntarily separated during the five-year period beginning October 1, 1990 to unrestricted selection of home, and one year of nontemporary

> storage of baggage and household effects. The committee believes that the expanded transportation and household effects storage provided by [proposed] section 503 will assist involuntarily separated service members in relocating in areas where they are most likely to find immediate employment, thereby substantially reducing the cost of unemployment compensation.[2]

The National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §561(l) 107 Stat. 1547, 1668 (1993), extended from five years to nine years the period during which members involuntarily separated from active duty who did not qualify for separation travel and transportation benefits under the provisions of paragraph 1 of this Summary of Separation Travel Benefits, above, could nevertheless receive separation travel and transportation allowances for themselves and their dependents. The period during which members involuntarily separated are authorized separation travel and transportation allowances was extended from five to nine years in order to "provide a safety net of benefits for separating military personnel during the defense drawdown"[3] and thereby "minimize the uncertainties and personnel turbulence associated with such a drawdown" following the end of the Cold War.[4]

The National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, §561(f), extended the involuntary separation allowances until September 30, 2001. The transition authority was not extended by the authorization act for 2002.

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[2] House Report No. 101-665 (Committee on Armed Services), pp. 14, 19, 20, and 273, accompanying H.R. 4739, 101st Congress, 2d Session (1990). In this same connection, see Senate Report No. 101-384 (Committee on Armed Services), pp. 29 and 173, accompanying S. 2884, 101st Congress, 2d Session (1990). Cf. Senate Report No. 101-384 (Committee on Armed Services), pp. 8-30, accompanying S. 2884, 101st Congress, 2d Session (1990), generally. Also see House Report No. 101-923 (Committee of Conference), p. 605, accompanying H.R. 4739, 101st Congress, 2d Session (1990).

[3] Senate Report No. 103-112 (Committee on Armed Services), p. 145, accompanying S. 1298, 103d Congress, 1st Session (1993).

[4] House Report No. 103-357 (Committee of Conference), p. 678, accompanying H.R. 2401, 103d Congress, 1st Session (1993).

**Chapter V.C.8.**

## Personal Money Allowance
## Special Position Allowance

**Legislative Authority**: 37 U.S.C. §414. Also see 37 U.S.C. §413.

**Purpose**: To partially reimburse the Chairman and Vice Chairman of the Joint Chiefs of Staff, the chiefs of staff of the various Armed Forces,[1] officers in pay grades O-9 and O-10, and Navy officers occupying five specified positions, for various expenses they may reasonably be expected to incur in entertaining and extending hospitality to visiting officers and dignitaries of the United States and foreign countries.

**Background**: The Act of June 10, 1922 (Joint Service Pay Readjustment Act of 1922), ch. 212 [Public Law 235, 67th Congress], §8, 42 Stat. 625, 629 (1922), established a personal money allowance (PMA) of $2,200 a year for Navy rear admirals serving in the grade of admiral or as chief of naval operations and an annual $500 PMA for those serving in the grade of vice admiral. As explained to Congress, the rationale supporting PMA was:

> The last sentence of this section prescribes the additions to be made to the pay of rear admirals of the Navy when serving temporarily in the higher grades of vice admiral, admiral, or as Chief of Naval Operations. The money allowances prescribed for this purpose are placed at the figures given so as to preserve the same relative total compensation under the proposed schedule as under the present law. The addition is made to the pay of these officers rather than to their allowances as recognition of the responsibilities of their assignment.[2]

The provision of a PMA for Navy officers in the Joint Service Pay Readjustment Act of 1922, ch. 212, id., §8, 42 Stat. at 629, but not for Army officers stemmed from differences in the services' appointment authorities. The highest permanent grade in the Navy was rear admiral and, except for the general of the armies, who was under a

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[1] For this purpose, the term "Armed Forces" is defined as meaning the Army, Navy, Air Force, Marine Corps, and Coast Guard. 37 U.S.C. §101(4) (1988).

[2] Hearings of March 18, 1922, on H.R. 10972 before a Special Committee of the House of Representatives, p.28, 67th Congress, 2d Session (1922). (The legislative history offers no clue as to why these "additions to be made to the pay" of certain Navy officers was given the title "personal money allowance".)

separate pay scale, the highest permanent grade in the Army was major general. While the Navy had authority to make temporary appointments to higher grades, the Army did not. The Act of February 23, 1929, ch. 298 [Public Law 796, 70th Congress], 45 Stat. 1255 (1929), moved the services closer together in this respect. It authorized the appointment of the Army chief of staff to the grade of general and concomitantly gave him the same entitlement to PMA as prescribed for the chief of naval operations. The Act of August 5, 1939, ch. 454 [Public Law 290, 76th Congress], 53 Stat. 1214 (1939), authorized the appointment of certain Army commanders to the grade of lieutenant general and entitled them to the same PMA prescribed for Navy vice admirals.

The Pay Readjustment Act of 1942, ch. 413 [Public Law 607, 77th Congress], §7, 56 Stat. 359, 362 (1942), added certain officers to the PMA eligibility list and consolidated the various provisions of law authorizing the allowance into one statute, but it made no change in the nature, purpose, or rates of PMA.

The Officer Personnel Act of 1947, ch. 512 [Public Law 381, 80th Congress], §504(e), 61 Stat. 795, 888 (1947), raised the PMA rate to $4,000 a year for the four military service chiefs. In explaining this action, the House Armed Services Committee commented:

> A supplemental allowance was also provided for the Chiefs of the four services in recognition of their added obligations as compared with other four-star officers.[3]

In thus indicating that PMA was authorized "in recognition of ... added obligations" of senior officers, it may be argued that Congress intended to change PMA from being compensation-based to being reimbursement-based. The so-called Hook Commission, which in 1948 conducted a comprehensive study of the military compensation system, apparently concluded that such a change of purpose had occurred. The commission addressed the reasons underlying PMA in these terms:

[3] House Report No. 640 (Committee on Armed Services), p. 12, accompanying H.R. 3830, 80th Congress, 1st Session (1947).

> The Commission considers that personal money allowances for high-ranking general and flag officers should be established definitely. Responsibilities of these officers and the maintenance of the prestige of such grade invariably entail entertainment and hospitality obligations. Nominal annual sums of $4,000 for a chief of staff and $2,200 and $500 for general and lieutenant general, respectively, which are authorized today, are therefore proposed as appropriate complements to the recommended increase in basic compensation.[4]

The Hook Commission's recommendations led to the introduction and enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §304, 63 Stat. 802, 816 (1949), the basic source for the present PMA authority. Congress evidently agreed with the commission's view that PMA should be seen as a form of reimbursement for expenses incurred. The allowance was incorporated into the Career Compensation Act of 1949 exactly as recommended by the commission after only a perfunctory discussion that brought forth no dissenting view.[5]

Congress has taken no further explicit action in regard to PMA since 1949, but it has enacted two items of legislation that have a bearing on and reinforce the reimbursement-based purpose of the allowance.

The Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], §2(3), 69 Stat. 18, 19 (1955), gave generals and admirals an entitlement to an "additional increment of basic pay" of $200 a month and lieutenant generals and vice admirals to an "additional increment" of $100 a month, on top of their regular compensation and in addition to any PMA. The grades of major general or rear admiral (upper half) were still the highest grades for regular compensation purposes. The "additional increment" was extra pay awarded to recognize the increased responsibility of a three-star or four-star

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[4] "*Career Compensation For the Uniformed Forces*, a Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay," p. 38, December 1948.

[5] The personal-money-allowance provisions contained in Section 304 of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], §304, 63 Stat. 802, 816 (1949), were classified to 37 U.S.C. §254. Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649, 76 Stat. 451 (1962), the personal-money-allowance provisions were codified at 37 U.S.C. §414(a), *id*., 76 Stat. at 476-477 (1962). Also see footnote 6 to this chapter, below.

officer as compared with a two-star officer. This, of course, was the same purpose for which PMA was first created. Had PMA been still fulfilling a pay-supplement purpose, it and the "additional increment" would have duplicated each other. There is nothing whatsoever in the legislative record to suggest that Congress intended to permit any such duplicate extra compensation.

The Act of May 20, 1958, Public Law 85-422, §1(2), 72 Stat. 122, 124 (1958), created the pay grades of 0-9 and 0-10 and prescribed special pay rates for service chiefs. The establishment of pay grades above the major general/rear admiral level recognized, for purposes of the military compensation structure, the added responsibilities of three-star and four-star officers as compared to two-star officers. Notwithstanding this provision of higher regular compensation for the higher grades, PMA was not mentioned during the bill's consideration, and the PMA entitlement for such grades was not disturbed. If PMA was still serving as "extra compensation," the revision of the regular pay structure to include special rates of pay for three and four-star officers would arguably have done away with any need for PMA, and it would seem only logical that PMA authority should have been repealed, just as the "additional increment of basic pay" deriving from the Career Incentive Act of 1955 was repealed.

The current PMA rates are $4,000 a year for the Chairman and Vice Chairman of the Joint Chiefs of Staff and the chiefs of staff of each of the services;[6] $2,200 a year for other generals and admirals; and $500 a year for lieutenant generals and vice admirals.[7] For payment purposes, the annual PMA is converted to monthly rates and paid to eligible officers on a *pro rata* basis the same as other pay and allowances.

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[6] Personal money allowance entitlement was extended to the chairman of the Joint Chiefs of Staff by the Act of September 7, 1962, Public Law 87-649, §413, 76 Stat. 451, 476 (1962), which enacted Title 37, United States Code, into positive law, and to the vice chairman of the Joint Chiefs of Staff by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §1314(c)(1), 101 Stat. 1019, 1176 (1987). See 37 U.S.C. §413.

[7] A lieutenant general or vice admiral serving as a senior member of the Military Staff Committee of the United Nations is, while serving in that position, entitled to an additional PMA of $2,200 per year.

The rates of the allowance are the weakest link in the chain connecting it to a reimbursement-based purpose. The $2,200 and $500 rates were established in 1922 to preserve the then-existing relative total compensation among Navy officers of the top three grades, but have not been changed since. There is no traceable relationship between these rates and the expenses eligible officers incur in fulfilling entertainment and hospitality obligations. The $4,000 rate was established in 1947 and appears to have been based more on an off-the-cuff estimate than on careful calculations. However that may be, any relationship the $4,000 rate may have had to the applicable expenses in 1947 has been warped out of shape by the drastic changes that have occurred in the prices of goods and services in the succeeding years. The Hook Commission found the annual PMA rates in 1949 appropriate reimbursement for hosting and entertainment expenses incurred by affected officers. If PMA rates had been increased on the basis of changes in the Consumer Price Index since 1949, significantly higher PMA rates would be in existence today.

The Act of August 2, 1946, ch. 756 [Public Law 604, 79th Congress], §3, 60 Stat. 853 (1946), established a "special position allowance," presently codified at 37 U.S.C. §414(b),[8] of $5,200 a year for the superintendent of the Naval Academy and the director of naval intelligence; $1,000 a year for the President of the Naval War College; $800 a year for the commandant of midshipmen at the Naval Academy; and $400 a year for the superintendent of the Naval Postgraduate School. The special position allowance and the PMA are not mutually exclusive; an officer above the grade of rear admiral is entitled to both allowances whenever assigned to one of the positions that qualifies for the special position allowance.

[8] The special-position-allowance provisions of the Act of August 2, 1946, ch. 756 [Public Law 604, 79th Congress], §3, 60 Stat. 853 (1946), were classified to 37 U.S.C. §257. Later, when Title 37 of the United States Code was enacted into positive law by the Act of September 7, 1962, Public Law 87-649,76 Stat. 451 (1962), these provisions were codified at 37 U.S.C. §414(b), *id.*, §414(b), 76 Stat. at 477 (1962). No reason was given for codifying the special position allowance in the same section of Title 37 as PMA. Perhaps the similarity of the purposes underlying the two allowances, together with the fact that they are applicable to flag and general officers, led to their inclusion under the same section heading. (Parenthetically, it may be noted that the catchline, or heading, of 37 U.S.C. §414 is "Personal Money Allowance".)

The purpose of the special position allowance is to partially reimburse the officers occupying the named positions for official entertainment and hosting expenses, as the following colloquy reflects:

> Mr. Cole: What is the reason for these extra allowances other than for entertainment?
>
> Captain Nunn: That is all, sir....
>
> ... This is an entertainment fund for these individual officers, and the contingent fund of the Secretary [of the Navy] is also available for that purpose.
>
> . . .
>
> Mr. Grant: What comes within the responsibility of the head of the Naval Academy that makes him spend $100 a week for entertainment?
>
> Captain Nunn: Visiting dignitaries, sir. He entertains most of the national figures that come to this country. They review the regiment of midshipmen and are entertained down there.[9]

The law provides that each of the five naval officers singled out in 37 U.S.C. §414(b) may spend his special position allowance "in his discretion for the contingencies of his position." Payment or accounting methods are not specified in any law or regulation; hence, the procedures used to pay and account for the allowance vary among the different positions for which it is authorized. However, as a matter of practice and in keeping with good business principles, most recipients account for how the allowance is spent.

The special allowance for the five specified Navy positions has no statutory counterpart in the other services, but funds that may be used for official courtesy, hosting, and entertainment purposes are available to the other services from different sources. Annual appropriation acts permit, within the monetary limits set in each act, the use of funds appropriated for operation and maintenance of the Army, Navy, Air Force, and defense agencies for "emergencies and extraordinary expenses," subject to the approval

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[9] Hearings of June 26, 1946, on S. 1917, To Enact Certain Provisions Now Included in the Naval Appropriation Act, 1946, and for Other Purposes, printed in Hearings before the House Committee on Naval Affairs on Sundry Legislation Affecting the Naval Establishment, 1946, pp. 3535-3536, 79th Congress, 2d Session (1946).

or authorization of the appropriate service Secretary. The Secretary concerned allocates part of these funds to extend courtesies and provide entertainment to dignitaries and officials of the United States and foreign countries. These funds are available to flag and general officers as well as other personnel. Under certain conditions, expenditures are also made from non-appropriated funds for the same or similar purposes. Nevertheless, the legacy from pre-unification days of the law, singling out the holders of five Navy positions for a special entertainment allowance to the exclusion of officers holding similar positions in the other services, is basically incongruous with the principle that pay and allowance entitlements should be uniform among all comparable service members to the extent practicable.

For federal income tax purposes, both PMA and special position allowances are includible in gross income, although with proper reporting, record keeping, and substantiation, expenditures made to defray the types of expenses for which the allowances were intended may be deducted as business expenses.

**Current rates of personal money allowance and special position allowance authorized:**

*Personal money allowance:* Personal money allowance is currently authorized for military personnel in pay grades O-10 and O-9 at rates ranging from $500 to $4,000 per year depending on the pay grade and duty assignment. The National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654A-149, authorized a personal money allowance of $2,000 per year for senior enlisted members serving as sergeant major of the Army, chief petty officer of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, and master chief petty officer of the Coast Guard.

*Special position allowance:* Special position allowance is currently authorized for certain Navy personnel at rates ranging from $400 to $5,200 per year depending on duty assignment. Navy officers in pay grades O-10 and O-9 who are entitled to special position allowance because of their duty assignment are also entitled to personal money allowance appropriate to their grade.

**Cost**: For the cost of personal money allowances from 1972 to 2004, see Table V-8 of *Military Compensation Statistics Tables*, volume II of this edition.

## Chapter V.C.9.

### Reimbursement for Recruiting Expenses

**Legislative Authority**: 37 U.S.C. §428.

**Purpose**: To reimburse members of the Armed Forces assigned to recruiting duties for the actual and necessary out-of-pocket expenses they experience in performing those duties.

**Background**: Members on recruiting duty have, by the very nature of the duty, long been put to small but frequent personal expense for such items as snacks, lunches, coffee, etc., for prospective recruits or candidates, parking fees and telephone calls while away from the recruiting station, the purchase of copies of birth certificates, school transcripts, diplomas, etc., for applicants or prospective applicants, and so forth. Until 1971, none of these expenses was reimbursable. In the Act of September 28, 1971, Public Law 92-129, §205(a), 85 Stat. 348, 359 (1971), Congress, recognizing that such expenses were properly a cost of conducting government business and that individual recruiters should not have to bear them personally, accordingly authorized their reimbursement.

The Department of Defense had initially recommended that recruiting personnel be paid a fixed monthly allowance to help defray, on average, the official out-of-pocket expenses they incurred in connection with recruiting duties. The "average-allowance" proposal did not find its way into enacted legislation, but the title "Allowance for Recruiting Expenses" went into general use. It is something of a misnomer for what actually is a reimbursement of actual and necessary expenses.

A member must submit a voucher to claim reimbursement of actual and necessary recruiting expenses, itemizing the expenses claimed. Any individual item over $25 must be supported by a receipt if practical, or an explanation of why it was not practical to furnish a receipt. Reimbursement vouchers must be approved at recruiting main stations, detachments, or higher levels before they can be paid. Except in unusual cases, such reimbursements may not exceed $60 per recruiter for any month.

**Cost**: For the cost of recruiting expense reimbursement from 1972 to 1995, see Table V-9 of *Military Compensation Statistics Tables*, volume II of this edition.

**BACKGROUND AND LEGISLATIVE HISTORY OF THE ARMED FORCES LEAVE ACT OF 1946 AND ITS AMENDMENTS**

The Armed Forces Leave Act of 1946, ch. 931 [Public Law 704, 79th Congress], 60 Stat. 963 (1946), as amended and codified, is the source of the current military leave system. Before its enactment, officers were, under the Act of May 8, 1874, ch. 154, 18 Stat. 43 (1874), the Act of July 29, 1876, ch. 239, 19 Stat. 102 (1876), and the Act of March 3, 1899, ch. 413, §13, 30 Stat. 1004, 1007 (1899), entitled to one month's leave per year and could accumulate such leave to a total of four months. Lump-sum payments were not authorized for unused accrued leave, but officers could be compensated for such unused leave through the granting of "terminal" leave. Under this procedure an officer, after being relieved from active duty for all practical purposes, remained on the active-duty rolls in a paid leave status to the extent of his accumulated leave.

There was no comparable authority for enlisted personnel, although regulations authorized paid "furloughs" of up to 30 days a year for such personnel. Since such furloughs had no statutory basis, any unused portion thereof did not accrue to an enlisted member's credit. Any unused furlough time was therefore "lost" instead of being terminally compensated for as in the case of officers.

In the Armed Forces Leave Act of 1946, ch. 931, *id*., Congress intended to equalize the treatment of officers and enlisted personnel with respect to leave, both for World War II and thereafter. To this end, the act provided that:

A. Effective September 1, 1946, all military personnel would earn leave at the rate of 2 1/2 days per month of active service and could accumulate such leave to a total of 60 days.

B. On or after September 1, 1946, enlisted personnel were entitled, by virtue of their statutory right to earn and accumulate leave, to terminal leave on the same basis as officers upon separation under honorable conditions.

C. Enlisted personnel were deemed to have earned leave at a rate of 2 1/2 days per month during active service from September 8, 1939, through August 31, 1946. Those discharged before September 1, 1946 (unless on active duty on that date), were entitled to a lump-sum payment for not more than 120 days of unused leave computed on such a basis.

D. Officers and enlisted personnel on active duty on September 1, 1946, were entitled to an initial credit for actual or "deemed" leave accumulated as of August 31, 1946, or, if the accumulation was more than 60 days, to an initial credit of 60 days and a lump-sum payment for the number of days in excess of 60. However, the unused leave entitlement of any member on active duty on September 1, 1946, was limited to a number of days which, when combined with the member's initial leave credit, did not exceed 120 days.

The lump-sum payments authorized by the act were, with minor exceptions, to be made in five-year Treasury bonds issued in multiples of $25--with any odd amount paid in cash--bearing interest at the rate of 2 1/2 percent per year. Other than for use in connection with government life insurance policies, the bonds were not negotiable or transferable and, except as to interest, were not subject to taxation.

The legislative history of the Armed Forces Leave Act, ch. 931, *id*., makes it clear that Congress included provisions authorizing leave accumulation and the granting of terminal leave and, later, the payment for unused accrued leave only in order not to discriminate against individuals who were prevented by bona fide military requirements and exigencies from taking leave on a current basis. This Congressional intent, as currently reflected in 10 U.S.C. §704(b)(3), was expressed by the Chairman of the Senate Military Affairs Subcommittee:

> The subcommittee does not want to discontinue a leave of 2 1/2 days, an earned leave of 2 1/2 days a month, but it wants that leave taken in the current year. We believe that the military service will benefit by a leave taken during the current year and that an accumulated leave has a commercial aspect of men cashing in on a terminal leave which they should have taken.
>
> We want them to have the leave as all other employees of the Government have, but we want them to take that leave because, if there is any good result to come from a leave, it must come from the exercise of the leave, not to make it a boost in pay.[1]

Although there has been no fundamental change to the military leave system created by the Armed Forces Leave Act, a number of important revisions have been made since 1946.

The Act of July 26, 1947, ch. 344 [Public Law 253, 80th Congress], §1, 61 Stat. 510 (1947), changed the medium of payment for unused leave from bonds to cash and made already-issued bonds redeemable after September 1, 1947, regardless of maturity date. As a concomitant to the elimination of bonds as a medium of payment, the act removed the provision making the bonds tax exempt. Thus, the basic pay element of payments for unused accrued leave became subject to taxation, while the allowances part was tax exempt.[2]

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[1] Armed Forces Leave Act of 1946: Hearings on H.R. 4051 before a Subcommittee of the Senate Committee on Military Affairs, p. 4, 79th Congress, 2d Session (1946) (introductory statement of Senator Johnson).

[2] Unused accrued leave payments were initially computed on the basis of basic pay and the basic allowances for quarters and subsistence, as well as the personal money allowance of certain senior officers. Under amendments to 37 U.S.C. §501 made by the Department of Defense Appropriation Authorization Act, 1977, Public Law 94-361, §304, 90 Stat. 923, 925-926 (1976), unused accrued leave payments are now computed on the basis of basic pay only. 37 U.S.C. §501(b)(1). See also discussion of the 1977 Appropriation Authorization Act and the reasons for its adoption in the text accompanying footnotes 2 through 4 to this chapter, above.

The Act of August 4, 1947, ch. 475 [Public Law 350, 80th Congress], §1,61 Stat. 748, 748-749 (1947), repealed the authority under which terminal leave was granted and as a substitute authorized lump-sum cash payments for unused accrued leave to officers and enlisted personnel separated on and after August 4, 1947.

In a 1949 decision, the Comptroller General of the United States ruled that the Armed Forces Leave Act did not permit an interim accumulation of leave in excess of 60 days during a fiscal year and, once a member had accumulated 60 days, he could accumulate no further leave until the 60 days had been reduced by the actual taking of leave.[3] The Act of September 23, 1950, ch. 998 [Public Law 818, 81st Congress], §1, 64 Stat. 978, 978-979 (1950), directly addressing the Comptroller General's ruling, provided that leave taken during a fiscal year may be charged to leave accumulated during that fiscal year, thus allowing a member to, in effect, accumulate more than 60 days of unused leave between accounting periods.

Under the Armed Forces Leave Act of 1946, ch. 931 [Public Law 704, 79th Congress], 60 Stat. 963 (1946), leave accumulated by a member did not survive his death on active duty. The Act of August 28, 1965, Public Law 89-151, §2, 79 Stat. 586 (1965), authorized payment to an eligible survivor for the unused accrued leave credited to a deceased member on the date of his death, subject to the 60 day maximum.[4]

The Act of January 2, 1968, Public Law 90-245, §1, 81 Stat. 782 (1968), permitted a member who had served at least 120 days in a hostile fire pay area to accumulate up to an additional 30 days of unused leave for a total of 90 days. The Military Pay and Allowances Benefits Act of 1980, Public Law 96-579, §10, 94 Stat. 3359, 3368 (1980), extended this authority to members "assigned to a deployable ship, mobile unit, or to other duty" specially designated for the purpose in question. Leave accumulated in excess of 60 days must be separately accounted for. Such leave is "lost" unless used by the member before the end of the third fiscal year following the fiscal year in which the leave was accrued.[5] In adopting this legislation, Congress intended to recognize the inability of members assigned to certain duty areas to use all the leave they

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[3] 29 Comp. Gen. 83 (1949).

[4] The 60-day limit on payments for unused leave to the survivors of military decedents was effectively repealed by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §641(a), 110 Stat. 186, 368 (1996). See Senate Report No. 104-112 (Committee on Armed Services), p. 258, accompanying S. 1026, 104th Congress, 1st Session (1995); cf. House Report No. 104-406 (Committee of Conference), p. 819, accompanying H.R. 1530, 104th Congress, 1st Session (1995), and House Report No. 104-450 (Committee of Conference), p. 809, accompanying S. 1124, 104th Congress, 2d Session (1996).

[5] Before adoption of the Department of Defense Authorization Act, 1984, Public Law 98-94, §1031, 97 Stat. 614, 671 (1983), this special additional leave accumulation had to be used before the end of the fiscal year following the fiscal year in which it was accrued. The 1984 authorization act extended the period within which this excess leave must be used on pain of otherwise being lost to the end of the third fiscal year following the fiscal year it was accrued. For the reasons underlying this extension, see discussion of the 1984 authorization act in the text accompanying footnotes 6, 7, and 8 to this chapter, above.

earned. This provision, codified at 10 U.S.C. §701(f), gives affected members three extra years in which to use rather than lose leave that could not, due to "military exigencies,"[6] be used. In effect, it puts affected members on a par with members not constrained by "military exigencies" with respect to the use or loss of earned leave.

The Act of October 27, 1972, Public Law 92-596, §1(2), 86 Stat. 1317, 1317-1318 (1972), authorized a member in a missing status to accumulate unused earned leave without limitation from the time such status began until he returned to United States custody or until the date his death is determined to have occurred. If, however, the missing member's death is determined to have actually occurred between the date he entered a missing status and the end of the fifth year of such a status, his leave accumulation is limited to 150 days in addition to leave accumulated before entering a missing status. If a presumptive date of death is determined, a member is likewise limited to 150 days of leave accumulation, plus leave accumulated before entering a missing status. Leave accumulated in a missing status is separately accounted for and cannot be used. It must be reimbursed to the member if he returns to United States custody or to his survivor if a determination of death is made. The term, "missing status," is defined at 37 U.S.C. §551(2) for purposes, among others, of leave accrued entitlements and accumulation under 10 U.S.C. §701(g).[7]

Although not an amendment to the Armed Forces Leave Act of 1946, ch. 931 [Public Law 704, 79th Congress], 60 Stat. 963 (1946), as amended and codified, the Employment Security Amendments of 1970, Public Law 91-373, §107, 84 Stat. 695, 701 (1970), touched on unused accrued leave payments. An earlier law, the Act of September 6, 1966, Public Law 89-554, §8524, 80 Stat. 378, 591 (1966), which had enacted Title 5, United States Code, into positive law, made former members of the uniformed services eligible for unemployment compensation from their state of residence during periods of unemployment following military service. Section 8524 of Title 5, United States Code, 5 U.S.C. §8524, however, barred eligibility for unemployment compensation in all states for any period covered by a payment for unused accrued military leave, regardless of the state law. At the time, some states considered accrued leave payments as current wages--*i.e.*, as compensation for contemporaneous work--with the result that a person in receipt of a payment for unused leave would be considered employed for the period for which he was receiving such payments and accordingly not entitled to unemployment compensation for that period; other states considered such payments to be for past services--not contemporaneous work--with the result that an individual in receipt of such payments would not be disqualified from receiving unemployment compensation. The Employment Security Amendments of 1970, Public Law 91-373, *id.*, repealed 5 U.S.C. §8524, thus permitting accrued military leave to be treated in each state the same as accrued leave of other unemployed persons.

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[6] Senate Report No. 98-174 (Committee on Armed Services), p. 231, accompanying S. 675, 98th Congress, 1st Session (1983).

[7] For a more detailed discussion of military pay and benefits entitlements of persons in a "missing status," see that portion of Appendix VII, "Special Pay and Other Benefits for Missing Persons, Prisoners of War (POWs), and Victims of Terrorism," titled "Missing Persons," below.

**Appendix I**

**Department of Defense**
**Military Retirement Fund**

**Legal Authority**: 10 U.S.C. §§1461-1467.

**Background**: Before enactment of the Department of Defense Authorization Act, 1984, Public Law 98-94, 97 Stat. 614 (1983), the military retirement system was funded on a "pay-as-you-go" basis. Every year as a part of the budgetary processes of the federal government, estimates were made of the aggregate retired and retainer pay entitlements of personnel on, or expected to be on, the retired lists of the various military departments that year, and Congress, through the appropriations process, appropriated moneys to pay for, or fund, those entitlements. If the original budget estimates were accurate, all of the appropriated moneys were paid out to military retirees in the year in which they were appropriated. In short, the military retired and retainer pay liabilities of the federal government were paid for out of current federal revenues, not out of a fund that had been built up as those liabilities were accruing. In fact, there was no fund from which the retired and retainer pay obligations of the federal government were met, and the military retirement system was, on that account, said to be "unfunded." The retired and retainer pay entitlements of retired members of the armed forces--as well as of future retirees--were, in some sense, obligations of the federal government, but no moneys had been set aside to defray them.

The Department of Defense Authorization Act, 1984, Public Law 98-94, §925(a)(1), 97 Stat. 614, 644-648 (1983), established effective October 1, 1984, a new Department of Defense function known as the "Department of Defense Military Retirement Fund," which is codified under that heading as Chapter 74 of Title 10, United States Code, 10 U.S.C. §§1461-1467. As stated at 10 U.S.C. §1461(a), the purpose underlying establishment of the fund was straightforward:

> ... The [Department of Defense Military Retirement] Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis

liabilities of the Department of Defense under military retirement and survivor benefit programs.

The Department of Defense Military Retirement Fund is a fund, "established on the books of the [United States Department of the] Treasury ... [and] administered by the Secretary of the Treasury," 10 U.S.C. §1461(a), from which the retired and retainer pay obligations of the federal government to retired members of the Army, Navy, Air Force, and Marine Corps[1] are to be met.[2] [3] 10 U.S.C. §1463(a)(1)-(3). In addition, obligations of the federal government, arising under the Survivor Benefit Plan, to the survivors of deceased members and former members of the armed forces are to be paid from the fund. 10 U.S.C. §1463(a)(4).

The assets of the fund used to defray the obligations of the federal government for retired and retainer pay and survivor annuities come from three sources. 10 U.S.C. §1462. First, the secretary of defense is required to make monthly payments into the fund from moneys appropriated by Congress for the pay and allowances of members of the Armed Forces on active duty and in the Ready Reserve. 10 U.S.C. §1466(a). The actual amount of money transferred to the fund by the secretary of defense for a given month is computed, using actuarial techniques, as a percentage (i) of the total basic pay paid that month to members of the Armed Forces on active duty and (ii) of the total basic pay and compensation[4] paid to members the Ready Reserve. 10 U.S.C. §1466(a). Cutting through

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[1] As well as to members of the Navy and Marine Corps transferred to the Fleet Reserve and Fleet Marine Corps Reserve, respectively.

[2] The Army, Navy, Air Force, and Marine Corps are the only components of the uniformed services covered by the Department of Defense Military Retirement Fund. Retirement and survivor benefit obligations of the federal government to retired members and survivors of deceased members or former members of the Coast Guard, the Public Health Service, and the National Oceanic and Atmospheric Administration are not covered by the fund. For this reason, the term "Armed Forces," as used in the discussion of various provisions of the Department of Defense Military Retirement Fund in the remainder of this appendix, is restricted to those uniformed services under the direct jurisdiction of the Department of Defense.

[3] Retired pay obligations accruing on account of non-regular service, *i.e.*, on account of reserve service, are also to be met from the Department of Defense Military Retirement Fund.

[4] As used in this appendix, the term "reserve compensation" covers pay to members of reserve components for inactive-duty training under 37 U.S.C. §206.

the technical language of actuarial science, the amount of money paid into the fund for a given month is supposed to cover the future retirement costs associated with the active duty and reserve service paid for by the basic pay and reserve compensation against which the "actuarially determined" percentage factor is applied in determining the contribution required for that month. Second, the secretary of the treasury is required to make an annual contribution, "[a]t the beginning of each fiscal year ... from the General Fund of the Treasury," 10 U.S.C. §1466(b)(1), in an amount that will, over time, amortize the unfunded liability of the Department of Defense Military Retirement Fund for retired and retainer pay and survivor annuity entitlements associated with prior active duty and reserve service.[5] Third, the secretary of the treasury is required to invest the various assets of the fund "in public debt securities with maturities suitable to the needs of the Fund," 10 U.S.C. §1467, and the return earned on these investments is also available to defray the obligations of the fund. The assets of the fund--coming from the three sources identified above--are specifically "made available for payment" of the obligations of the fund. 10 U.S.C. §1463(b).

The plan adopted by Congress for dealing with and accounting for military retired and retainer pay and survivor annuities—the Department of Defense Military Retirement Fund--established what is frequently referred to as an "accrual accounting system" for dealing with such obligations. As is true of any retirement accrual accounting system, the system in issue gives Congress and the Department of Defense direct and immediate information on the future retirement costs associated with current manpower decisions. Under the system adopted, the pay and allowances accounts for members of the armed

[5] As is true whenever a retirement fund is first established for an existing retirement system, money is needed for two different sets of costs that the fund will eventually have to bear. First, money is needed to pay for the retirement obligations accruing as a result of current service for personnel who will someday become entitled to retirement pay from the fund. Second, money is also needed to pay for retirement obligations already earned for past service--including not only persons already retired but also currently employed persons who have some past retirement-creditable service of one sort or another and who will someday retire. In the case of the Department of Defense Military Retirement Fund, Congress made the decision to amortize the initial unfunded liability of the fund for past service--which was determined to be $528.7 billion as of September 30, 1984--over a period of time. The annual payments to the fund from the General Fund of the Treasury are intended to accomplish just that.

forces are larger—by approximately 51% of basic pay[6]--than they would be if the system had not been adopted. The following table shows the ratio of assets in the fund to the present value of future benefits to recipients, which is a common measurement of the funding progress of a pension plan, for the fiscal years 1986 through 2003.[7]

| End of Fiscal Year… | Ratio of Assets to Present Value of Future Benefits |
|---|---|
| 1986 | .07187 |
| 1987 | .11431 |
| 1988 | .16211 |
| 1989 | .19549 |
| 1990 | .21878 |
| 1991 | .25127 |
| 1992 | .27018 |
| 1993 | .28314 |
| 1994 | .30306 |
| 1995 | .30375 |
| 1996 | .31314 |
| 1997 | .32200 |
| 1998 | .34567 |
| 1999 | .35142 |
| 2000 | .35085 |
| 2001 | .34476 |
| 2002 | .37376 |
| 2003 | .38989 |

[6] See, *e.g.*, Senate Report No. 99-292 (Committee on Armed Services), p. 3, accompanying S. 2395, 99th Congress, 2d Session (1986) (relating to the legislative proposal ultimately enacted as the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986), but discussing the Department of Defense Military Retirement Fund).

[7] Source: United States Department of Defense, *Fiscal Year 2003 Military Retirement Fund Audited Financial Statements*, December 5, 2003, 10.

A direct and immediate consequence of the adoption of an accrual accounting system for military retired and retainer pay and survivor annuities is that Congress has to appropriate money every year for retirement "expenditures" that do not in fact result in out-of-pocket cash outlays for the federal government, considered as a whole, for quite some time. The fact that such moneys have to be appropriated and are subsequently transferred from Department of Defense to Department of the Treasury accounts, however, means that the funds are treated for all practical purposes as though they had really been "spent" by the Department of Defense--as though they had in fact been disbursed--in the year in which they were appropriated. For this reason, both Congress and the executive branch of the federal government can reduce current defense "expenditures"—that is, they can "save" current defense budget dollars--by reducing the amount of money that is appropriated for transfer to the fund. That is, the defense budget can be reduced by reducing military retirement accruals, and this is what happened in the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986), which generally reduced future military retired and retainer pay entitlements for persons first becoming members of the uniformed services after July 31, 1986.[8] The Retired Pay Reform of 2000, contained in the National Defense Authorization Act for Fiscal Year 2001, Public Law 106-65, 113 Stat. 662, essentially eliminated this reduction by returning most military personnel who entered service after July 31, 1986 to the retired pay computation formula (the “high three”) used before the1986 reform.[9]

As explained by Congress, the reasons for adoption of the Department of Defense Military Retirement Plan were as follows:

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[8] Although the Department of Defense Military Retirement Fund applies only to personnel in the Army, Navy, Air Force, and Marine Corps, the changes to the "military retirement system" effected by the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986), apply to all branches of the uniformed services--to the Coast Guard, the Public Health Service, and the National Oceanic and Atmospheric Administration as well as to the Army, Navy, Air Force, and Marine Corps. Thus, the total savings over time for the federal government as a whole that are attributable to the changes in the retirement system under the Military Retirement Reform Act are actually larger than the immediate reduction in the basic pay accounts of the four armed services.

[9] For a more complete discussion of the changes to the military retirement system effected by the Military Retirement Reform Act of 1986, Public Law 99-348, 100 Stat. 682 (1986) and by the Retired Pay Reform of 2000, see Chapter III.B.1, "Nondisability Retired and Retainer Pay," above.

> Most retirement plans in the private sector are funded, either partially or fully, and the trend--as a result of the Employee Retirement and Income Security Act (ERISA)--is toward full funding. Security of a retirement plan, *i.e.*, the probability that promised benefits will be paid, is generally related to the method of funding. Full funding provides greater security than partial funding.
>
> Of course, the security of payments from the Federal government is not generally related to the method of funding. From the Federal government's perspective, the issue of funding is primarily a matter of timing. Should funds be raised by taxing and borrowing when the obligation becomes due, or should funds be set aside through taxing and borrowing when the obligation is incurred?[10] [11]

In establishing the Department of Defense Military Retirement Fund and the funding mechanism by which future retirement and survivor annuity costs associated with current-year service are dealt with, Congress gave a definitive answer to the rhetorical question it posed: Funds to defray future retirement and survivor annuity obligations of the federal government should be set aside as the obligations are incurred.

For budgeted allotments for retirement accruals from 1985 to 2004, see Table A-1 of *Military Compensation Statistics Tables*, volume 2 of this edition.

[10] House Report No. 98-107 (Committee on Armed Services), p.225, accompanying H.R. 2969, 98th Congress, 1st Session (1984).

[11] As indicated in the quoted excerpt, one of Congress's reasons for adopting the Department of Defense Military Retirement Fund was to provide a funding mechanism similar to private-sector retirement plans subject to the Employee Retirement Income Security Act (ERISA). While the funding mechanism adopted in fact succeeded in that regard, the military retirement system as a whole falls far short of meeting other, basic ERISA standards--including vesting requirements.

## Appendix II

### Uniformed Services Former Spouses' Protection Act

**Legislative Authority**: 10 U.S.C. §1408 and various provisions in Chapters 55 and 73 of Title 10, United States Code.

**Backgroun**d: The Uniformed Services Former Spouses' Protection Act, enacted as Title X of the Department of Defense Authorization Act, 1983, Public Law 97-252, Title X, §§1001-1006, 96 Stat. 718, 730-738 (1982), was adopted to remove certain limitations that barred state and local courts from judicial enforcement of financial orders arising out of divorce and separation actions involving members of the Armed Forces and their spouses and former spouses and to extend certain benefits--mainly including survivor and medical benefits--to spouses and former spouses of members of the uniformed services. The provisions of the Former Spouses' Protection Act affecting state court judgments and orders arising out of divorce and separation actions are codified at 10 U.S.C. §1408; the provisions affecting survivor benefits are codified at various places in Subchapter II of Chapter 73 of Title 10, United States Code, "Survivor Benefit Plan," 10 U.S.C. §§1447-1460b; the provisions affecting medical care to spouses and former spouses of members and former members of the Armed Forces are partially codified at various places in Chapter 55 of Title 10, United States Code, "Medical and Dental Care," 10 U.S.C. §§1071-1104. The reasons underlying enactment of the Uniformed Services Former Spouses' Protection Act were explained by the Senate Armed Services Committee in 1982:

#### Background and Discussion

> Currently, [a number of] States ... apply community property principles [in connection with the judicially ordered distribution of marital property incident to a divorce or legal separation or to the dissolution or annulment of a marriage]. The concept of the pool of property available for division on divorce or other dissolution of a marriage (*i.e.*, marital property) in these States is based on French and Spanish Civil Law, rather than on the English common law from which other State marital property laws are derived. In community property States, all property earned by either spouse during the marriage is considered "community property" in which each spouse has a one-half interest. The general rule is that a pension earned by one party for work performed during the marriage becomes part of the marital property in which each spouse has an interest.

[A number of other] States ... apply common law principles to the determination and distribution of marital property. An increasing number of these States are now determining that retirement and pension benefits can be deemed part of the marital property in divorce. However, in these jurisdictions, the concept of an equal interest created by law in marital property does not exist. These States apply a concept known as "equitable distribution" in dividing marital property. Under this approach, the court weighs the equities of each case and divides the property accordingly, not necessarily on a 50-50 basis, but however seems fair under all the circumstances.

Courts in ... [some] of the ... community property States also have the discretion to distribute marital property on this basis.

The ... remaining States ... are presently the only strict "title" States, in which title controls the distribution of marital assets. Upon divorce, pensions in these States remain the property of those who earn them.

In the vast majority of divorce cases, domestic relations courts do not become involved in the financial aspects of divorce. Usually, a privately negotiated property settlement is entered into by the parties and incorporated in the divorce decree. For this reason, there is little information available on the precise extent to which military retired pay has been considered and divided during the divorce process. What information exists, however, indicates that pensions are seldom divided between the parties to a divorce. Instead, the pensioner generally retains current or future annuity benefits and the non-working spouse receives an offsetting award of cash or other property.

However, there is a growing body of State laws and precedents in the area of dividing pensions and retired pay. As of June 26, 1981, case decisions in virtually all community property States, and a number of common law property States employing equitable distribution principles, specifically permitted military retired pay to be considered as an asset of the marriage and subject to division. [A number of] other States had specifically ruled that military retired pay could not be so considered.

**The McCarty v. McCarty Decision**

On June 26, 1981, the United States Supreme Court decided the case of *McCarty v. McCarty*, 453 U.S. 210 (1981), holding that absent a Federal statute permitting such action, a State court may not order a division of non-disability military retired pay as part of a distribution of community property incident to a divorce proceeding.

The Supreme Court examined the military retirement scheme and concluded that the application of State community property laws conflicted with that scheme. According to the Court, the Congress intended military retired pay to

be the personal entitlement of the retiree. Thus, the Court reasoned that the application of State community property laws "interfere(s) directly with a legitimate exercise of the power of the Federal Government" reflected in the military retirement scheme. However, the Court left it to the Congress to change the policy reflected by that scheme. Writing for the majority, Justice Blackmun stated:

We recognize that the plight of an ex-spouse of a retired service member is often a serious one ... Congress may well decide, as it has in the Civil Service and Foreign Service contexts, that more protection should be afforded a former spouse of a retired service member. This decision, however, is for Congress alone. We very recently have reemphasized that in no area has the Court accorded Congress greater deference than in the conduct and control of military affairs. 453 U.S. at 235-236.

**Prior Legislation Similar to S. 1814**

Until 1975, the Federal Government had refrained from involvement in the circumstances surrounding the divorce of a present or former Government employee or military member. However, in 1975, Public Law 93-647 authorized the Federal Government to recognize a valid State court order garnishing or attaching the salary or retired pay of a present or former military member or Government employee when the individual failed to keep up with alimony or child support payments required by a court ordered divorce settlement. See 42 U.S.C. §659. The 95th Congress passed Public Law 95-30 which limited the amount of salary or retired pay that can be garnished or attached. A present or former military member or Government employee who is supporting a spouse or dependent can have up to 55 percent of disposable earnings garnished or attached; a person without a spouse or dependents can have up to 65 percent of disposable earnings attached. See 15 U.S.C. §1673(b); 5 CFR Part 581 (1982).

In 1978, the 96th Congress enacted a separate law, 5 U.S.C. §8354(j), which is applicable to the retired pay of Federal civil service employees. This law requires the Office of Personnel Management to comply with the terms of a court decree, order, or property settlement in connection with a divorce, annulment, or legal separation of a Federal employee. No limitation was imposed on the percentage of retired pay that could be paid out pursuant to such decrees and orders. This law does not apply to military personnel.

Finally, the Foreign Service Act of 1980 (Public Law 96-405) entitles the former spouse of a Foreign Service employee to receive up to 50 percent of the employee's retired pay, provided that the former spouse was married for at least 10 years of the employee's Foreign Service career. See 22 U.S.C. §§4044 *et seq*. This right can be modified by spousal agreement or certain court orders. The rationale for this entitlement legislation was that the majority of Foreign Service duty is overseas and the "Foreign Service tradition of husband-wife ‘teams’ and

the participation of wives in the vital representational activities is still very much alive."

**Provisions of S. 1814**

On November 4, 1981, Senator Roger Jepson introduced S. 1814, the Uniformed Services Former Spouses Protection Act. Under S. 1814 military retired pay can be treated either as the property solely of the member or as the property of the member and his spouse. No right or entitlement to military retired pay is created by S. 1814. The bill does not require any division of retired pay by a State court; nor does it prohibit such division.

Treatment of such retired pay--with certain limitations--generally would be dependent on the divorce and property laws applied by the courts of the jurisdiction in which a divorce or other related decree is issued.

S. 1814 imposes three distinct limits on the division or enforcement of court orders against military retired pay in divorce cases. First, the total amount of the disposable retired or retainer pay of a member which the Service Secretary could pay out to satisfy a court order for prospective obligations could not exceed 50 percent of such pay. Second, this bill would not create in the spouse or former spouse any right, title or interest which could be sold, assigned, transferred or disposed of by will or inheritance. Third, the courts could not direct that a service member retire at a particular time in order to effectuate any payment out of retired pay to a spouse or former spouse. Within these limitations, a former member's military retired pay would be subject to court orders issued incident to a divorce, dissolution, annulment or legal separation proceeding. The Service Secretaries would comply with such orders which direct the payment of a portion of that retired pay to a former spouse as alimony, as child support, or as the distribution of marital property.

S. 1814 extends limited health care coverage to certain unremarried former spouses of present or former service members. To qualify for the coverage, the former spouse must have been married to the member or former member for a period of at least 20 years on or before the date of the divorce during which period the member completed at least 20 years of creditable service. The health care is offered for a period of 180 days immediately following the date of the final decree of divorce, dissolution or annulment, provided that the former spouse remains unremarried. Under certain circumstances, health care will be extended by the Secretary concerned for the treatment of a medical condition which existed prior to the end of the 180-day period, but only if treatment for that condition has been provided by the uniformed services prior to the end of that period.

Finally, S. 1814 provides future participants in the Survivor Benefit Plan (SBP) the flexibility to provide for their former spouses. The bill provides that where the service member has not remarried and does not have a dependent

> child for whom an annuity can be provided under SBP, the member could voluntarily provide an annuity to a former spouse. If the member chooses to provide such an annuity and then remarries, the member would be free to change the earlier designation so as to provide an annuity to the new wife or dependent child, unless the member had made a commitment as part of a voluntary written agreement to designate the former spouse. In that event, the member would have to obtain the appropriate court or other approval before changing the designation. It is the committee's intention that the service member retain the sole right to elect a former spouse as beneficiary of any SBP annuity.[1]

The Uniformed Services Former Spouses Protection Act introduced as S. 1814 was in fact not enacted, but the substance of S. 1814 was picked up and adopted as Title X of S. 2248, which was enacted as the Department of Defense Authorization Act, 1983, Public Law 97-252, Title X, §§1001-1006, 97 Stat. 718, 730-738 (1982).[2] Subsequent Congressional enactments have amended and modified some aspects of the original act--basically to extend the categories of benefits available to former spouses under the Survivor Benefit Plan and to perfect and clarify various provisions of the original enactment. See, *e.g.*, National Defense Authorization Act for Fiscal Year 1987, Public Law 99-661, §§641-646, 100 Stat. 3816, 3885-3887 (1986);[3] National Defense Authorization Act, Fiscal Year 1989, Public Law 100-456, §652, 102 Stat. 1918, 1991 (1988);[4] National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §1404(a), 103 Stat. 1352, 1579-1586 (1989), enacting the Supplemental Survivor Benefit Plan;[5] National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, §555, 104 Stat. 1485, 1569-1570 (1990); National Defense Authorization

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[1] Senate Report No. 97-502 (Committee on Armed Services), pp. 2-5, accompanying S. 1814, 97th Congress, 2d Session (1982).

[2] See House Report No. 97-749 (Committee of Conference), pp. 165-168, accompanying S. 2248, 97th Congress, 2d Session (1982).

[3] *cf.* House Report No. 99-1001 (Committee of Conference), pp. 483-484, accompanying S. 2638, 99th Congress, 2d Session (1986).

[4] Making several technical amendments to include former spouses within the Survivor Benefit Plan.

[5] See especially 10 U.S.C. §1459 as adopted by the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, §1404(a), 103 Stat. 1352, 1584-1585 (1989). *cf.* Senate Report No. 101-81 (Committee on Armed Services), pp. 180-181, accompanying S. 1352, and House Report No. 101-331 (Committee of Conference), pp. 660-661, accompanying H.R. 2461, 101st Congress, 1st Session (1989).

Act for Fiscal Year 1993, Public Law 102-484, §653(a)(2), 106 Stat. 2315, 2426-2428 (1992);[6] the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §555(a)(2), 107 Stat. 1547, 1666 (1993)[7]; the National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, 110 Stat. 2579; the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1799; and the National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261, 112 Stat. 2048.

The Uniformed Services Former Spouse Protection Act remains a controversial and emotional topic for both members and former spouses. In 2001 the Department of Defense recommended several changes to the USFSPA. A copy of the DoD report is available at http://dod.mil/prhome/spouserev.html. As of 2004, Congress had not enacted any of the recommendations proposed by DoD.

[6] Adding provisions, codified at 10 U.S.C. §1408(h), extending protections of Uniformed Services Former Spouses' Protection Act to spouses and former spouses of members who have had their right to receive retired or retainer pay terminated as a result of abuse of a spouse or dependent child. See House Report No 102-966 (Committee of Conference), p. 716, accompanying H.R. 5006, 102d Congress, 2d Session (1992).

[7] See Senate Report No. 103-112 (Committee on Armed Services), p. 155, accompanying S. 1298, and House Report No. 103-357 (Committee of Conference), p. 678, accompanying H.R. 2401, 103d Congress, 1st Session (1993).

## Appendix III

### Highlights of Major Structural Studies of Military Compensation

Since the end of World War II, a number of studies of military compensation have been conducted under the general sponsorship of the Department of Defense, the President, and the Congress. Some of these studies have been broad in scope, others more narrowly circumscribed. From 1945 to 1965, the more comprehensive studies tended to come at approximately four-year intervals--usually in response to perceived crises or specific needs. In 1965, a provision was added to permanent law, at the behest of the House Armed Services Committee, requiring the President to conduct a comprehensive review of military compensation every four years.[1] The following listing identifies the major structural studies of military compensation that have been conducted since World War II, starting with the so-called Hook Commission in 1948 and ending with the *Ninth Quadrennial Review of Military Compensation* in 1999-2001. The listing indicates the significant accomplishments of each study.[2]

1. ***The Advisory Commission on Service Pay (The Hook Commission*--1948).**

In 1948, Secretary of Defense James V. Forrestal chartered the Advisory Commission on Service Pay, also known as the Hook Commission after its chairman, Charles J. Hook, to undertake the first comprehensive review of military compensation since 1908. Upon completion of its review, the commission issued a report, titled *Career Compensation for the Uniformed Services: A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay*, which formed the basis for various recommendations to Congress to restructure military compensation. These recommendations eventuated in the enactment of the Career Compensation Act of 1949, ch. 681 [Public Law 351, 81st Congress], 63 Stat. 802 (1949), which, with relatively minor emendations, established the structure of the military compensation system that exists today--*i.e*., basic pay, allowances, and special and incentive pays for active duty forces, and retired or retainer pay for retired forces. The rates of military

[1] See discussion relating to the adoption of Section 1008(b) of Title 37, United States Code, 37 U.S.C. §1008(b), under the heading relating to the *First Quadrennial Review of Military Compensation* (Hubbell Study Group), at paragraph 5 to this appendix, below.

[2] All of the studies referred to produced reports of one sort or another, and these reports may be consulted for specific details concerning the underpinnings of the findings and conclusions reached and the recommendations made, if any.

compensation established under the act were set by a comparison of levels of responsibility between military and private sector organizations. In focusing on and questioning the underpinnings and justifications of the entire system of military compensation, the Hook Commission completed what has turned out to be the most fundamental and most important of all the studies of military compensation that have taken place since the end of World War II.

2. ***The Strauss Commission*** **(1952-1953).**

Under pressures deriving from the Korean War, which had started on June 25, 1950, when North Korean troops invaded South Korea by crossing the 38th parallel at eleven separate points, the Strauss Commission was convened by Secretary of Defense Robert A. Lovett in 1952 to consider the continued need for special and incentive pays and to make recommendations concerning the form of such pays. After completing its study of special and incentive pays, the Strauss Commission prepared a comprehensive technical report[3] that, while never formally transmitted to Congress, had substantial influence on later legislation dealing with such pays--especially that adopted in the Career Incentive Act of 1955, ch. 20 [Public Law 20, 84th Congress], 69 Stat. 18 (1955).

3. ***The Cordiner Committee*** **(1956-1957).**

The Cordiner Committee was convened in 1956 in response to a perceived problem in attracting and retaining qualified technical personnel in the armed services. The Cordiner Committee's work, which was undertaken shortly after the Soviet Union launched its first Sputnik satellite, led to the recommendation that resulted in the creation of four new pay grades--E-8 and E-9 in the enlisted grade structure and O-9 and O-10 in the officer grade structure--and to the introduction of proficiency pay for critical military skill occupations. Act of May 20, 1958, Public Law 85-422, §1(2), 72 Stat. 122, 124 (1958). (Taking its cue from the Cordiner Committee's recommendation, Congress added responsibility pay to the military compensation system as an officer analogue to enlisted proficiency pay.)

4. ***The Gorham Report and the Randall Panel*** **(1962).**

A study was convened by Secretary of Defense Robert S. McNamara in 1962 to conduct a comprehensive study of the entire system of military compensation. Although no final report was ever issued, the study findings were set forth in a document generally referred to as the "Gorham Report." This report was reviewed by the Randall Panel, which approved the majority of its recommendations. The action of the Randall Panel, in turn, led to Congressional approval of one of the largest military pay raises of modern times--exceeded only by the pay raise of 1982. Another effect of the Gorham Report was the adoption of the consumer-price-index (CPI) method of adjusting military retired pay benefits, thereby removing the linkage of military retired pay to active duty basic pay.

[3] "*Differential Pays for the Armed Services of the United States*, Report of the Commission on Incentive-Hazardous Duty and Special Pays," March 1953.

The Gorham Report also originated the earliest counterpart of the present-day construct known as "regular military compensation" to serve as a rough yardstick for comparing military and civilian compensation levels.

5. ***The First Quadrennial Review of Military Compensation (The Hubbell Report*--1967).**

The *First Quadrennial Review of Military Compensation* was convened in 1965 by Secretary of Defense Robert S. McNamara in response to the newly enacted requirements of Section 1008(b) of Title 37, United States Code. Under 37 U.S.C. §1008(b), the President was--and continues to be--required to conduct "a complete review of the principles and concepts of the compensation systems for members of the uniformed services" at least once every four years and, after completing such a review, to "submit a detailed report to Congress summarizing the results of such review together with any recommendations ... proposing changes" to the compensation systems. The first such review was conducted by a study group that soon came to be referred to as the *First Quadrennial Review of Military Compensation*.[4]

The major recommendation of the *First QRMC* was to move from the then-existing system of pay and allowances for military personnel to a salary system. Although this recommendation generated a good deal of interest--both in Congress and elsewhere--it did not in fact result in any changes to the military compensation system. The general consensus was that movement from the pay and allowances system of military compensation to a salary system would simply be too expensive and that, in light of then-existing draft, a salary system was not needed to attract requisite numbers of military personnel. One of the most important results of the *First QRMC* was the implementation of annual pay raises for uniformed services personnel.

6. ***The Gates Commission* (1970).**

The Gates Commission recommended the all-volunteer force concept--thus abandoning reliance on the draft as the primary source of military personnel in peacetime--together with certain necessarily associated changes in the pay system. The most important of the recommendations concerning the pay system was a proposal for a substantial pay increase for first-term military personnel, and this recommendation was in fact adopted in a modified form in connection with the movement to an all-volunteer force.

7. ***The Second Quadrennial Review of Military Compensation* (1971).**

The *Second QRMC* was concerned with proposals to restructure four selected special pays in line with the all-volunteer force concept. Recommendations made by the

[4] Subsequent reviews have been referred to, successively, as the *Second Quadrennial Review of Military Compensation (QRMC)*, the *Third QRMC*, the *Fourth QRMC*, the *Fifth QRMC*, the *Sixth QRMC*, *etc*. The *Ninth QRMC* was convened in the fall of 1999, and its report was completed in the fall of 2001.

*Second QRMC* resulted in legislation affecting flight pay, reenlistment bonuses, and medical special pays. The preexisting flight pay program for rated aviators was replaced by the aviation career incentive pay program; the preexisting variable reenlistment bonus program was replaced by the selective reenlistment bonus program; and variable incentive pay was authorized for medical officers of the Armed Forces. Although the *Second QRMC* also considered the hostile fire pay program, especially in light of the imperatives of the Viet Nam War, no change to the program was recommended. The *Second QRMC* was unique in being the only one of the QRMCs to have virtually all of its recommendations enacted into law.

8. ***Department of Defense Retirement Study Group*** **(1972).**

The Department of Defense Retirement Study Group was constituted to review the findings and recommendations of the Interagency Committee on Uniformed Services Retirement and Survivor Benefits, which had been convened in 1971 to conduct a comprehensive review of the military retirement system. The report of the interagency committee recommended far-reaching reform of the military non-disability retirement system to reduce perceived inequities of the system, to improve its efficiency and effectiveness as a management tool, and to decrease its costs. The review of the interagency committee's report by the Department of Defense Retirement Study Group led to the Department of Defense's development of a legislative proposal that was forwarded to Congress in 1974 and again in 1975 as the Retirement Modernization Act (RMA). Despite having been submitted to Congress twice, the Retirement Modernization Act never was enacted.

9. ***The Third Quadrennial Review of Military Compensation*** **(1975-1976).**

The *Third Quadrennial Review of Military Compensation* conducted the first, across-the-board, comprehensive review of the entire system of military compensation since the Hook Commission in 1948. Although the *Third QRMC* never issued a formal final report, its staff studies, which covered the entire spectrum of military compensation, were collected in ten volumes.[5] The major conclusions of the *Third QRMC* were that a modernized system of pay and allowances should be established as the basis for uniformed services pay, that comparability with Civil Service should be the standard for determining uniformed services pay levels, that pay should be set and adjusted on a "total compensation" basis, and that the military retirement system should be revamped in accordance with the twice-submitted Retirement Modernization Act. One of the major accomplishments of the *Third QRMC* was the collection and publication of the first edition of *Military Compensation Background Papers--Compensation Elements and Related Manpower Cost Items: Their Purpose and Legislative Background* (Washington, D.C.: Department of Defense, 1976), the predecessor of the present volume.

[5] A draft final report was sent to appropriate committees of the Congress. In addition, because of a change in administrations, the draft final report and staff studies of the *Third QRMC* were turned over to the President's Commission on Military Compensation for further review. (For a discussion of the President's Commission on Military Compensation and its accomplishments, see paragraph 11 of this appendix.)

10. ***The Defense Manpower Commission*** **(1976).**

The Defense Manpower Commission was convened in response to a Congressional directive to review a broad range of personnel and compensation issues. The commission recommended a major overhaul of the military compensation system, including the adoption of a salary system together with a radically revised retirement system. The commission's recommendations did not result in any legislative enactments.

11. ***The President's Commission on Military Compensation (PCMC*--1978-1979).**

The President's Commission on Military Compensation, sometimes referred to as the "PCMC" or the Zwick Commission (after its chairman, Charles Zwick), was convened by the newly ensconced Carter Administration to review all of the recently completed studies affecting military compensation--including the studies of the three QRMCs, the Interagency Committee, the Defense Manpower Commission, and various special studies of selected military compensation issues conducted by the General Accounting Office. Parting ways with the Defense Manpower Commission, the PCMC recommended against a salary system as well as against a formal comparability system for setting military pay levels. In a positive vein, the PCMC recommended more reliance on special and incentive pays to solve manpower shortage problems as well as a new, non-contributory, three-part, mandatory retirement plan. It also recommended a form of variable housing allowance and longevity pay based on time-in-grade rather than time-in-service.

12. ***The Fourth Quadrennial Review of Military Compensation*** **(1979).**

The *Fourth Quadrennial Review of Military Compensation* reviewed the findings, conclusions, and recommendations of the President's Commission on Military Compensation. Focusing particularly on the PCMC's retirement recommendations, the *Fourth QRMC* refined the recommendations in question and produced a legislative proposal that was submitted to Congress, in fulfillment of the report requirements of 37 U.S.C. §1008(b), as the proposed Uniformed Services Retirement Benefits Act (USRBA) of 1979. One of the important features of the USRBA proposal was a modified vesting provision coupled with an early withdrawal option. Opposition by the Department of the Treasury to income averaging treatment for early withdrawals taken by service members effectively resulted in blocking favorable consideration of the proposal, and Congress in fact took no action on the submission.

13. ***The Fifth Quadrennial Review of Military Compensation*** **(1983-1984).**

Pursuant to Presidential directive, the *Fifth Quadrennial Review of Military Compensation* was convened to review the military retirement system and its associated benefits as well as the special and incentive pays program. The report and recommendations of the *Fifth QRMC* led to Congressional amendment of the special and incentive pays program, including the elimination of officer-enlisted pay differentials for seven hazardous duty incentive pays. The *Fifth QRMC* pioneered new methods for evaluating the impact of military retirement benefits as incentives affecting active duty

service members. It also prepared a statement on the principles and concepts of military compensation, which, in a modified form, is incorporated as Chapter 1 of this edition of *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items--Their Purposes and Legislative Backgrounds.*

14. ***The Sixth Quadrennial Review of Military Compensation*** **(1986-1988).**

The *Sixth Quadrennial Review of Military Compensation* was tasked by the President to perform a comprehensive evaluation of the benefits and costs of the reserve compensation system. As the first comprehensive review of reserve compensation, the *Sixth QRMC* provided both a systematic evaluation of the elements of compensation for members of the reserve components and an analysis of the way reserve compensation affects the ability of the National Guard and the reserve components of the Armed Forces to meet their manpower requirements in support of readiness. The report of the *Sixth QRMC* contained separate studies of the compensation of full-time support personnel, compensation in support of reserve medical manpower requirements, and of National Guard and reserve retirement. The studies of full-time support and reserve medical manpower were the first comprehensive studies completed in these areas. The retirement study was the first to employ analytical models to assess the effects of the current system and evaluate the costs and benefits of alternatives. Many recommendations of the *Sixth QRMC* were adopted by Congress, including a muster allowance, benefits for "gray area" retirees, statutory authorization of the Delayed Enlistment Program, revised medical special pay, bonus test programs, an improved system of incapacitation pay, and amendments to the Soldiers' and Sailors' Civil Relief Act. Legislation to revise the reserve retirement system as recommended by the *Sixth QRMC* was not submitted because of the high initial costs associated with its implementation.

14. ***The Seventh Quadrennial Review of Military Compensation*** **(1990-1991).**

The *Seventh Quadrennial Review of Military Compensation* was chartered to conduct a fundamental review of the overall military compensation system and assess its ability to continue to attract and retain the numbers and kinds of personnel needed in the post-Cold War environment and in particular to evaluate the major components of the military compensation system--specifically including basic pay, the various allowances, special pays, and bonuses--and the mechanisms for their periodic adjustment. The *Seventh QRMC* recommended continuation of the present system of pay and allowances but with realistic pricing of existing housing and subsistence allowances and internal restructuring of basic pay to achieve the identified objectives. As for periodic adjustments in the compensation system, the *Seventh QRMC* recommended annual adjustments in basic pay based on the Employment Cost Index (ECI), annual adjustments in the allowances based on costs actually experienced by service members, and annual reviews of the levels of special and incentive pays in light of the objectives they were intended to serve. In addition, the *Seventh QRMC* recommended development of a cost-of-living allowance applicable in the continental United States to help offset differentially higher

non-housing costs in different parts of the country, which has since been enacted as the "CONUS COLA" (cost-of-living allowance for the continental United States) program.[6]

15. ***The Eighth Quadrennial Review of Military Compensation*** **(1995-1997)**

The *Eighth Quadrennial Review of Military Compensation* was tasked by the President of the United States to focus its analysis on the military compensation scheme's current effectiveness in attracting, maintaining, and motivating its work force. Accordingly, the *Eighth QRMC* analyzed the role of human resource management in attaining overall performance and efficiency goals. The recommendations of the review involve the design and implementation of a centralized core of policies and practices that can be flexibly tailored to the needs of specific organizations. The goal of this approach was to establish a future-oriented human resource management plan that can be responsive to issues posed by a changing workforce and to the need for improved effectiveness in leadership and organization within the overall framework of the Department of Defense. The establishment of such a plan was to include a Defense Human Resources Board that would contribute expert advice and perspective as new policies and practices are integrated. This board finally was established in 2002 and first met in July 2003, assisted by a civilian Strategic Advisory Group tasked with analyzing future change.

16. ***The Ninth Quadrennial Review of Military Compensation*** **(1999-2001)**

The *Ninth Quadrennial Review of Military Compensation* was asked to perform a strategic review of regular military compensation (RMC) in addition to benefits provided by the Department of Veteran Affairs. Specifically, the *Ninth QRMC* was tasked to evaluate the effectiveness in retention and recruitment of high-quality personnel through special and incentive pays and bonuses in addition to an analysis of the adequacy of basic pay in maintaining the financial well-being of service members and their families. The primary recommendations of the report indicated that although new advertising campaigns and recruiting messages had been successful in bringing an increased number of youths into the military, the continued increase in recruitment and retention of high-quality candidates would best be encouraged by focusing on the increase of balance and flexibility of the compensation system. The analysis found that regular military compensation was still below the standards set by the private sector, increasing the tendency for potential recruits to go to the private sector for better pay. The report recommended that RMC be adjusted to reflect levels close to private sector salary, and that the potential for pay differentials be increased to maintain highly educated and skilled members. The review concluded that expanding incentive pays, the basic allotment for housing, and increasing flexibility for assignments also may assist in recruit attraction and retention. Finally, the *Ninth QRMC* suggests expansion of programs in education and employment for spouses that assist entire families of members, since the decision to stay in the military often is a family decision.

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[6] See Chapter V.C.4. hereof, "Cost of Living Allowance for the Continental United States (CONUS COLA)", above.

17. ***The Defense Science Board (2000)***

The Defense Science Board Task Force on Human Resources Strategy was tasked by the Secretary of Defense to address "How to attract and retain personnel with the motivation and skills to serve and lead in civilian and military capacities in the Department of Defense." The task force concluded that the All-Volunteer Force is still the appropriate vehicle for procuring and sustaining Defense military manpower. Further, military personnel should limit their activity to inherently military functions with civilians performing other government tasks. The task force identified three issues as having an adverse impact on force quality – (1) the Department does not have the authority and tools necessary to integrate the management of its human resources and to shape the military force. Specifically, the 'one-size-fits-all' approach in compensation and personnel policies is no longer suited to the current needs of the force; (2) the Department lacks a strategic plan for future human resource requirements for a fully integrated DoD force; and, (3) the American public is less involved and less inclined to serve in the Department of Defense.

**Appendix IV**

## BAH Entitlements of Members of the Uniformed Services Married to Other Members of the Uniformed Services

Under Section 403 of Title 37, United States Code, the normal rule is that members of the uniformed services are entitled to basic allowance for housing, or BAH, unless they are assigned to quarters provided by the Federal Government that are "appropriate to [their] grade, rank or rating and adequate for [themselves] and [their] dependents, if with dependents," in which case they are specifically declared to be "not entitled to a basic allowance for housing." 37 U.S.C. §403 (e)(1).[1] As indicated in Chapter II.B.2., "Housing Allowances," above, members who are entitled to BAH under 37 U.S.C. §403 and who have dependents are entitled to a higher rate of BAH than members without dependents. Section 421 of Title 37, however, creates an exception to eligibility for the "with dependents" BAH rate in the case of a member of the uniformed services whose sole dependent also is a member of the uniformed services:

> A member of a uniformed service may not be paid an increased allowance under [Chapter 7 of Title 37, which contains the BAH provisions here in issue], on account of a dependent, for any period during which that dependent is entitled to basic pay under section 204 of [Title 37].[2]

As interpreted, the quoted provision requires service members married to other service members to be treated as single for the purpose of determining the rate of BAH to which they are entitled unless they have one or more additional dependents who are not entitled to basic pay.

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[1] The major exception to this general rule is that a member in pay grade E-7 or above who is without dependents but who is assigned to quarters provided by the federal government "may elect not to occupy those quarters and instead to receive the basic allowance for quarters prescribed for his pay grade." See, *e.g.*, 37 U.S.C. §403 (e)(2).

[2] This provision, which was formerly codified as Section 420 of Title 37, United States Code, was recodified as Section 421 of Title 37 by the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, §611(a)(1)(A), 101 Stat. 1019, 1093 (1987).

Section 403(f) of Title 37 deals with the entitlement to BAH of certain members of the uniformed services without dependents, or who are considered under 37 U.S.C. §421 as being without dependents for the purpose of determining the BAH to which they are entitled, as follows:

> (1) A member of a uniformed service without dependents who makes a permanent change of station for assignment to a unit conducting field operations is not entitled to a basic allowance for housing while on that initial field duty unless his commanding officer certifies that the member was necessarily required to procure quarters at his expense.
>
> (2) A member of a uniformed service without dependents who is in a pay grade below E-6 is not entitled to a basic allowance for quarters while on sea duty.[3]

Prior to 1997, the combined effect of these various provisions prohibited the payment of a housing allowance to a member of a uniformed service below pay grade E-6 who was married to another member of a uniformed service, who was without other dependents, and who was assigned to sea duty.[4] Thus, when both members of a married service couple below pay grade E-6 were assigned to sea duty, they were statutorily denied a basic allowance for quarters and had to either choose to live on board their respective vessels or suffer financial losses measured by the costs of establishing a household off the vessels to which they were assigned. The National Defense Authorization Act for Fiscal Year 1997, which generally revised regulations on housing allowances, provided that such a couple is jointly entitled to one basic allowance for housing for the duration of such simultaneous sea duty.

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[3] Before enactment of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, 110 Stat. 186 (1996), the rule was that a member of a uniformed service without dependents who was in a pay grade below E-7 was not entitled to a basic allowance for quarters while on sea duty. That legislation, at 110 Stat. at 358, changed the rule so that members in pay grade E-6 and above without dependents became entitled to basic allowance for housing even while on sea duty.

[4] For the purpose of determining the entitlement of affected persons to BAH, a member of a uniformed service is considered as being assigned to sea duty if assigned to a self-propelled vessel that is in an active status, in commission, or in service, and that is equipped with berthing and messing facilities.

**Appendix V**

### Federal Taxation of Members of the Armed Forces

No other category of federal taxpayers has more special tax rules than members of the Armed Forces. These special rules have been enacted over many decades in response to changing circumstances related to service as a member of the Armed Forces. This appendix will identify those provisions of Title 26, United States Code, also identified as the Internal Revenue Code of 1986, regarding federal taxation of members of the Armed Forces in effect as of January 1, 2004. To provide structure, the provisions will be addressed by their function, *i.e*., exclusions, exemptions, postponements, *etc*., rather than numerical order on the basis of the section number within Title 26, United States Code. To eliminate ambiguity regarding which individuals are entitled to these special tax benefits, Section 7701(a)(15) of the Internal Revenue Code, IRC §7701(a)(15), 26 U.S.C. §7701(a)(15), defines the terms "military or naval forces of the United States" and "Armed Forces of the United States" to include all regular and reserve components of the uniformed services that are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force.

## Income Taxes

Subtitle A of Title 26, United States Code

The vast majority of provisions that establish special rules for members of the Armed Forces are contained in Subtitle A of the Internal Revenue Code of 1986--the federal income tax.

### Exclusions From Gross Income

In general, income tax is computed by applying a particular tax rate or set of tax rates to a measure of income determined by law. The federal income tax is computed by applying the tax rate prescribed by law to a measure of income identified as taxable income. Taxable income is defined as adjusted gross income reduced by various deductions for certain expenses and exemption amounts based on family size. Adjusted gross income is defined as gross income, as adjusted by increases and decreases for

various items. Gross income is defined as income from all sources regardless of form unless excluded by law. An exclusion from gross income removes items from consideration in determining gross income--the initial measure of income. In many cases, amounts excluded from gross income are never reported for tax purposes. Since the federal income tax rate increases with increases in taxable income, the economic value of an exclusion from gross income is greater for taxpayers who receive greater amounts of income subject to tax and subject to higher rates of tax. The following exclusions from gross income are available to members of the Armed Forces.

## Military Disability (IRC §104)

Subsection (a)(4) of Section 104 of the Internal Revenue Code, IRC §104(a)(4), 26 U.S.C. §104(a)(4), excludes from gross income "amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the Armed Forces of any country or in the Coast and Geodetic Survey [now the National Oceanic and Atmospheric Administration] or the Public Health Service." This provision provides the statutory basis to exclude disability retired pay and disability separation pay from gross income subject to federal income tax. Section 104 was amended in 1975 to limit the exclusion to compensation for "combat-related injuries." Combat-related injuries are injuries or sickness incurred as a direct result of armed conflict, while engaged in extra hazardous service, or under conditions simulating war, or caused by an instrumentality of war. The limitation enacted in 1975 pertains only to individuals who became members of the Armed Forces after September 25, 1975.

## Compensation for Service in a Combat Zone (IRC §112)

Section 112 of the Internal Revenue Code, IRC §112, 26 U.S.C. §112, excludes from gross income compensation received for active service as an enlisted member of the Armed Forces of the United States for any month during any part of which such member served in a combat zone or was hospitalized as a results of wounds, disease, or injury incurred while serving in a combat zone. In 1996 the amount of the monthly exclusion for commissioned officers was increased from $500 per month to the "the maximum enlisted amount." For 2004, the maximum exclusion for a commissioned officer is $6,315.90,

consisting of $6090.90 per month in pay, plus $225 per month of hostile fire or imminent danger pay.

A combat zone is an area designated by the President of United States by executive order as an area in which Armed Forces of the United States are or have engaged in combat. Service is performed in a combat zone only if performed on or after the date designated by the President by executive order as the date of commencing of combatant activities and before the date designated by the President by executive order as the date of termination of combatant activities in the combat zone. Compensation excludable under Section 112 does not include pensions or retirement pay.

By U.S. Treasury regulation (Treas. Reg. §1.112), members entitled to hostile fire/imminent danger pay under Section 310 of Title 37, United States Code, who are serving in support of members of the Armed Forces in a combat zone are treated as if they were serving in a combat zone. In addition, members of the Armed Forces who are present in a combat zone other than as a result of presence pursuant to orders are not considered to be performing active service in a combat zone and, as a result, are not entitled to the benefits of Section 112 or other provisions of the Internal Revenue Code requiring active service in a combat zone.

The exclusion from gross income for members of the Armed Forces serving in a combat zone was first authorized for the Korean war. That authorization ended January 31, 1955. Since then there have been four combat zones. Authorization for Vietnam ended June 30, 1996. A third zone includes certain areas in the Persian Gulf region (*i.e.*, Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, the United Arab Emirates, and certain surrounding waters), which were designated in 1991 and maintained their status in 2004. Operation Iraqi Freedom, which began in 2003, was included under the ongoing provision for this region. On March 24, 1999, Executive Order 13119 designated Kosovo, including Albania, the Adriatic Sea region, the Ionian Sea region north of the 39$^{th}$ parallel, and Serbia and Montenegro, as a combat zone. Afghanistan was designated as a combat zone September 9, 2001.

In addition, special legislation has been enacted to provide combat zone-like tax treatment for crew members of the USS Pueblo held by the government of North Korea (Act of April 24, 1970, Public Law 91-235, 84 Stat. 200 (1970)) and for members of the uniformed services, civil service, citizens, and resident aliens held hostage in the United States embassy in Teheran, Iran (Hostage Relief Act of 1980, Public Law 96-449, 94 Stat. 1967 (1980)). The Act of March 20, 1996, Public Law 104-117, 110 Stat. 827 (1996), and the Act of April 19, 1999, Public Law 106-21 also authorized combat-zone-like tax treatment for members of the Armed Forces serving in a "qualified hazardous duty area," defined to include Bosnia and Herzegovina, Croatia, and Macedonia, Serbia and Montenegro, and Albania, during the period in which a member of the Armed Forces is entitled to special pay for duty subject to hostile fire or imminent danger under 37 U.S.C. §310 for service in those areas.

Additional measures have been enacted to provide benefits for members of the Armed Forces and civilian personnel who were determined to be missing under 37 U.S.C. §551(2) or 5 U.S.C. §5561 during the Vietnam conflict as a result of such conflict. These benefits included exclusion from gross income for compensation received for active service as a member of the Armed Forces or as a civilian employee for any month during any part of which such member or employee was in a missing status. (Because the entire compensation of an enlisted member serving in a combat zone is excluded from gross income, this additional exclusion for members and civilian employees in a missing status had the effect of making the tax treatment of commissioned officers and civilian employees in that status equal to the tax treatment of enlisted members of the Armed Forces in a combat zone.)

**Certain Reductions in Uniformed Services Retirement Pay (IRC §§122 and 72(n))**

Members and former members of the uniformed services entitled to retired pay are eligible to enroll in the Survivor Benefit Plan (SBP) under Chapter 73 of Title 10, United States Code. Under the SBP, the retired pay of participating retirees is reduced to provide an annuity to a surviving spouse or other eligible beneficiary. Under Section 122 of the Internal Revenue Code, IRC §122, 26 U.S.C. §122, gross income of a member or

former member of the uniformed services does not include the amount of any reduction in military retired pay resulting from participation in the Survivor Benefit Plan (SBP). In addition, under Section 72(n) of the Internal Revenue Code, IRC §72(n), 26 U.S.C. §72(n), annuities received under the Retired Servicemen's Family Protection Plan (RSFPP) or SBP after December 31, 1965, were excluded from gross income until the amount excluded equals reductions in military retired pay that were subjected to federal income tax and, as a result, considered consideration for the annuity provided by RSFPP or SBP. Section 122 and subsection (n) of Section 72 were enacted to treat SBP for members of the uniformed services in a manner comparable to joint and survivor annuities under qualified pension plans available to civilian employees.

## Military Benefits (IRC §134)

Although enacted in 1986, Section 134 of the Internal Revenue Code, IRC §134, 26 U.S.C. §134, does not establish any new exclusion for military benefits. It was enacted to preserve the tax-exempt treatment of military benefits that were traditionally regarded as excluded from gross income. The provision became necessary because the Tax Reform Act of 1984 included provisions clarifying the taxation of fringe benefits. The exclusion for "fringe benefits" under Section 132 of the Internal Revenue Code was not applicable to exclude many benefits provided to members of the uniformed services yet the legislative history regarding the tax treatment of fringe benefits indicated no intention to alter the non-taxability of benefits provided to members of the Armed Forces. However, the absence of an explicit statutory basis to exclude military benefits from gross income raised questions regarding the continuing tax-free treatment of in-kind benefits provided to members of the Armed Forces. Section 134 was enacted to eliminate ambiguity and to provide a statutory basis for the exclusion of many military benefits that were and would continue to be excluded from gross income. These traditional exclusions for military benefits were based on regulation, administrative ruling, or practice.

Benefits excluded under Section 134 include several important military cash allowances payable under provisions of Title 37, United States Code, that were excluded on the basis of a Treasury regulation (Treas. Reg. §1.62-2(b)) adopted after a 1925

decision of the United States Court of Claims, Jones v. United States, 60 Ct.Cl. 552 (1925). These allowances include the Basic Allowance for Subsistence (BAS), payable under 37 U.S.C. §402 and; the Basic Allowance for Housing (BAH), payable under 37 U.S.C. §403. Other allowances payable in cash were excluded on the basis of a ruling of the Internal Revenue Service. These benefits include dislocation allowance (DLA), payable under 37 U.S.C. §407; departure (evacuation) allowances, payable under 37 U.S.C. §405a; family separation allowances (FSA), payable under 37 U.S.C. §427; and various allowances payable to members stationed overseas, payable under 37 U.S.C. §405, *i.e.*, overseas housing allowance (OHA), cost of living allowance (COLA), and temporary lodging allowance (TLA).[1]

In addition to benefits payable in cash, Section 134 also excludes "any in-kind benefit (other than personal use of a vehicle) which is received by any member or former member of the uniformed services or any dependent of such member by reason of such member's status or service as a member which was excludable from gross income under any provision of law, regulation, or administrative practice which was in effect on September 9, 1986." This includes various in-kind benefits such as space available travel on military aircraft provided under regulations of the Department of Defense, legal assistance provided to members of the Armed Forces under the authority of Title 10, United States Code, shopping privileges at military commissaries, as authorized by Sections 2484 and 2685 of Title 10, United States Code, 10 U.S.C. §§2484 and 2685, and shopping at military exchanges, as authorized by Congressional approved regulations of the Department of Defense. The Military Family Tax Relief Act, Public Law 108-121, clarified that section 134 applies to dependent car assistance programs provided to members of the uniformed services.

**Veterans' Benefits (IRC §137, 38 U.S.C. §3101)**

Section 137 of the Internal Revenue Code, IRC §137, 26 U.S.C. §137, provides cross reference to Section 3101 of Title 38, United States Code, 38 U.S.C. §3101, for

[1] See footnote 16 to Chapter II.B.4. hereof, "Federal Tax Advantage," for a statement of congressional purpose underlying adoption of Section 134 of the Internal Revenue Code.

exemption from federal taxation for benefits under laws administered by the Veterans' Administration (Department of Veterans' Affairs). Eligibility for benefits under laws administered by the Department of Veterans' Affairs requires service as a member of the Armed Forces of the United States. Accordingly, the exemption from federal taxation for veterans' benefits is included within this listing of federal tax benefits provided to members of the Armed Forces. Many benefits administered by the Department of Veterans' Affairs are related to disabilities incurred or aggravated during a period of service as a member of the Armed Forces. However, the Department of Veterans' Affairs also administers the Veterans' Educational Assistance Program under which veterans and current members of the Armed Forces may obtain financial assistance to pursue higher education goals. Assistance under these programs is excluded from gross income.

## Moving and Storage Expenses (IRC §217(g))

Section 82 of the Internal Revenue Code, IRC §82, 26 U.S.C. §82, specifically includes in gross income (as compensation for services) any amount received by an individual as payment or reimbursement for the expenses of moving from one residence to another residence in connection with employment. Under Section 217, certain expenses are deductible in arriving at taxable income.

Subsection 217(g) of the Internal Revenue Code, IRC §217(g), 26 U.S.C. §217(g), provides a different rule for members of the Armed Forces. Under this subsection, any moving and storage expenses which are furnished in-kind (or for which reimbursement or an allowance is provided, but only to the extent of the expenses paid or incurred) to a member of the Armed Forces on active duty who moves pursuant to a military order and incident to a permanent change of station are excluded from gross income. The exclusion also extends to moving and storage in-kind and moving reimbursements and allowances provided to a member's spouse and dependents in connection with the member's permanent change of station.

## Exemption From Income Tax

### Income Tax Exemption for Certain Deceased Members of the Armed Forces (IRC §692)

Under Section 692 of the Internal Revenue Code, IRC §692, 26 U.S.C. §692, the federal income tax does not apply for any taxable year in which a member of the Armed Forces dies while in active service in a combat zone (as determined under Section 112, *supra*) or as a result of wounds, injury, or disease incurred while serving in a combat zone. This exemption extends to income tax on all sources of taxable income, not just compensation for service as a member of the Armed Forces. The exemption is also applicable to members of the Armed Forces who die as a result of injuries incurred as the result of a terrorist or military action. Unlike most other military tax benefits, the exemption from income tax for death as a result of wounds or injuries incurred in a terrorist or military action is also applicable to civilian employees of the United States who die in the same circumstances. The exemption applies to the year death occurs and every prior year served in a combat zone or one prior year in the case of death resulting from terrorist or military action.

## Exemption From Income Tax Limitations

Various provisions of subtitle A of Title 26 related to the imposition of the federal income tax impose various requirements and restrictions on the availability of certain provisions. In many cases, members of the Armed Forces are exempt from these limitations or different, less demanding or more generous limitations are prescribed for members of the Armed Forces.

### Earned Income Credit (IRC §32)

Under Section 32 of the Internal Revenue Code, IRC §32, 26 U.S.C. §32, an eligible individual is entitled to a refundable credit against federal income tax in an amount of up to $4,204 (in tax year 2003) for families with more than one child. If the amount of the credit exceeds tax liability, the excess is paid to the taxpayer in the form a

refund. The amount of the credit is based on taxable earned income. To be eligible, an individual's principal place of abode must be in the United States.

Under paragraph (4) of subsection (c) of Section 32, a member of the Armed Forces of the United States stationed outside the United States while serving on extended active duty shall be treated as having a principal place of abode in the United States for purposes of the earned income credit. As a result, a member of the Armed Forces of the United States is exempt from the requirement to have his principal place of abode in the United States.

Section 3507 of the Internal Revenue Code, IRC §3507, 26 U.S.C. §3507, requires employers to make advance payment of the earned income credit to employees who have filed an eligibility certificate with the employer. The amount of the advanced payment of the earned income credit is based on employee's wages for a payroll period. For members of the Armed Forces, the earned income advance amount is determined by taking into account the member's earned income as determined under Section 32 rather than wages under 3402 of the Internal Revenue Code.

## Moving Expenses Deductions (IRC §217)

Section 82 of the Internal Revenue Code, IRC §82, 26 U.S.C. §82, mandates that reimbursements and allowances paid to an employee to offset expenses of moving from one residence to another residence in connection with employment are included in gross income, and Section 217 of the Internal Revenue Code, IRC §217, 26 U.S.C. §217, authorizes a deduction for certain expenses paid or incurred in connection with certain moves. As explained above, subsection (g) of Section 217 of the Internal Revenue Code provides an exclusion from gross income for moving and storage benefits and allowances provided to members of the Armed Forces and their dependents in connection with a permanent change of station.

To be deductible, Section 217 requires that the taxpayer's new principal place of work must be at least 50 miles farther from his former residence than was his former residence. In addition, the taxpayer must be a full-time employee in the same general location of the new principal place of work for at least 39 weeks. Under subsection (g), members of the Armed Forces who move in connection with a permanent change of station are exempt from the 50-mile and 39-week rules.

## IRA Deductions (IRC §219)

Under Section 219 of the Internal Revenue Code, IRC §219, 26 U.S.C. §219, in 2004 every individual receiving compensation for services included in gross income subject to tax could make a contribution of up to $3,000 per year to an Individual Retirement Account (IRA). The maximum annual contribution is scheduled to increase to $4,000 for the period 2005-2007 and to $5,000 in 2008. If an individual is an active participant in an employer-provided retirement system, including a plan established by the United States for the benefit of its employees, the amount of a contribution to an IRA that may be deducted is limited if the individual's adjusted gross income exceeds certain amounts. Between 2002 and 2005, the maximum amount increased from $54,000 to $80,000 for members filing jointly and from $34,000 to $50,000 for members filing singly. Partial deductions are available to members with employer-provided retirement plans if those members' income falls within a specified range. Between 2002 and 2005 the range increased from $54,000-$64,000 to $80,000-$100,000 for members filing jointly and from $34,000-$44,000 to $50,000-$60,000 for members filing singly.

Active participation does not require any vesting of a pension benefit. Active participation requires that an employee earn something toward an employer-provided retirement benefit. An active participant in an employer-provided retirement system must be earning something toward a potential retirement benefit, such as accruing years of service for purposes of calculating a retirement benefit.

Satisfactory completion of 20 years of active service in the reserve components of the Armed Forces can provide the basis for reserve component retirement benefits.

Entitlement to reserve component retired pay for non regular service requires completion of 20 years of qualifying service as an active member of the reserves. Payment begins at age 60, pursuant to Section 12739 of Title 10, United States Code. Consequently, a member of the reserves who is performing active service as a member (usually by monthly weekend drills and two weeks of annual active duty for training) is earning something toward an government-provided retirement system and, as a result, would be considered an active participant in a retirement system established by the United States.

Pursuant to subsection (g)(6) of Section 219 of the Internal Revenue Code, a member of the reserve component of the Armed Forces of the United States is exempt from this limitation. An active member of a reserve component of the Armed Forces of the United States is not treated as an active participant in a retirement system established by the United States as a result of service as a member of the reserves for purposes of deducting a contribution to an IRA unless the member serves on active duty for a period in excess of 90 days during a year. Periods of active duty for training are disregarded.

## Expenses Relating to Exempt Income (IRC §265)

Under Section 163 of the Internal Revenue Code, IRC §163, 26 U.S.C. §163, interest on indebtedness to acquire a residence and interest on certain home equity indebtedness are deductible as an itemized deduction. Under Section 164 of the Internal Revenue Code, IRC §164, 26 U.S.C. §164, state and local real property taxes are also deductible as an itemized deduction.

Members of the Armed Forces on active duty who are not provided with housing for themselves and their dependents are entitled to housing allowances payable in cash. These cash allowances are excluded from gross income (see Military Benefits, *supra*.) Section 265 of the Internal Revenue Code, IRC §265, 26 U.S.C. §265, limits the deduction of otherwise allowable deductions to the extent the deduction is considered allocable to income exempt from federal income tax. Since cash housing allowances provided to a member of the Armed Forces are excluded from gross income, they could

be considered income exempt from federal income tax for purposes of Section 265. If mortgage interest and real property taxes on a personal residence were considered allocable to exempt income in the form of tax-free housing allowances, members would not be permitted to deduct these normal expenses of home ownership. Application of the provisions of Section 265 to a member's deduction for mortgage interest and real property taxes would decrease or eliminate the benefits of these deductions and increase a member's federal and, in most cases, state tax liability.

To prevent application of Section 265 to members of the Armed Forces, subsection (a)(5) of Section 265 of the Internal Revenue Code provides that Section 265 shall not apply to deny deductions for mortgage interest or real property taxes on the home of a military taxpayer as a result of receiving a military housing allowance.

**Exclusion of Gain on Sale of Principal Residence (IRC §1034)**

Prior to May 1997, section 1034 applied to sale of a principal residence and allowed for a deferral of capital gain tax on such a sale if the taxpayer met certain requirements in purchasing a replacement residence. Internal Revenue Code Section 121 replaced this provision of the law beginning in May 1997.

Under section 121, taxpayers can exclude up to $250,000 of gain on a sale of a principal residence (or $500,000 of gain for married taxpayers filing jointly) as long as the taxpayer owned and occupied the residence as a principal residence for two of the five years prior to the date of sale. Because of frequent relocations, military members often had difficulty meeting this requirement. For this reason, the Military Family Tax Relief Act, Public Law 108-121, 177 Stat. 1336 (2003), provided an extension of the capital gain exclusion on home sales. Section 121 of Title 26 of the U.S.Code states that a military member may exclude up to $250,000, or $500,000 for married couples filing jointly, of the profit gained from sale of a residence in which the member resided for at least two of the five years preceding the sale. This 2003 amendment of the tax law effectively extends the five-year period for up to ten years by excluding from the five-year computation time in which a member or spouse was away from the residence on

extended military duty. Extended military duty includes a period of duty longer than 90 days in a location more than 50 miles from the residence or under orders compelling residence in government-furnished quarters.

# Other Taxes

## Estate Taxes

Subtitle B of Title 26, United States Code

### Exemption From Additional Estate Tax (IRC §2201)

Subtitle B of Title 26, United States Code (Internal Revenue Code Section 2001 *et seq*., 26 U.S.C. §2001 *et seq*.) entitled Estate and Gift Taxes, imposes federal taxes on estates and gifts. Chapter 11 (IRC § 2001 *et seq*.) imposes a federal tax on estates. Pursuant to Section 2011(d) of the Internal Revenue Code, the federal estate tax consists of the basic estate tax and the additional estate tax. The basic estate tax is 125 percent of the amount determined to be the maximum credit for state death taxes. The additional estate tax is the difference between the federal estate tax imposed by Section 2001 or 2101 and the basic estate tax. Under Section 2010, every decedent is entitled to an estate tax credit that has the effect of establishing a maximum tax-free transfer of a taxable estate. Between 2002 and 2004, the maximum tax-free estate value increased from $1,000,000 to $1,500,000; increases scheduled for the ensuing years would bring the maximum to $2,000,000 in 2006 and $3,500,000 in 2009.

Pursuant to Section 2201 of the Internal Revenue Code, the additional estate tax as defined above shall not apply to the transfer of the taxable estate of a citizen or resident of the United States dying while in active service as a member of the armed forces of the United States if the decedent was killed in action while serving in a combat zone, as determined under Section 112, *supra*, or died as a result of wounds, disease, or injury suffered while serving in a combat zone, while in the line of duty, by reason of a hazard to which he was subjected as an incident to such service. The imposition of state death taxes and the credit against federal estate taxes for state death taxes paid increases the taxable estate that can be transferred free of federal estate taxes.

## Employment Taxes

Subtitle B of Title 26, United States Code

### Exemption From FICA Taxes (IRC §3121(i)(2))

To finance the federal system of old age, survivor, disability, and hospital insurance, (known as Social Security) Section 3101 of the Internal Revenue Code, IRC §3101, 26 U.S.C. §3101, imposes an excise tax on the wages of employees. This tax is known as the Federal Insurance Contributions Act (or FICA) tax. The first dollar of covered wages is subject to tax. The old age, survivor, and disability insurance tax rate is 6.2 percent and is applicable to the first $87,900 of wages (for 2004). The hospital insurance tax rate is 1.45 percent, and all wages paid are subject to this tax.

In general, “wages” means all remuneration from employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain specified exemptions. The Servicemen's and Veteran's Survivor Benefits Act, 70 Stat. 857, ch. 837 [Public Law 881, 84th Congress] (1956), made certain compensation for service as a member of the uniformed services subject to FICA tax. However, pursuant to paragraph (2) of subsection (i) of Section 3121, the term "wages" shall only include basic pay, as described in Chapter 3 and Section 1009 of Title 37, United States Code, 37 U.S.C. §1009. The term "wages" as applied to members of the uniformed services also includes compensation received for service as a member of the reserves.

As explained previously, a member of the uniformed services may be entitled to many special or incentive pays such as hazardous duty incentive pay, aviation career incentive pay, submarine duty incentive pay, diving duty pay, *etc*. Although each of these special and incentive pays is included in gross income subject to federal income tax, none is included in wages subject to FICA taxes.

### Exemption From Withholding (IRC §3401)

In general, every employer making payment of wages is required to deduct and withhold federal income tax on wages paid to employees in accordance with tables and

schedules based on marital status, dependents, and additional allowances for excess itemized deductions. Pursuant to Section 3401(a)(1) of the Internal Revenue Code, IRC §3401(a), 26 U.S.C. §3401(a), the term "wages" for purposes of withholding income tax does not include remuneration paid for active service performed in a month for which a taxpayer is entitled to the exclusion from gross inclusion for service in a combat zone. This exclusion from wages subject to withholding for remuneration paid for a month during which a member served in a combat zone or was hospitalized as a result of such service immediately increases the monthly take-home of every member of the Armed Forces entitled to the exclusion of Section 112 for combat zone service.

This exclusion from wages subject to withholding also presented problems for commissioned officers. Prior to a 1996 amendment, Section 3401(a)(1) provided an exclusion from withholding for any member of the Armed Forces entitled to an exclusion from gross income for service in a combat zone without regard to the amount excluded from gross income. The amendment limited that entitlement with the phrase, “to the extent remuneration for such service is excludable from gross income under this section” [section 112]. As explained above, the monthly exclusion for commissioned officers is limited. Prior to the 1996 amendment that increased the monthly exclusion for commissioned officers to the highest level of enlisted pay plus imminent danger pay if paid that month, the exclusion was limited to $500. If compensation for a commissioned officer exceeded the amount excluded from gross income, an unlimited exemption from withholding created an "under-withheld" situation in which the amount withheld would be less than the tax liability. Financial difficulties could arise if the officer did not authorize additional income tax withholding or otherwise did not set aside amounts to satisfy this tax liability. This dilemma was remedied when subsection 3401(a)(1) was amended to limit~~ed~~ the exclusion from withholding to the amount excluded from gross income under Section 112.

**Excise Taxes**

Subtitle D of Title 26, United States Code (Internal Revenue Code Section 4001 *et seq*.), Chapters 31 through 47, impose a number of different federal excise taxes

including retail excise taxes (Chapter 31), manufacturing excise taxes (Chapter 32), and facilities and services excise taxes (Chapter 33).

## Exemption From Toll Telephone Excise Tax (IRC §4253)

Subchapter B of Chapter 33 (IRC §4251 et seq., 26 U.S.C. §4251 et seq.) imposes a federal excise tax on certain communication services, including local telephone service, toll telephone service, and teletypewriter exchange service. Pursuant to Section 4251, this federal excise tax is equal to 3 percent of amounts paid for communication services subject to tax.

Section 4253 establishes several exemptions from the communication excise tax. Under subsection (d), toll telephone service that originates within a combat zone from a member of the Armed Forces of the United States performing service within such zone, as determined under Section 112, *supra*, is exempt from the federal excise tax on such toll telephone service.

## Procedure and Administration Exemptions

Subtitle F, Title 26, United States Code (Internal Revenue Code Sections 6001 *et seq*., 26 U.S.C. §6001 *et seq*.) establishes procedure and administrative rules for various federal tax purposes. These matters pertain to information reporting, returns, time and place of paying tax, collections, etc. Several provisions provide special rules for members of the Armed Forces.

## Joint Returns/Surviving Spouse for Missing Status (IRC §§2(a)(3) and 6013(f)(3))

In general, Section 6013 of the Internal Revenue Code, IRC §6013, 26 U.S.C. §6013, authorizes a husband and wife to make a single joint return even though one had neither gross income nor deductions. Subsection (f) of Section 6013 permits the spouse of an individual in a missing status as a result of service in a combat zone, as determined under Section 112, s*upra* (including a member of a uniformed service in a missing status entitled to pay and allowances under Section 552 of Title 37, United States Code, 37 U.S.C. §552), to elect to file a joint return. This election may be revoked by either spouse

on or before the due date (including extensions) for such taxable year. See Postponements, *infra*.

Under Section 1 of the Internal Revenue Code, IRC §1, 26 U.S.C. §1, the tax table for a surviving spouse is the same as the tax table for married individuals filing joint returns. Section 2 of the Internal Revenue Code, IRC §2, 26 U.S.C. §2, defines surviving spouse as a taxpayer whose spouse died during either of his two taxable years immediately preceding the taxable year and who maintains as his home a household which is the principal place of abode of a dependent son, stepson, daughter, or stepdaughter of the taxpayer. If a deceased spouse was in a missing status as a result of service in a combat zone, then, for purposes of eligibility as a surviving spouse, the date of death shall be established as the earlier of: (A) the date of determination of death, or (B) the date two years after the date of termination of combatant activities in that combat zone.-

**Exemption From Reporting**

Section 6051 of the Internal Revenue Code, IRC §6051, 26 U.S.C. §6051, requires every employer who is required to deduct and withhold taxes under 3402 of the Internal Revenue Code to furnish to each employee a written statement showing various items, including the total amount of wages as defined in Section 3401(a) (related to income tax withholding), IRC §3401(a), 26 U.S.C. §3401(a), and the total amount of wages as defined in 3121(a) (related to FICA taxes), IRC §3121(a), 26 U.S.C. §3121(a). This written statement is the familiar W2 form received by every employee no later than January 31 for the preceding year.

For members of the uniformed services, the amounts to be shown as FICA wages are modified to reflect wages, as computed under Section 3121(i)(2), which limits FICA wages to basic pay. In addition, in lieu of wages as defined in Section 3401, the statements furnished to members of the Armed Forces are required to show as wages paid the amount of such compensation that is not excluded from gross income under Chapter 1 of the Internal Revenue Code (whether or not such compensation constitutes wages as defined in Section 3401(a)). This has the effect of making the Department of Defense the

administrator of military tax exclusions under Section 104 (related to compensation for disability) and Section 112 (related to compensation for service in a combat zone). Statements provided to members of the Armed Forces must also included such member's earned income as determined for purposes of Section 32 (relating to earned income credit).

## Exemption From Levy

If any person liable to pay any tax neglects or refuses to pay the tax after notice and demand, Section 6331 of the Internal Revenue Code, IRC §6331, 26 U.S.C. §6331, authorizes the Secretary of the Treasury Department to collect such tax by levy upon all property and rights to property belonging to such person. Section 6334 of the Internal Revenue Code provides that certain property is exempt from levy including certain amounts paid to members of the Armed Forces and annuities based on retired pay.

In particular, paragraph (6) of subsection (a) of Section 6334, IRC §6334, 26 U.S.C. §6334, provides exemption for two payments received as a result of service as a member of the Armed Forces. The first enumerated exemption from levy is for the "special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562)." The second exemption from levy is for "annuities based on retired or retainer pay under Chapter 73 of Title 10, United States Code." These annuities are the annuities payable to surviving spouses and other eligible beneficiaries of a deceased member of the uniformed services under the Survivor Benefit Plan (SBP) of the Retired Servicemen's Family Protection Plan (RSFPP).

## Postponements Because of Combat Zone Service (IRC §7508)

Federal tax law requires certain acts to be performed within specified time frames. For example, Section 6072 of the Internal Revenue Code, IRC §6072, 26 U.S.C. §6072, requires individual income tax returns to be filed on or before April 15th of the year following the close of the calendar year. Under Section 6151 of the Internal Revenue Code tax is to be paid at the time and place fixed for filing a tax return.

Section 7508 of the Internal Revenue Code, IRC §7508, 26 U.S.C. §7508, provides a postponement in the time when certain acts must be performed for a member of the Armed Forces of the United States serving in a combat zone as designated by the President by executive order under Section 112 of the Internal Revenue Code, *supra*, an individual serving in support of such Armed Forces in a combat zone or in support, or an individual serving in a contingency operation outside the United States. The postponement continues for the period of service in the combat zone, any periods of hospitalization as a result of injury received while serving in a combat zone, 180 days thereafter, plus whatever time the individual had remaining in the normal schedule for such acts on the day when he entered into combat or contingency service.

The postponement extends to: a) filing any return for income tax, estate tax, or gift tax; b) payment of any income, estate, or gift tax, or any other liability to the United States related to such taxes; c) filing a petition with the Tax Court for redetermination of a deficiency, or a petition for judicial review of a decision of the Tax Court; d) allowance of a credit or refund of any tax; e) filing a claim for credit or refund of any tax; f) bringing suit upon a claim for refund; g) assessment of any tax; h) giving or making notice or demand for the payment of any tax; i) collection by levy or otherwise; j) bringing suit by the United States in respect of any liability for tax; and k) any other act required or permitted under the internal revenue laws as specified in regulations. The postponement period is also disregarded in determining the amount of any credit or refund but is considered for purposes of determining the amount of interest on an overpayment.

Individuals eligible for postponement include members of the Armed Forces and other individuals serving in support of the Armed Forces, such as Red Cross workers, civilian employees of the Federal Government, and accredited correspondents. In addition, under subsection (c) of Section 7508, the provisions of Section 7508 apply to the spouse of any individual entitled to postponement under Section 7508.

As a result of Public Law 102-2, 105 Stat. 5 (1991), enacted shortly after the designation of the Persian Gulf combat zone, postponement under Section 7508 is also applicable to individuals performing Desert Shield services. Under subsection 7508(f) of the Internal Revenue Code, Desert Shield services are defined as service in the Armed Forces of the United States or in support of the Armed Forces in the area designated by the President by executive order as the "Persian Gulf Desert Shield area" during the period beginning on August 2, 1990, and ending on the date when any part of the designated area was designated as a combat zone pursuant to Section 112. Executive Order 12750, 56 Fed. Reg. 6785 (February 14, 1991) designated the Desert Shield area as the Persian Gulf, the Red Seas, the Gulf of Oman, a portion of the Arabian Sea north of 10 degrees north latitude and west of 68 degrees east longitude, the Gulf of Aden, and the land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates. Executive Order 12744, 56 Fed. Reg. 2663 (January 21, 1991) designated as a combat zone an area identical to the Desert Shield area. Because Executive Order 12744 designated January 17, 1991, as the date of commencement of combatant activities in the Persian Gulf combat zone, eligibility for postponement as a result of service in the Desert Shield area terminated as of that date, and eligibility for postponement as a result of service in a combat zone commenced on that date.

As indicated above, the Act of March 20, 1996, Public Law 104-117, 110 Stat. 827 (1996), provided that service in the Armed Forces of the United States or in support thereof in the area designated as a "qualified hazardous duty area" is to be treated as service in a combat zone for purposes of Section 112. A "qualified hazardous duty area" includes the Adriatic Sea region, Albania, Bosnia and Herzegovina, Croatia, the Ionian Sea region north of the 39$^{th}$ parallel, Macedonia, and Serbia and Montenegro, if members of the Armed Forces serving in that area are eligible for hostile fire/imminent danger pay under Section 310 of Title 37, United States Code. Combat zone-like treatment includes eligibility for postponement pursuant to Section 7508 of the Internal Revenue Code.

In addition, the Act of March 20, 1996, Public Law 104-117, 110 Stat. 827 (1996) and Public Law 106-21 (1999), also provided that members of the Armed Forces serving

in Operation Joint Endeavor outside the United States while deployed away from their permanent duty station are also eligible for postponement under Section 7508. As a result, Section 7508 postponement is available to members serving in locations such as Hungary and Italy, if such members are deployed away from their permanent duty stations and are serving in support of Operation Joint Endeavor.

## Conclusion

As indicated by the preceding, the Internal Revenue Code is replete with many explicit statutory provisions that provide special treatment for members of the Armed Forces. Special tax measures for members of the Armed Forces are an important part of federal tax policy. The explanations above highlight provisions of the Internal Revenue Code in effect as of January 1, 2004. These various provisions are the product of numerous revisions enacted throughout the duration of the twentieth century to respond to changing circumstances. The parameters and contours of these provisions will undoubtedly undergo further change to respond to the challenges in the future related to the taxation of members of the Armed Forces of the United States.

**Appendix VI**

## Impact of State Income Taxes on Military Compensation

**Introduction**: Generally speaking, members of the Armed Forces are subject to both state and federal income taxation on their military compensation. The disposable income of a member of the Armed Forces--what the member has to spend after paying all income tax liabilities, state and federal, associated with his or her military compensation--depends on the amount, or level, of the member's state and federal income tax liability, among other things. Generally speaking, the rules concerning federal income taxation of military compensation are the same for all members of the Armed Forces--especially for those who are similarly situated with respect to pay grade, years of service, special and incentive pay entitlements, and family situation. Generally speaking, the rules concerning state income taxation of military compensation are not the same for all members of the Armed Forces--even for those who are similarly situated with respect to pay grade, years of service, special and incentive pay entitlements, and family situation. To the extent that the military personnel and compensation systems are intended to provide incentives to induce men and women to engage in military careers, those incentives may be affected by disparities in the income tax laws of the various states and localities throughout the United States. This appendix is intended to highlight the major tax policies of the various states insofar as those tax policies may have a differential impact on similarly situated personnel.[1] In this same connection, and because of the intimate relationship between the state income tax liabilities of members of the Armed Forces and the Servicemembers' Civil Relief Act, this appendix also highlights the effects of the Servicemembers' Civil Relief Act on the state income tax liabilities of members of the Armed Forces and their spouses. The latter subject is discussed in Section I, below, and the former, in Section II. Section I considers two subjects: the Servicemembers' Civil Relief Act and state income taxation of military compensation, and the Servicemembers' Civil Relief Act and state income taxation of non-military compensation. Section II provides a brief overview of

[1] A discussion of the differences between tax rates applicable to military compensation in different states is beyond the scope of the present appendix.

state income taxation of military compensation, in alphabetical order by state, including the District of Columbia.

## I. The Servicemembers' Civil Relief Act.

### * The Servicemembers' Civil Relief Act and State Income Taxation of Military Compensation.

Every member of the Armed Forces is subject to federal income taxation under the Internal Revenue Code, classified to Title 26, United States Code. While some members are entitled to exclude from their income that would otherwise be subject to taxation under the Internal Revenue Code all or a portion of that income because of particular conditions of service--for instance, Section 112 of the Internal Revenue Code, 26 U.S.C. §112, specifically provides that "gross income" is not to include a specified portion of the income a member of the Armed Forces "received for active service ... for any month during any part of which [the] member ... served in a combat zone"--the federal income tax laws are generally applicable to all members of the Armed Forces and the general rule is that, unless a specific exception applies, all compensation received by a member of an armed force on account of such service is subject to taxation under the Internal Revenue Code.[2]

In addition to being subject to income taxation under the federal Internal Revenue Code, members of the Armed Forces are also subject to income taxation by state and local taxing authorities.[3] Persons subject to the tax laws of a particular state are persons

[2] As previously indicated, see Chapter II.B.4., above, "Federal Income Tax Advantage," the amounts received by members of the uniformed services as basic allowance for housing and basic allowance for subsistence are not subject to taxation under the Internal Revenue Code. The exclusion of such items from "gross income" derives from a decision rendered by the United States Court of Claims in 1925 in a case titled Jones v. United States, 60 Ct.Cl. 552 (1925). In that case, the Court of Claims determined that neither the provision of government quarters nor any allowance provided in commutation thereof was "compensatory" in nature and on that account should not be included in income subject to taxation. While the Jones case dealt only with quarters, the rationale of the decision has been extended to various other allowances, including basic allowance for subsistence as well as variable and overseas station housing allowances. See Chapter II.B.4., "Federal Income Tax Advantage," generally, above.

[3] Although local income tax laws have the potential for having the same kinds of effects on the incentives created by the military personnel and compensation systems as state tax laws do, a discussion of local tax laws is beyond the scope of this appendix. Accordingly, although this appendix considers only state income tax laws, the reader should keep in mind that localities' tax laws may have similar effects.

who are, in some sense or other, "subject to the jurisdiction" of that state, and if a member of a uniformed service is in fact subject to the income tax jurisdiction of a particular state, the member is treated no differently than any person would be who is similarly situated with respect to that state for the purpose of determining state tax liabilities.[4] As a general matter, persons subject to the jurisdiction of a particular state for the purposes of the income tax laws of that state are persons who are "residents" of that state or who otherwise derive income from a source or sources within that state. From the point of view of the taxing authorities of the states, there are two categories of persons who may be treated as "residents" for purposes of determining income tax jurisdiction. First, a state may assert "tax jurisdiction" over persons who, while not physically present in that state, have a relationship with the state that amounts to "legal residence." Included within this category of persons are individuals who, even though they do not maintain a place of permanent abode within the state, vote within the state, have automobiles licensed within the state, and who regard themselves, for whatever reason or reasons, as residents of the state. Typically, persons who at one time were physically present in a state, who were on that account treated as residents of the state, who have left the state on a temporary basis, and who have an intention sometime to return to the state to resume permanent physical residence are regarded as legal residents of the state. Second, and conversely, a state may assert tax jurisdiction over persons who are physically present in the state even if they do not intend to remain there permanently.

Under the general principles concerning potential liability for state income taxes briefly set out above, a person who is a legal resident of one state and a physical resident of another state is potentially subject to the income tax jurisdiction of both states. For most purposes, however, legal and physical residency go hand in hand, and it may safely be stated that the vast majority of people wish to be regarded as legal residents of the

[4] This is not to suggest that the tax liabilities of a member of the uniformed services and a non-member both of whom have the same level of "income" will be exactly the same. Some states have excluded from income taxation certain categories of military compensation, and others have excluded some initial amount of military compensation from the "income" that would otherwise be subject to taxation. Where relevant, these differences will be highlighted below.

state where they physically reside--if for no other reason than to minimize the likelihood of being subjected to the income taxing jurisdictions of two or more states and other similar problems.[5] Indeed, for the vast majority of people the question never really arises, as legal and physical residence are in fact united in one state.

Members of the Armed Forces are, however, in a different position. They may well find themselves being treated as legal residents of the state in which they resided when they initially entered the Armed Forces and as residents of the state in which they physically reside while on active duty in the Armed Forces. Thus, a member of the Armed Forces who is a legal resident of one state but who is stationed and living in another state could be regarded as a "resident" subject to income taxation by the taxing authorities of each state--as a "legal resident" of the first state and as a physically-present "resident" of the second state. Under the principles previously stated, the state where a member of the Armed Forces lives and is stationed--even if different from the state where the member legally resides--thus has two potential grounds for asserting income tax jurisdiction over the member: first, on the ground that the member is a "resident" of that state, at least in the physically-present sense set out above, and second, on the alternative ground that, even if not a "resident," no matter how the term may be interpreted, the member is in receipt of income from a source, *i.e.*, from the member's station, that is within the state. A very slightly altered set of factual assumptions could theoretically make a member of the Armed Forces subject to taxation on the member's military compensation in three states: if the member is a legal resident of one state, is living in a second, and is stationed in a third, the member could be subject to income taxation on the member's military compensation by the state where the member legally resides, by the state where the member physically resides, and by the state where the member is stationed.

[5] Persons maintaining physical residences in two or more jurisdictions in each of which they have a source or sources of earned income have to face the problem of which jurisdiction to treat as their legal residence squarely. The resolution of this issue raises a number of questions that are basically factual in nature.

The Servicemembers' Civil Relief Act of 2003[6] deals with these various situations by providing, in essence, that a member of the Armed Forces who is a legal resident of one state but maintains an abode and is stationed in another—or others--has income tax liability with respect to his or her military compensation only to his or her state of legal residence.

* **The Servicemembers' Civil Relief Act and State Income Taxation of Non-Military Compensation.**

Despite the fact that a member of the Armed Forces may choose as his or her state of legal residence a state different from the state where he or she lives or is stationed and that, under the Servicemembers' Civil Relief Act, the state where the member physically resides or where he or she is stationed may not assert income tax jurisdiction over the member's military compensation, the Servicemembers' Civil Relief Act does not shield a member's non-military compensation from income taxation by the state where the member physically resides or by the state from which the member derives non-military compensation. Similarly, the Servicemembers' Civil Relief Act has no effect on income earned by a non-service-member spouse of a member of the Armed Forces. These two facts may add substantially to the difficulty of filing state income tax returns.

Thus, for instance, if a member of the Armed Forces is a legal resident of State A, physically resides in State B, has a part-time job in State C, owns a retirement house that is currently being rented out in State D, and has a spouse who is employed in State E, the member may have to deal with five taxing jurisdictions. First, the member's spouse will, in all probability, have to pay income taxes to State E, where he or she is employed, on the amount of income the spouse earned in State E. State B will, in all probability, treat the member's spouse as a "resident" for state income tax purposes, and the member's

[6] The Soldiers' and Sailors' Civil Relief Act of 1940, which was enacted by the Act of October 17, 1940, ch. 888 [Public Law 861, 76th Congress], 54 Stat. 1178 (1940), is codified at 50 U.S.C. App. §501 *et seq*. The particular provision of the Soldiers' and Sailors' Civil Relief Act that is at issue with respect to the state income tax liabilities of members of the Armed Forces is classified to 50 U.S.C. App. §574. In 2003 a major revision of the Soldiers' and Sailors' Civil Relief Act of 1940 was enacted by the Act of December 19, 2003, Public Law 108-189 (2003), which changed the name of the act to the Servicemembers' Civil Relief Act. The new act retained the provisions of the 1940 law regarding state income taxation of military compensation.

spouse will have to file an income tax return with respect to the income earned in State E, although the spouse will, in all probability, be able to credit the amount of the tax paid to State E against the tax due and owing to State B on account of the State-E income. The member will, in all probability, have to file an income tax return for State C with respect to the amount of income earned from the part-time job. The member will also have to file an income tax return in State A covering both the member's military compensation and earnings from the part-time job, although the member will, most probably, be able to claim a credit for the income taxes paid to State C on account of the part-time job. With respect to the income earned from the rental of the retirement house in State D, a further income tax return will, in all probability, be required for State D based on the amount of the rental income received. If the member and the member's spouse jointly own the rental property, they will, in all probability, have to apportion the income between them and report the apportioned amount credited to each as income, respectively, in State A, the state of the member's legal residence, and in State C, the state in which the member's spouse is "resident," although each will, in all probability, be able to credit the amount of the tax paid to State D on account of the rental income against the taxes due and owing to States A and C, respectively. If the member and the member's spouse derive investment income from property inherited by each in States F and G, respectively, the same rules outlined above will most probably apply to that further income as well. Since the member files with respect to his or her military compensation and other attributable income in State A and the member's spouse files with respect to his or her compensation and other attributable income in State C, the possibility exists that each will be treated by his or her state of filing as married but filing separately, which has the effect of prohibiting the member and spouse from taking advantage of the generally lower tax rates applicable to joint returns.

Exactly how the possibilities outlined above will be applied in practice depends on the income tax laws and regulations of the different states and on the precedent of court decisions interpreting those laws and regulations. To the extent that the Servicemembers' Civil Relief Act was initially intended to simplify the complex of state laws and regulations confronting members of the Armed Forces who were, as a

consequence of their conditions of service, frequently forced to move from one state to another, the states, in their quest for ever greater sources of revenues, may be seen as having substantially undercut that purpose.

**II. Overview of State Income Taxation of Military Compensation**.

As indicated above, a member of the Armed Forces may be subject to income taxation on his military compensation by his state of legal residence. Depending on the state of a member's legal residence, the member may not have any state income tax liability: some states do not impose any state income taxes whatsoever, with the result that no resident of such a state, whether a member of the Armed Forces or not, has any state income tax liability; other states exempt military compensation from the operation of their income tax laws; others exempt military compensation earned while stationed in another state or abroad from the operation of their income tax laws; and still others exempt a portion of military compensation from the operation of their income tax laws. On the other hand, some states tax military compensation independently of where the member is stationed. To determine how a particular state will tax the military compensation of one of its legal residents, it is necessary to consult the tax laws of that state.

In addition, there is a subsidiary question of whether a particular state follows federal tax rules with respect to members stationed in a "combat zone" or a "qualified hazardous duty area." Under Section 112 of the Internal Revenue Code, I.R.C. §112, 26 U.S.C. §112, an enlisted member of the Armed Forces is entitled to exclude from gross income subject to federal income taxation all military compensation received for active service for any month during any part of which the member served in a combat zone or was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone. Under the same provision, an officer is entitled to exclude from gross income subject to federal income taxation military compensation up to the maximum enlisted pay amount plus imminent danger pay amount ($6,315.90 per month in 2004, consisting of the $6,090.90 highest enlisted pay amount plus $225 imminent danger pay) for any month during any part of which the officer served in a combat zone or was

hospitalized as a results of wounds, disease, or injury incurred while serving in a combat zone.[7] Under special rules adopted pursuant to the Act of March 20, 1996, Public Law 104-117, 110 Stat. 827 (1996) and the Act of April 19, 1999 Public Law 106-21, the same federal exclusions apply to compensation earned by a member of the Armed Forces for military service in a "qualified hazardous duty area," which in 2004 included Albania, the Adriatic Sea region, Bosnia and Herzegovina, Croatia, the Ionian Sea region north of the 39th parallel, Macedonia, and Serbia and Montenegro,[8] while the member is entitled to hostile fire or imminent danger pay under 37 U.S.C. §310 for service in such an area.[9]

The following three aspects of state income taxation of active-duty military compensation are dealt with below:

1. The extent to which active-duty military compensation is subject to income taxation by a particular state.

2. Whether that state provides a combat zone tax exclusion similar to that provided under the Internal Revenue Code, *i.e.*, the "combat zone" exclusion of Section 112 of the Internal Revenue Code.

3. Whether that state provides qualified hazardous duty area ("QHDA") benefits similar to those provided for federal income tax purposes under the Act of March

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[7] As a member's basic allowances for housing and subsistence, overseas station allowances, travel and transportation allowances, clothing allowances, as well as any other "qualified military benefits," are exempt from federal income taxation in any case, the "compensation" excludable by an officer under Section 112 of the Internal Revenue Code includes the total of basic pay and any special or incentive pays received by the officer, specifically including any hazardous duty and hostile fire pays, not to exceed the maximum enlisted pay amount ($6,315.90 per month in 2004), in addition to all the officer's "qualified military benefits." (With respect to the items of military compensation deemed "qualified military benefits", see in particular footnote 16 to Chapter II.B.4 hereof, "Federal Income Tax Advantage," together with the accompanying text, above. See also footnote 18 of that chapter with respect to the inclusion of the cost-of-living allowance for the Continental United States--so-called "CONUS COLA" --in military compensation subject to federal income taxation.)

[8] Albania, the Adriatic Sea region, the Ionian Sea region north of the 39th parallel, and Serbia and Montenegro received status as qualified hazardous duty areas from Public Law 106-21 (1999).

[9] The only "compensation" excludable from gross income, and hence from federal income taxation, under Section 112 of the Internal Revenue Code and the Act of March 20, 1996, Public Law 104-117, 110 Stat. 827 (1996), is military compensation. Any non-military compensation received by an individual member while serving in a "combat zone" or a "qualified hazardous duty area"--*e.g.*, interest income, dividends received, capital gains, rent income, etc.--is not excludable under either of those provisions.

20, 1996, Public Law 104-117, 110 Stat. 827 (1996) or the Act of April 19, 1999, Public Law 106-21 (1999).

Information on these three aspects of state taxation of military compensation is provided for each of the 50 states of the United States and the District of Columbia.[10] [11] Unless otherwise noted, the only items of military compensation subject to state income taxation by those states that tax such compensation are basic pay and special and incentive pays.[12]

The following highlights the special rules, incorporated in the income tax laws of the various states, that apply to active duty military compensation received by members of the Armed Forces who are, for one reason or another, subject to the income tax jurisdiction of those states.

*** Alabama**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion for tax year 1991 and later.

3. No exclusion for service in a qualified hazardous duty area

[10] For those states that have no state income tax or that exempt military compensation from state income taxation altogether, the issue of combat zone and qualified hazardous duty area exclusions does not arise.

[11] A fourth aspect of state income taxation of members of the Armed Forces deals with the question of whether a specific state provides extra time for a member of the Armed Forces subject to its income tax jurisdiction who is stationed in a "combat zone" or a "qualified hazardous duty area" to prepare and file a state income tax return. This question has special relevance with respect to non-military compensation earned by members of the Armed Forces subject to the income tax jurisdiction of states that follow the federal exclusionary rules for service in a combat zone or qualified hazardous duty area. While identified here as an additional aspect of state income taxation of members of the Armed Forces of relevance to such members, that aspect is not dealt with in this appendix.

[12] As a practical matter, the Federal Government, as the "employer" of members of the Armed Forces, at the end of each year provides each member serving in the Armed Forces during any part of that year with a statement--known as a "W-2" wage statement--of the member's "military compensation" that is subject to income tax for that year. The cost-of-living allowance for the continental United States--so-called "CONUS COLA"--should be included in a member's W-2 statement as well as basic pay and special and incentive pays unless it is specifically excluded under the operation of Section 112 of the Internal revenue Code or the Act of March 20, 1996, Public Law 104-117, 110 Stat. 827 (1996). The information provided to each member on Form W-2 is also provided to the member's state of legal residence (if that state has a state income tax).

*** Alaska**

No state income tax.

*** Arizona**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Arkansas**

1. Military compensation subject to state income tax except for first $6,000.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** California**

1. Military compensation subject to state income tax if stationed in California.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Colorado**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Connecticut**

1. Military compensation not taxable if member does not maintain a permanent place of abode in state, maintains a permanent place of abode outside state, and spends 30 days or less per year in state.

2. Follows federal rules for combat zone tax exclusion for members subject to state income taxation.

3. Follows federal rules for qualified hazardous duty area tax exclusion for members subject to state income taxation.

*** Delaware**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** District of Columbia**

1. Military compensation subject to state income tax.

2. No exclusion for service in a combat zone.

3. No exclusion for service in a qualified hazardous duty area.

*** Florida**

No state income tax.

*** Georgia**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Hawaii**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Idaho**

1. Military compensation subject to state income tax unless member serves 120 or more consecutive days of active duty outside state.

2. Follows federal rules for combat zone tax exclusion for members subject to state income taxation.

3. Follows federal rules for qualified hazardous duty area tax exclusion for members subject to state income taxation.

*** Illinois**

Military compensation exempt from state income tax.

*** Indiana**

1. Military compensation subject to state income tax, except for first $2,000.

2. Follows federal rules for combat zone tax exclusion.

3. No exclusion for service in a qualified hazardous duty area.

*** Iowa**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Kansas**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Kentucky**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Louisiana**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Maine**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Maryland**

1. Military compensation subject to state income tax unless serving abroad, in which case, first $15,000 is exempt if military pay does not exceed $30,000. Above $30,000, no exemption applies.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Massachusetts**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Michigan**

Military compensation exempt from state income tax but military personnel must file.

*** Minnesota**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Mississippi**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Missouri**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion for members subject to state income taxation.

3. Follows federal rules for qualified hazardous duty area tax exclusion for members subject to state income taxation.

*** Montana**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Nebraska**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Nevada**

No state income tax.

*** New Hampshire**

Military compensation exempt from state income tax.

*** New Jersey**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. No exclusion for service in a qualified hazardous duty area.

*** New Mexico**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** New York**

1. Military compensation not taxable if member does not maintain a permanent place of abode in state, maintains a permanent place of abode outside state in compliance with military orders, and spends 30 days or less per year in state.

2. Follows federal rules for combat zone tax exclusion for members subject to state income taxation.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** North Carolina**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** North Dakota**

1. Military compensation subject to state income tax, with limited partial exceptions.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Ohio**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Oklahoma**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Oregon**

1. Military compensation subject to state income tax for residents. However, military can be treated as non-residents if they meet certain requirements.

2. Follows federal rules for combat zone tax exclusion for members subject to state income taxation.

3. No exclusion for service in a qualified hazardous duty area.

*** Pennsylvania**

1. Military compensation not taxable if member is stationed outside the state.

2. Follows federal rules for combat zone tax exclusion for members subject to state income taxation.

3. No exclusion for service in a qualified hazardous duty area.

*** Rhode Island**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** South Carolina**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** South Dakota**

No state income tax.

*** Tennessee**

Military compensation exempt from state income tax.

*** Texas**

No state income tax.

*** Utah**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Vermont**

1. Military compensation subject to state income tax if stationed outside the state.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Virginia**

1. Military compensation subject to state income tax. Military compensation up to $15,000 can be deducted; no deduction if military compensation exceeds $30,000.

2. Follows federal rules for combat zone tax exclusion, except that all military compensation for officers is excluded.

3. Follows federal rules for qualified hazardous duty area tax exclusion, except that all military compensation for officers is excluded.

*** Washington**

No state income tax.

*** West Virginia**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. Follows federal rules for qualified hazardous duty area tax exclusion.

*** Wisconsin**

1. Military compensation subject to state income tax.

2. Follows federal rules for combat zone tax exclusion.

3. No exclusion for service in a qualified hazardous duty area.

*** Wyoming**

No state income tax.

## Appendix VII

### Special Pay and Other Benefits for Missing Persons, Prisoners of War (POWs), and Victims of Terrorism

Over the years, Congress has adopted a number of special provisions concerning the pays, allowances, and benefits of members of the uniformed services who are in a "missing status," who are "prisoners of war" (POWs), or who are victims of terrorism. As a general proposition, the special provisions are intended to leave members of the uniformed services who are missing, who are POWs, or who are victims of terrorism, and any of their dependents, in the same position they would have been if the members were not missing, POWs, or victims of terrorism. This appendix briefly summarizes the most important of those provisions.

### Missing Persons

As a general proposition, the entitlement of members of the uniformed services to various pays and allowances for full-time military service turns upon their being on "active duty."[1] Entitlement to basic pay is explicitly premised on a member's being on active duty, 37 U.S.C. §204(a)(1), or other "full-time duty," 37 U.S.C. §204(a)(2). Entitlement to certain medical and other pays is also premised on being on "active duty." See, *e.g.*, 37 U.S.C. §302(a)(1) (medical officers of the Armed Forces entitled to special pay under 37 U.S.C. §302 if "on active duty under a call or order to active duty for a period of not less than one year"); 37 U.S.C. §302a (optometrists entitled to "special pay [under 37 U.S.C. §302a] ... for each month of active duty"); 37 U.S.C. §302b (dental officers entitled to special pay under 37 U.S.C. §302b if "on active duty under a call or order to active duty for a period of not less than one year"); *etc*. Entitlement to various other special and incentive pays and allowances is premised on a member's being entitled

[1] The term "active duty" is defined at 37 U.S.C. §101(18) as meaning:

... full-time duty in the active service of a uniformed service, and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary concerned.

to basic pay, which, as above indicated, is itself premised on the member's being on active duty. See, *e.g.*, 37 U.S.C. §301(a) (entitlement to hazardous duty incentive pay premised, in the first instance, on a member's entitlement to basic pay); 37 U.S.C. §301a(a)(1) (entitlement to aviation career incentive pay (ACIP) premised on entitlement to basic pay);[2] 37 U.S.C. §301c(a)(1) (entitlement to submarine duty incentive pay); 37 U.S.C. §304 (diving duty pay); 37 U.S.C. §402(a) (basic allowance for subsistence); 37 U.S.C. §403(a) (basic allowance for housing); *etc*. For all these pays and allowances, entitlement ceases when a person is no longer on active duty. In particular, a member's entitlement to these various pays and allowances ceases with the member's death, at which time there is a final settlement of accounts with respect to that member. *Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, ¶40512. See 10 U.S.C. §2771; *cf*. 37 U.S.C. §557.

In most cases, it is reasonably clear whether a particular member is or is not alive and hence is or is not entitled to pay and allowances. In some cases, however, it is not at all certain whether a member is alive. In particular, because of the exigencies of a military career, members of the Armed Forces may be missing, and in that case it may not in practice be possible to determine readily whether they are or are not alive. Special rules have been adopted by Congress over the years to cover the pay and allowances entitlements of persons in such situations. These rules and provisions are set out in Titles 10 and 37, United States Code.

Until enactment of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §569, 110 Stat. 186, 336-353 (1996), questions concerning the status of missing persons and their continuing entitlement to basic and other pays and allowances was governed solely by Chapter 10 of Title 37, United States Code, 37 U.S.C. §§551-558. The National Defense Authorization Act for Fiscal Year 1996, Public Law

[2] Entitlement to aviation career continuation pay (AOCP) under 37 U.S.C. §301b--the catchline of which reads: "Special pay: aviation career officers extending period of active duty"--is premised on entitlement to ACIP, which is in turn, as above noted, premised on entitlement to basic pay.

104-106, §569, 110 Stat. 186, 336-353 (1996), established Chapter 76 of Title 10, United States Code, entitled "Missing Persons." That chapter governs questions concerning the status of certain missing persons, *i.e.*, whether they are to be carried in a missing status on the rolls of the Armed Forces or may be declared dead, whereas questions concerning the entitlement to basic and other pays and allowances of members of the Armed Forces deemed to be in a missing status continues to be governed by Chapter 10 of Title 37, United States Code, 37 U.S.C. §§551-558.

In essence, members of the active-duty Armed Forces deemed to be missing as a result of hostile action are entitled to continuing pays and allowances under the provisions of Chapter 10 of Title 37, United States Code, until they are declared no longer to be in a missing status pursuant to the provisions of Chapter 76 of Title 10, United States Code. Status determinations for "[a]ny member of the Armed Forces on active duty who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for" are required to be made pursuant to the provisions of Chapter 76 of Title 10, United States Code. As explicitly stated in the 1996 Authorization Act, the purpose of the new chapter is--

> ... to ensure that any member of the Armed Forces (and any Department of Defense civilian employee or contractor employee who serves with or accompanies the Armed Forces in the field under orders) who becomes missing or unaccounted for is ultimately accounted for by the United States and, as a general rule, is not declared dead solely because of the passage of time.[3]

To this end, the new chapter requires the Secretary of Defense to establish an office of missing persons within the Department of Defense. The responsibilities of this office include the establishment of

> (A) policy, control, and oversight within the Department of Defense of the entire process for investigation and recovery related to missing persons (including matters related to search, rescue, escape, and evasion); and

[3] National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §569(a), 110 Stat. 186, 336 (1996).

(B) coordination for the Department of Defense with other departments and agencies of the United States on all matters concerning missing persons.[4]

In addition to requiring the establishment of a special office to deal with missing persons, the new provisions also place stringent limitations on the ability of the Department of Defense and any of its military departments to declare a missing person to be dead.[5] Special provisions have been included for reviewing the status of persons previously declared dead who were involved in the Korean conflict, the Cold War, or the Indochina War era.[6] Finally, any person in a missing status or declared dead who is subsequently found alive and returned to the control of the United States is specifically provided to be entitled to all pay and allowances while in a missing status or while declared dead.[7] As stated by the House-Senate Conference Committee:

> The conferees expect that the Secretary of Defense will organize this new office to serve as the focal point in the Department of Defense for POW/MIA matters and consolidate the formulation and oversight of search, rescue, escape and evasion and accountability policies. The conferees further expect that the Secretary of Defense will make every effort to ensure a close working relationship with the national intelligence agencies.[8]

As previously indicated, persons covered by new Chapter 76 of Title 10, United States Code, include "[a]ny member of the Armed Forces on active duty who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for." 10 U.S.C. §1501(c)(1). The status of any member falling within

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[4] 10 U.S.C. §1501(a).

[5] 10 U.S.C. §1507(a).

[6] 10 U.S.C. §1509.

[7] 10 U.S.C. §1511.

[8] House Report No. 104-450 (Committee of Conference), p.801, accompanying S. 1124, 104th Congress, 2d Session (1996), and House Report No. 104-406 (Committee of Conference), p. 811, accompanying H.R. 1530, 104th Congress, 1st Session (1995). *cf.* Senate Report No. 104-112 (Committee on Armed Services), p. 245, accompanying S. 1026, and House Report No. 104-131 (Committee on National Security), pp. 223-224, accompanying H.R. 1530, 104th Congress, 1st Session (1995).

the above category is required to be determined by the Secretary of the member's departmental affiliation (the "Secretary concerned"). 10 U.S.C. §1503. After reviewing preliminary recommendations submitted by field commanders, the Secretary concerned determines whether the member should be categorized as "missing," "deserted", "absent without leave," or "dead." 10 U.S.C. §1503(i)(3). For the purpose of determining whether a given member should be categorized as a "missing person" or placed in one of the other categories, the term "missing person" is defined to include "a member of the Armed Forces on active duty who is in a missing status". 10 U.S.C. §1513(1)(A). Section 1513(2) defines the term "missing status" to mean

> ... the status of a missing person who is determined to be absent in a category of any of the following:
>
> (A) Missing.
>
> (B) Missing in action.
>
> (C) Interned in a foreign country.
>
> (D) Captured.
>
> (E) Beleaguered.
>
> (F) Besieged.
>
> (G) Detained in a foreign country against that person's will.

Members who are not "involuntarily absent," or who become missing while not engaged in hostile action, or who become missing under circumstances not suggesting their absence is connected with hostile action, are not covered by Chapter 76 of Title 10, United States Code. Nor are members who become missing from service in inactive-duty training. Status determinations for these latter categories of persons are still made under Chapter 10 of Title 37, United States Code. Under Section 551(2) of Title 37, the term "missing status" is defined to mean

> ... the status of a member of a uniformed service who is officially carried or determined to be absent in a status of--

(A) missing;

(B) missing in action;

(C) interned in a foreign country;

(D) captured, beleaguered, or besieged by a hostile force; or

(E) detained in a foreign country against his will.

Under 37 U.S.C. §552(a)(1), a member of the uniformed services who is on active duty or performing inactive-duty training and who is categorized as being in a "missing status," no matter whether that status is determined under Chapter 76 of Title 10 or Chapter 10 of Title 37, is

> ... for the period he is in that status, entitled to receive or have credited to his account the same pay and allowances ... to which he was entitled at the beginning of that period or may thereafter become entitled; ...

In the case of a member of the uniformed services who is determined to be in a missing status while performing full-time training duty or other full-time duty without pay, or inactive-duty training with or without pay, the member

> ... is entitled to the pay and allowances to which he would have been entitled if he had been on active duty with pay.

37 U.S.C. §552(a). In the case of a member performing full-time training duty or inactive-duty training, however, this rule applies only if the member

> ... is officially determined to be in a missing status that results from the performance of duties prescribed by competent authority.
>
> 37 U.S.C. §552(d).

For members covered by Chapter 10 of Title 37, members determined to be in a missing status are continued in that status for 12 months unless a "finding of death" is made before. At the end of 12 months, the Secretary of the member's departmental affiliation is required to review the member's status. 37 U.S.C. §555(a). Upon conclusion of that review, the Secretary in question may (i) continue the member in a missing status,

"if the member can reasonably be presumed to be living," 37 U.S.C. §555(a)(1), or (ii) "make a finding of death," 37 U.S.C. §555(a)(2). If the Secretary continues the member in a missing status, a later review may be made "when warranted by information received or other circumstances." 37 U.S.C. §555(a). Upon completion of such a later review, the Secretary may either continue the member in a missing status or make a finding of death. If the Secretary concerned makes a finding of death with respect to a particular member, the finding is required to

> ... include the date death is presumed to have occurred for the purpose of--
>
> (1) ending the crediting of pay and allowances;
>
> (2) settlement of accounts; and
>
> (3) payment of death gratuities.

37 U.S.C. §555(b).

Pursuant to the provisions of new 37 U.S.C. §555(d), as added by the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, §569(c)(1)(B), 110 Stat. 186, 351-352 (1996), the provisions of 37 U.S.C. §555(a)-(c) relating to secretarial review of the status of members in a missing status for the purpose of declaring them dead is specifically provided not to apply to persons placed in a missing status pursuant to the provisions of Chapter 76 of Title 10, United States Code. This has the effect of prohibiting the Secretary of the department of a member placed in a missing status under Chapter 76 of Title 10, United States Code, from declaring the member dead under 37 U.S.C. §555, with the attendant result that the member's pay and allowances continue to be credited until the member is declared dead pursuant to the provisions of Chapter 76 of Title 10, United States Code. The pay and allowances entitlements of members determined to be dead under the provisions of Chapter 76 of Title 10, United States Code, are governed by Chapter 10 of Title 37, United States Code.

In the case of a member in a missing status, no matter whether determined under the provisions of Chapter 76 of Title 10 or Chapter 10 of Title 37, the Secretary concerned may order an allotment to the member's dependents of the pay and allowances

with which the member is to be credited under 37 U.S.C. §552. 37 U.S.C. §553(e) and (h). Persons in a missing status are granted an automatic extension of the time within which they would otherwise have to file a federal income tax return and pay federal income taxes. 37 U.S.C. §558.

**Prisoners of War (POWs)**

Members of the Armed Forces of the United States who have been held as "prisoners of war" are, in addition to the pay and other benefits to which they may be entitled as persons in a "missing status,"[9] as set out above, also entitled to certain additional benefits under the provisions of 50 U.S.C. App. §2005. For the purposes of the provision in question, the term "prisoner of war" is defined generally to mean:

> ... any regularly appointed, enrolled, enlisted, or inducted member of the military or naval forces of the United States who was held as a prisoner of war for any period of time subsequent to December 7, 1941, by any government of any nation with which the United States has been at war subsequent to such date.

50 U.S.C. App. §2005(a) and (d)(1). Persons who qualify as "prisoners of war" under this definition are entitled to compensation at the rate of $1 per day for each day the government by which they were held "violat[ed] ... its obligation to furnish [them] the quantity of food to which [they] were entitled as ... prisoner[s] of war under the ... Geneva Convention...."[10] 50 U.S.C. App. §2005(b). They are in addition independently entitled to compensation at the rate of $1.50 per day for each day the government by which they were held "violat[ed] ... such government's obligations under ... the Geneva Convention ... relating to labor of prisoners of war," 50 U.S.C. App. §2005(d)(2)(A) and

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[9] As indicated above, members of the uniformed services are placed in a "missing status" if they are "officially carried or determined to be absent in a status of ... interned in a foreign country; ... captured ... by a hostile force; or ... detained in a foreign country against [their] will." 37 U.S.C. §551(2)(C), (D), and (E). In addition to any special benefits to which members of the Armed Forces may be entitled as "prisoners of war" under 50 U.S.C. App. §2005, they are also entitled to the various benefits available to them as persons in a "missing status." See Chapter 10 of Title 37, United States Code, 37 U.S.C. §§551-559, generally. Also see discussion of "missing persons" in this appendix, above.

[10] For the text of the Geneva Convention of July 27, 1929, relative to the treatment of prisoners of war, see 47 Stat. 2021 (1932).

(d)(3)(A), or for each day they were subjected to "inhumane treatment"[11] by the government by which they were held, 50 U.S.C. App. §2005(d)(2)(B) and (d)(3)(B), subject to a limitation of $1.50 for any one day, 50 U.S.C. App. §2005(d)(2). Persons entitled to such compensation include the actual prisoners of war themselves and, if they are dead, certain named beneficiaries. 50 U.S.C. App. §2005(c) and (d)(4). Although the United States has not been "at war" with any other nation since the end of World War II,[12] the subject law would be applicable to any persons taken prisoner of war in a war formally declared by Congress.

As set out above, the term "prisoner of war" was limited by definition to include only persons "held as ... prisoner[s] of war ... by any government of any nation with which the United States has been at war subsequent to" December 7, 1941. 50 U.S.C. App. §2005(a) and (d)(1) (emphasis added). This definition necessarily excluded persons held captive during the "Korean War," 50 U.S.C. App. §2005(e) (catchline), and the "Vietnam Conflict," 50 U.S.C. App. §2005(f)(1)(A), since the United States was never officially "at war" in either case. For this reason, the "Korean War" gave rise to a change in the governing law relating to prisoners of war, effectively expanding the concept of prisoners of war to include persons held by a hostile force without respect to whether an "at war" determination had been made. Thus, the Act of August 21, 1954, ch. 784 [Public Law 615, 83d Congress], §2(b), 68 Stat. 759, 761-762 (1954), extended the application of the "prisoner of war" provisions of 50 U.S.C. App. §2005 to

> ... regularly appointed, enrolled, enlisted, or inducted member[s] of the Armed Forces of the United States who w[ere] held as ... prisoner[s] of war for any period of time subsequent to June 25, 1950, by any hostile force with which the Armed Forces of the United States were actually engaged in armed conflict subsequent to such date and prior to the date of enactment [of this provision, August 21, 1954].

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[11] The term "inhumane treatment" was itself defined as consisting of violations of various provisions of the Geneva Convention of July 27, 1929.

[12] Under the War Claims Act amendments of 1954, ch. 1162 [Public Law 744, 83d Congress], §102(c), 68 Stat. 1033, 1034 (1954), the deadline for filing claims for prisoner-of-war benefits with respect to World War II captivity was August 31, 1955.

50 U.S.C. App. §2005(e)(1). Persons qualifying as "prisoner[s] of war" under this definition were given the same right to compensation, for the same violations of the Geneva Convention, at the same rates of compensation, and subject to the same overall daily limitation as was true of persons who qualified as "prisoner[s] of war" under 50 U.S.C. App. §2005(a) and (d)(1).[13] For the purposes of the "Korean War" provisions here in issue, the term "prisoner[s] of war" was later broadened to include both military and civilian personnel assigned to duty on the U.S.S. *Pueblo* who were captured on January 23, 1968, and were thereafter held prisoner by the government of North Korea for any period of time ending on or before December 23, 1968.[14]

The Act of June 24, 1970 (War Claims Act of 1948 Amendments), Public Law 91-289, §§1,2, 84 Stat. 323, 323-324 (1970), further extended the application of the "prisoner of war" provisions of 50 U.S.C. App. §2005 to

> ... regularly appointed, enrolled, enlisted, or inducted member[s] of the Armed Forces of the United States who w[ere] held as ... prisoner[s] of war for any period of time during the Vietnam Conflict by any force hostile to the United States, except any such member who, at any time, voluntarily, knowingly, and without duress, gave aid to or collaborated with, or in any manner served, such hostile force.

50 U.S.C. App. §2005(f)(1)(B). Persons qualifying as "prisoner[s] of war" under this definition were given the same right to compensation for the same violations of the Geneva Convention as was true of persons who qualified as "prisoner[s] of war" under 50 U.S.C. App. §2005(a) and (d)(1). The rates of compensation were, however, increased--to $2.00 per day for substandard food and $3.00 per day for labor and inhumane treatment

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[13] The deadline for filing claims by or with respect to Korean War prisoners under 50 U.S.C. App. §2005(e) was, in the general case, August 21, 1955. Act of August 21, 1954, ch. 784 [Public Law 615, 83d Congress], §2(b), 68 Stat. 759, 761-762 (1954). Persons who continued to be held as prisoners of war after the cessation of hostilities had one year after being "returned to the jurisdiction of the Armed Forces of the United States" within which to file claims. Claims filed with respect to prisoners of war subsequently determined to have "actually died or ... presumed to be dead" had to be filed within one year after the Department of Defense made its determination of death or presumption of death. 50 U.S.C. App. §2005(e)(5)(A), (B), and (C).

[14] The deadline for filing claims with respect to the U.S.S. *Pueblo* was June 24, 1971. See, *e.g.*, 50 U.S.C. App. §2005(e)(5)(D).

violations of the Geneva Convention. The overall daily limitation on the amount of compensation that could be paid for labor and inhumane treatment violations of the Geneva Convention was also increased--to a maximum of $3.00 per day.[15]

## Victims of Terrorism

Section 806 of the Victims of Terrorism Compensation Act, enacted as Title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, Public Law 99-399, §806, 100 Stat. 853, 884-887 (1986), added four special provisions to Titles 10 and 37, United States Code, establishing benefits for members of the uniformed services and their dependents who are victims of terrorism.[16] These provisions were added to cover persons taken captive in a non-belligerent status--basically, to cover persons who are victims of incidents of political warfare. The first of the four provisions, codified at 37 U.S.C. §559, provides for special compensation for members of the uniformed services held in a "captive status." For the purposes of 37 U.S.C. §559, the term "captive status" is defined to mean:

> ... a missing status of a member of the uniformed services which, as determined by the President, arises because of a hostile action and is a result of membership

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[15] The period for filing claims under the general provisions of 50 U.S.C. App. §2005(f) are set out at 50 U.S.C. App. §2005(f)(5):

Each claim filed under this subsection must be filed not later than three years after whichever of the following dates last occurs:

(A) the date of enactment of this subsection [50 U.S.C. §2005(f), *i.e.*, June 24, 1970];

(B) the date the prisoner of war for whom the claim is filed returned to the jurisdiction of the Armed Forces of the United States; or

(C) the date upon which the Department of Defense makes a determination that the prisoner of war has actually died or is presumed to be dead, in the case of any prisoner of war who has not returned to the jurisdiction of the Armed Forces of the United States.

[16] The Victims of Terrorism Compensation Act, Public Law 99-399, Title VIII, 100 Stat. 853 (1986), was modeled on the Hostage Relief Act of 1980, Public Law 96-449, 94 Stat. 1967 (1980), set out at 5 U.S.C. §5561 note (1988), which was in turn substantially derived from Viet Nam-era legislation concerning persons missing in action and prisoners of war. The Hostage Relief Act of 1980, which was enacted in response to the takeover of the American Embassy in Teheran in 1979, was temporary legislation; the Victims of Terrorism Compensation Act, which was enacted in response to the hijacking of TWA Flight 847 on June 14, 1985, and the subsequent murder in Beirut of an enlisted member of the Navy, is permanent legislation.

> in the uniformed services, but does not include a period of captivity of a member as a prisoner of war if Congress provides to such member, in an Act enacted after the date of enactment of the Victims of Terrorism Compensation Act, monetary payment in respect of such a period of captivity. [17]-

37 U.S.C. §559(a)(1). The term "former captive" is defined to mean:

> ... a person who, as a member of the uniformed services, was held in a captive status.

37 U.S.C. §559(a)(2).

With respect to the "compensation" authorized, Section 559(c)(1) of Title 37, United States Code, provides that the President

> ... shall make a cash payment to any person who is a former captive. Such payment shall be made before the end of the one-year period beginning on the date on which the captive status of such person terminates.

The amount of the payment is to be determined by the President in accordance with 5 U.S.C. §5569(d)(2).[18] 37 U.S.C. §559(c)(2). While the President is required by the Victims of Terrorism Compensation Act to make the payments specified, the President is permitted to defer the payment of such compensation to any former captive charged with

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[17] Section 559 of Title 37, United States Code, as enacted by Section 806(a) of the Victims of Terrorism Compensation Act, Public Law 99-399, *id*., §806(a), 100 Stat. at 884, is codified as a part of Chapter 10 of Title 37, which deals generally with "payments to missing persons". As indicated earlier in this appendix in the discussion of special benefits for "missing persons", the term "missing status" is defined at 37 U.S.C. §551(2). That definition is quoted above.

[18] Section 5569(d)(2) of Title 5, United States Code, which was itself enacted under Section 803(a) of the Victims of Terrorism Compensation Act, provides:

> Except as provided in section 802 of the Victims of Terrorism Compensation Act [dealing with compensation for persons held captive during the period November 4, 1979, through January 21, 1981, *i.e*., the period during which Americans were held captive at the American Embassy in Teheran], the amount of the payment under this subsection with respect to an individual held as a captive shall be not less than one-half the amount of the world-wide average per diem rate under section 5702 of [Title 5, United States Code] which was in effect for each day that individual was so held.

*The Department of Defense Financial Management Regulation, Military Pay: Policy and Procedures for Active Duty and Reserve Pay*, Volume 7A, ¶40601(b)(1), provides that "[f]or each day a member was held in a captive status, payment is 50 percent of the world-wide average per diem rate which was in effect for each day the member was held in a captive status," but ¶40601(b)(2) provides that "[f]ormer captives may receive more than the 50 percent rate when specifically approved by the SECDEF."

a "captivity-related offense" pending resolution of such charges and, if the person is found guilty of such charges, to deny such compensation altogether.[19]

Section 806(b) of the Victims of Terrorism Compensation Act added Section 1032 to Chapter 53 of Title 10, United States Code. This provision permits the United States to

> ... pay compensation for the disability or death of a dependent of a member of the uniformed services if the President determines that the disability or death--
>
> (1) was caused by hostile action; and
>
> (2) was a result of the relationship of the dependent to the member of the uniformed services.

The "compensation" provided for, and the amount thereof, is to be determined in accordance with regulations required to be prescribed by the President.

Section 806(c) of the Victims of Terrorism Compensation Act added Section 1095a to Chapter 55 of Title 10, United States Code. The provision in question provides for the payment, "by advancement or reimbursement," for health care and related expenses of members of the uniformed services and their dependents "to the extent that such care ... is incident to the captive status" and is not otherwise covered by government health or medical programs or by insurance.

Finally, Section 806(d) of the Victims of Terrorism Compensation Act added Chapter 110 to Part III of Title 10, United States Code, concerning educational benefits for members of the uniformed services held as captives and their dependents.[20] Under the provisions in question, codified at 10 U.S.C. §§2181-2185, members of the uniformed

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[19] In addition to the "compensation" authorized to be paid to members of the uniformed services held in a captive status, another provision directs the Secretary of the Treasury to establish a special "saving fund" to which the pay and allowances of captives may be allotted by the "Secretary concerned." Any amounts so allotted bear interest, compounded quarterly, equal to the average rate paid on U.S. Treasury bills with 3-month maturities issued during the preceding calendar quarter. 37 U.S.C. §559(b).

[20] The educational benefits of the Victims of Terrorism Compensation Act derive substantially from Viet Nam-era educational benefits.

services who are held as captives and their dependents may be paid, "by advancement or reimbursement," various specified educational expenses. Payments may be made to "former captives" for up to ten years following the date on which "the status of that person as a captive terminates," although payments are permitted "only to the extent ... not otherwise authorized by law." 10 U.S.C. §2183. Payments may be made to the dependents of a person in a "captive status" after that person has been in such a status for 90 days and may continue for a limited period after "the captive status of that person terminates," provided that the dependents are not otherwise eligible for educational assistance under other provisions of law. 10 U.S.C. §2182.

**Appendix VIII**

## Special Benefits Applicable To Certain Members of the Armed Forces Assigned to the National Security Agency, The Central Intelligence Agency, and The Defense Intelligence Agency

**Legal Authority**: 37 U.S.C. §431; Section 4 of the Central Intelligence Agency Act of 1949, ch. 227 [Public Law 110, 81st Congress], §5, 63 Stat. 208, 209-211 (1949), as amended (50 U.S.C. §403e); Section 9 of the Act of May 29, 1959 (National Security Agency Act of 1959), Public Law 86-36, §9, 73 Stat. 63 (1959), as amended by the Intelligence Authorization Act for Fiscal Year 1981, Public Law 96-450, §402, 94 Stat. 1975, 1977-1978 (1980) (50 U.S.C. §402 note).

**Background**: The military compensation and benefits system detailed in Chapters I through V.C.9 of this volume, above, is the compensation and benefits system for the vast majority--well over 99 percent--of all members of the Armed Forces. For this 99+ percent of all members of the Armed Forces, the compensation and benefits system detailed above is both comprehensive and all-encompassing--in the sense that it establishes the outer boundaries within which members of the Armed Forces are paid and receive benefits in return for their services. The fact is, however, some members are, under specific conditions, eligible for additional, or alternative, benefits. One such group consists of prisoners of war (POWs), persons who are in a "missing status," and victims of terrorism. The special compensation and benefits available to this group of persons is dependent upon a specific, involuntary status such persons have, as detailed in Appendix VII, above. Another category of persons for whom special compensation and related benefits have been authorized includes military personnel assigned to intelligence activities of one sort or another--including the Central Intelligence Agency, the National Security Agency, the Defense Attache System, and the Defense Intelligence Agency. This category of "intelligence personnel" is distinguished from the category that includes persons in a "missing status," POWs, and victims of terrorism on the grounds, among others, that the status of "intelligence personnel" is not involuntary. The present appendix summarizes the benefits available to affected personnel and the conditions of entitlement.

Sections 501 and 601 of the Intelligence Authorization Act for Fiscal Year 1982, Public Law 97-89, §§501 and 601, 95 Stat. 1150, 1152-1154 (1981), authorized the payment of certain "allowances and benefits" to members of the Armed Forces "detailed or assigned" to the Central Intelligence Agency and the National Security Agency, respectively. Section 501 of the 1982 Intelligence Authorization Act, *id*., amended Section 4 of the Central Intelligence Agency Act of 1949, ch. 227 [Public Law 110, 81st Congress], §5, 63 Stat. 208, 209-211 (1949) (classified to 50 U.S.C. §403e), by adding a new subsection (b), to provide that members of the Armed Forces "detailed or assigned" to the Central Intelligence Agency could be paid "allowances and benefits comparable to the allowances and benefits authorized to be paid to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980, Public Law 96-465, §§901-905, 94 Stat. 2071, 2124-2128 (1980) (22 U.S.C. §4081 *et seq*.), or any other provision of law." Under this authority, the Director of Central Intelligence

> ... may pay allowances and benefits related to officially authorized travel, personnel and physical security activities, operational activities, and cover-related activities ... when payment of such allowances and benefits is necessary to meet the special requirements of work related to such activities.

The rates at which such allowances and benefits may be paid are limited by the rates authorized by 5 U.S.C. §§5724 and 5724a when "relocation [is] attributable, in whole or in part, to relocation within the United States." Section 601 of the 1982 Intelligence Authorization Act, on the other hand, amended subsection (b)(1) of Section 9 of the National Security Agency Act of 1959 (50 U.S.C. §402 note) to provide that members of the Armed Forces "detailed or assigned" to the National Security Agency could be paid

> (1) allowances and benefits--
>
> (A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4081 et seq.) or any other provision of law; and
>
> (B) in the case of selected personnel serving in circumstances similar to those in which personnel in the Central Intelligence Agency serve, comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency.

With respect to the "allowances and benefits" that may be paid to members of the Armed Forces under 50 U.S.C. §§403e and 402 note, as amended, a special limitation prohibits members of the Armed Forces from receiving, at the same time, "allowances and benefits" both under these provisions and also under comparable provisions of Title 37, United States Code. Sections 4081-4086 of Title 22, United States Code, in turn detail the various "travel, leave, and other benefits" that the Secretary of state may authorize for members of the Foreign Service and their families--which benefits are, by virtue of the 1982 Intelligence Authorization Act, available to members of the Armed Forces "detailed or assigned" to the Central Intelligence Agency or the National Security Agency.[1]

Section 501 of the Intelligence Authorization Act for Fiscal Year 1984, Public Law 98-215, §501(a), 97 Stat. 1473, 1478-1479 (1983), also extended certain of these benefits to personnel assigned to the Defense Intelligence Agency. Under the subject provision, which was originally codified at Section 192 of Title 10, United States Code, but which has since been amended and recodified at Section 431 of Title 37, United States Code, the Secretary of Defense was authorized to

> ... provide to members of the Armed Forces who are assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States and who are designated by the Secretary of Defense for the purposes of this [provision] allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5 [United States Code].

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[1] See, *e.g.*, Senate Report No. 97-57 (Select Committee on Intelligence), pp. 6-7 and 10, accompanying S. 1127, and House Report No. 97-332 (Committee of Conference), pp. 17-19, accompanying H.R. 3454, 97th Congress, 1st Session (1981), for a discussion of the reasons underlying adoption of these provisions. In essence, the provisions were adopted to compensate "intelligence personnel" for the "frequent moves between major metropolitan centers" such personnel were required to undertake because of "career development" and to limit adverse effects on "morale and efficiency of significant numbers of intelligence personnel" due to such moves and the attendant "price of considerable personal loss" such personnel had theretofore been personally required to bear. House Report No. 97-332, *id.*, p. 18. No particular attention was given to the extension of these special benefits to members of the Armed Forces.

Benefits covered include, among others, home visitation between consecutive foreign tours, travel and related expenses of family members accompanying, preceding, or following a member on temporary duty assignments; environmental and morale leave; child care expenses associated with spouses' intelligence training precedent to overseas duty assignments of DIA personnel. The stated reason for the adoption of such benefits was to "bring the attache system in line with other intelligence personnel overseas who may receive similar allowances under existing law."[2]

[2] Senate Report No. 98-77 (Select Committee on Intelligence), pp. 7-8, accompanying S. 1230, 98th Congress, 1st Session (1983).

**Appendix IX**

## Death Benefits Payable to Survivors of Military Decedents

**Background**: Various questions arise concerning the death benefits payable to survivors of members of the Armed Forces who die on active duty. First, there is the question of what benefits exist; second, the amount of the benefit payable in each individual case; and third, when and under what circumstances the benefit is payable in each individual case. This appendix is intended to provide a bare-bones listing or catalogue of the individual benefits payable to survivors of active-duty military decedents. For greater detail on the amount of certain benefits payable under a specific heading, when those benefits are payable, and the reasons underlying the existence of the benefits in the first instance, the reader is referred to those chapters in this volume dealing with the individual benefit in question.

**Death Gratuity**: A $12,000 death gratuity is intended to provide immediate cash to meet the needs of survivors. In general, the death gratuity is payable immediately upon the death of a member of the Armed Forces. Legislative authority: 10 U.S.C. §§1476-1478. See Chapter III.D.3., hereof, "Death Gratuity," above.

**Continued Government Housing or an Allowance in Lieu Thereof**: Survivors are provided rent-free government housing for 180 days after the death of a member or a tax-free housing allowance for that portion of the 180-day period when not in government housing, with the amount of the allowance based on the member's grade at the time of death. Legislative authority: 37 U.S.C. §403(l).

**Burial Costs**: The government reimburses up to $6,900 of expenses for the member's burial if the member’s death is service-connected, and provides travel for next-of-kin under invitational travel orders. Legislative authority: 10 U.S.C. §1482 and 38 U.S.C. §§2301-2308. Cf. ASD (FM&P) Memorandum dated March 21, 1991.

**Unused Leave**: Survivors of a deceased member are entitled to payment for the decedent's unused accrued leave, if any. The amount of the payment is based only on the member's basic pay at the time of death. Legislative authority: 37 U.S.C. §501. See Chapter IV.B.1., hereof, "Annual Leave/Accrued Leave Payments/Leave Lost," above.

**Servicemen's Group Life Insurance (SGLI)**: Service members may elect insurance coverage in multiples of $10,000 up to a maximum coverage of $250,000 under the Servicemen's Group Life Insurance program, or SGLI. The program also provides $100,000 of coverage for spouses of members and $10,000 of coverage per dependent child. SGLI is a Government-sponsored group life insurance program that provides insurance coverage to members of the Armed Forces at rates often lower than those available, given the added risk involved in insuring members of the Armed Forces, under normal commercial insurance policies. SGLI has one affordable insurance rate for all members of the Armed Forces. The government pays the portion of SGLI premium costs that exceeds premiums that would be payable for group life insurance for persons not subject to the special risks involved in military service. Legislative authority: 38 U.S.C. §§1965-1980. See Chapter III.D.2., hereof, "Servicemen's Group Life Insurance/Veterans' Group Life Insurance," above.

**Dependency and Indemnity Compensation (DIC)**: The Department of Veterans Affairs pays a tax-free monthly annuity to an unremarried surviving spouse of a service member who dies from a service-connected disability. The basic spousal DIC is currently $967 per month. An additional $242 per month is payable for each dependent child of the deceased member under the age of 18. Additional amounts are authorized for specific purposes. Legislative authority: 38 U.S.C. §§1301-1323. See Chapter III.D.4., hereof, "Dependency and Indemnity Compensation," above.

**Survivor Benefit Plan (SBP)**: Surviving spouses and/or children of members may be entitled to monthly annuity payments under the Survivor Benefit Plan. The amount of the annuity for a surviving spouse under age 62 is 55 percent of the retired or retainer pay the member would have been entitled to receive if the member was retired on the date of death with a total disability; for a surviving spouse age 62 or older, the annuity

is 35 percent of that amount because Social Security normally becomes available at that age. A supplemental SBP is available to spouses in that category, to counteract the 20 percent annuity reduction that occurs at 62. The amount of an SBP annuity payable to a surviving spouse is reduced by the amount of DIC, if any, the spouse receives on account of the member's death. A surviving spouse who remarries before reaching age 55 loses entitlement to SBP, although SBP is reinstated if the remarriage ends in death or divorce. Children may receive the SBP benefit instead of the surviving spouse in order to allow the benefit to be received without the DIC reduction. Legislative authority: 10 U.S.C. §§1447-1460b. See Chapter IV.C.2., hereof, "Survivor Benefit Plan," above, and National Defense Authorization Act for Fiscal Year 2004, PL 108-136, 117 Stat. 1518.

**Social Security**: Social Security death benefits are payable on behalf of a "currently insured" deceased member to a surviving spouse caring for the deceased member's dependent children under age 16 and to eligible minor children of the deceased member. Social Security old-age survivor benefits are payable on behalf of a "fully insured" deceased member to a surviving spouse at least 60 years old. The amount of an old age survivor benefit is a percentage of a deceased member's Primary Insurance Amount, and depends on the age of the survivor at the time of applying for a Social Security old age survivor benefit. See Chapter IV.C.1., above, "Government Contribution to Social Security," above.

**Health Care**: A surviving spouse less than 65 years old and the minor dependents of a deceased member are eligible for space-available medical care at military medical facilities or are otherwise covered by TRICARE. A surviving spouse 65 years old or older is eligible for space-available medical care at military medical facilities or is otherwise covered by Medicare. Legislative authority: 10 U.S.C. Chapter 55.

**Commissary and Exchange Privileges**: The unmarried surviving spouse and qualified dependents of a deceased member are eligible to shop at military commissaries and exchanges. Legal authority: DoD Directive 1330.17, "Armed Services Commissary Regulations," and DoD Directive 1330.9, "Armed Services Exchange Regulations."

**Tax Benefits**: The next-of-kin of a deceased service member whose death occurs overseas in a terrorist or military action is exempt from paying federal income tax on income received by the decedent during at least the year of the decedent's death. Legislative authority: Internal Revenue Code, Section 692, 26 U.S.C. §692. Benefits received by a survivor of a deceased member from the Department of Veterans Affairs are exempt from levy by the United States or any agency or instrumentality thereof with respect to any indebtedness the decedent may have had to the United States. Legislative authority: 38 U.S.C. §5301.

## Appendix X

### CHAMPUS and TRICARE

**Purpose**: To provide contractual civilian medical care to eligible beneficiaries when the required care cannot be provided by the direct care system, through sharing the cost of medically necessary civilian health care for the dependents of active duty service members, retired members of the uniformed services and their dependents, surviving family members of deceased active or retired members, and eligible former spouses of members.

**Background**: Early in the history of the United States, it was understood that, in order to have a healthy fighting force capable of meeting the nation's military needs, it would be necessary to provide for the medical care of members of the Armed Forces. Because of the remoteness of many of the nation’ military outposts, it was soon determined that each of the nation's military organizations--the Army and Navy at the time--should have its own medical department. Accordingly, the Act of March 2, 1799, ch. 27, §6, 1 Stat. 721, 722 (1799), authorized medical departments for the Army and Navy and provided for the "compensations" of members of those departments as well as additional "compensation for forage, rations, and ... expenses."

The primary mission of the medical departments of the Army and Navy was to provide medical care to active-duty personnel, but over time, as more and more of those personnel came to have dependents, medical care was also provided to dependents, mainly on a "space-available" basis. When military personnel were given retirement rights, it always was understood that they might be recalled to active duty in time of national need, and it was determined that military retirees should be given medical care so that they would be available as force augmentees if needed. Retirees were in fact members, even if not on active duty, and both they and their dependents received medical care from military medical facilities on a "space-available" basis.

After World War II, and especially after the Korean War, when national policy dictated a large standing force capable of quick and effective deployment to any of the "Cold War" hotspots around the world, the active-duty dependent and retiree communities grew rapidly, and the medical care provided through military medical facilities to dependents and retirees (and their dependents) came to be rationed. Indeed, it was during this time that the "space-available" nature of military medical care for dependents and retirees came to be fully understood. Many retirees in fact were forced to seek medical care in the civilian economy, as they had in World War II and the Korean War, and, at least until they became eligible for Medicare after 1966, had to pay for such care on their own. Dependents of active-duty members, on the other hand, while given a higher priority than some retirees, also had their medical care needs rationed.

Because of the adverse effects on morale occasioned by the rationing of medical care provided through military medical facilities to active-duty dependents and retirees (and their dependents), Congress determined to provide alternative sources of medical care to those communities, so that, if their medical care needs could not in fact be met through the "space-available" military medical facilities, they would nevertheless get needed care. The system through which this care is provided initially was referred to as the Civilian Health and Medical Program of the Uniformed Services, or CHAMPUS. As one of the fastest growing parts of the military manpower budget, CHAMPUS and its successor program TRICARE has been of great concern to Congress and to the Department of Defense. The remainder of this appendix sets out the legislative background leading up to CHAMPUS and describes the current administration of the TRICARE program.

**Legislative Background and Administration**: The Dependents Medical Care Act of June 7, 1956, Public Law 84-569, 70 Stat. 250 (1956), gave military retirees and their dependents the right to care in military medical facilities based on the "availability of space and facilities and the capabilities of the medical and dental staff." It also gave the Secretary of Defense the authority to contract with civilian sources for the medical

care of spouses and children of active duty members of the uniformed services, but not for retirees and their dependents.

In recognition that the demand for military medical care was exceeding the capabilities of the services in general, in 1966 Congress, following passage of Medicare legislation, amended the provisions of Title 10 dealing with health care for members, former members, and their dependents and survivors, creating authority to contract for the provision of civilian health care to retired members and their dependents under age 65, as well as the survivors of certain former members, among others. The Department of Defense subsequently exercised this authority through creation of a program that was adopted as part of the Military Medical Benefits Amendments of 1966, Public Law 89-614, 80 Stat. 863 (1966), and which came to be known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

The principal features of the CHAMPUS legislation, which used the Blue Cross-Blue Shield High Option Plan of the Federal Health Benefits Program as a model, established partial government payment for new and expanded inpatient and outpatient care provided by civilian sources to designated beneficiaries. The benefits payable under CHAMPUS were not quite as extensive as those authorized in military medical facilities, and some beneficiaries eligible for care in military facilities—notably those over 65 years of age--were not eligible for care under CHAMPUS. Those with only military facility eligibility were primarily retirees and their dependents and the dependents of deceased members and former members who by law lose their eligibility for CHAMPUS upon becoming entitled to Medicare because of age or disability.[1] The eligibility of parents and parents-in-law of active and retired service members also is limited to military facilities.

Among the differences between CHAMPUS and the Federal Employees' Health Benefits Program were that civilians had to pay a part of the monthly premium but could choose from a variety of plans with different annual benefit structures, while

[1] See footnote 1 to Chapter III.D.1. hereof, "Retired Members Medical Care," above.

CHAMPUS-eligible individuals did not have to pay a premium but also had no choice among a variety of plans. CHAMPUS and its successor program, TRICARE Standard, also differ from federal employees' plans in that, under CHAMPUS AND TRICARE Standard, beneficiaries generally are required to obtain non-emergency inpatient care from nearby military medical facilities if such care is available there. Thus, CHAMPUS and TRICARE Standard have provided only a part of the medical care that their beneficiaries receive. For that reason, those programs are not directly comparable to the various plans available to participants in the Federal Employees' Health Benefits Program, which provide for complete medical care to beneficiaries.

The annual National Defense Authorization Acts from 1991 to 1996 mandated a variety of changes to the CHAMPUS program and the TRICARE programs that succeeded it:

A. The annual outpatient deductible increased to $150 (individual) and $300 (family) for most eligible beneficiaries effective with care provided on and after April 1, 1991. The dependents of active duty members in grades E-4 and below were exempt from the increase and continued to be liable for an annual individual deductible of $50 and family deductible of $100 for outpatient care. These rates remained in effect in the TRICARE Standard and Extra programs through 2004; the TRICARE Prime program, in which all active-duty personnel are automatically enrolled, has no deductible if care is received from a military facility or from the preferred network of outside providers. (See below for a discussion of the TRICARE program.)

B. The annual limits on inpatient mental health care, subject to waivers, changed from 60 days per calendar year, effective February 15, 1991, to:

(1) 30 days in any year for patients aged 19 or older;

(2) 45 days in any year for patients under 19;

(3) 150 days in any year for inpatient mental health services provided by residential treatment centers. Previously, there was no limit on such care.

C. A broadened benefit for pap smears and mammograms, allowing cost-sharing for such services obtained as diagnostic or preventive health care measures.

D. "Transitional" health care (60 or 120 days of eligibility for CHAMPUS benefits and care at military medical facilities, depending on length of active service) were offered to service members (and their families) who were involuntarily separated from active duty during a nine-year period beginning October 1, 1990. Involuntarily separated service members also could buy a "conversion" health care policy after leaving active duty when they still retain CHAMPUS eligibility. If such a policy was purchased, these families received separate benefits in military medical facilities and under CHAMPUS for one year from the starting date of the conversion policy for any preexisting conditions (including pregnancy) that were not covered by the policy. The National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, §4408, 106 Stat. 2315, 2708-2712 (1992), extended the same "transitional" health care benefits to otherwise qualified service members who agree to voluntarily separate from active duty under any of the voluntary separation incentive programs. This provision remained in effect as of 2004. See 10 U.S.C. §1078a as added by Section 4408 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, *id.*

The most recent transitional health care program provides similar benefits to members and the families of members who have been involuntarily separated from active duty on or after January 1, 2002 and to members and the families of members who have been separated from active duty but retained involuntarily in support of a contingency operation. The program also applies to reserve members who have been separated from active duty then called up to serve in a contingency operation for a period of more than 30 days.

By law, CHAMPUS shared the cost of covered civilian inpatient and outpatient health care for eligible persons. The dependents of active duty members in pay grades E-4 and below had an outpatient care deductible in each fiscal year of $50 per person with a $100 family limit. The outpatient care deductible each fiscal year for all others was $150

per person with a $300 family limit. These limits remained under the TRICARE programs. After the deductible was met, CHAMPUS paid 80 percent of allowable outpatient costs for dependents of active duty members and 75 percent of the allowable cost for all others. Under TRICARE Prime, Extra, and Standard, the respective outpatient cost coverages are 100 percent, 85 percent, and 80 percent. For covered inpatient care under CHAMPUS, active duty dependents paid a nominal daily fee ($9.30 for fiscal year 1994) or a total of $25, whichever was greater. TRICARE Prime charges nothing for such care, while TRICARE Extra and Standard both charge $13.32 per day or $25, whichever is greater. All other CHAMPUS patients--*i.e.*, retirees, their families, survivors, and eligible former spouses--paid a fixed daily rate ($271 for fiscal year 1994), or 25 percent of billed charges, whichever was less, in hospitals that fell under the diagnosis-related group (DRG) payment system. In DRG-exempt facilities, they paid 25 percent of the CHAMPUS-determined allowable charge. CHAMPUS paid the remaining allowable charges. Under TRICARE Extra, individuals in those categories pay the lesser of $250 per day or 25 percent of negotiated charges plus 20 percent of negotiated professional fees, and under TRICARE Standard the inpatient charges are the lesser of $441 per day or 25 percent of billed charges plus 25 percent of allowed professional fees. Under TRICARE Prime, the inpatient charges are $11 per day, with a $25 minimum per admission.

Beginning October 1, 1987, all CHAMPUS-eligible families were protected from catastrophic civilian medical expenses by a $1,000 (active duty families only) or $7,500 (all other families) "cap" on the amount of money required to meet the family's annual deductibles and cost-shares based on CHAMPUS allowable charges for covered medical care received in any one fiscal year. The TRICARE Extra and Standard programs provide a cap on catastrophic expenses of $1,000 per year for the dependents of active duty members and a cap of $7,500 per year for other beneficiaries. The cap for members in TRICARE Prime also is $1,000 per year.

The 1966 legislation also established the CHAMPUS Program for the Handicapped (PFTH), a specialized program of assistance for active duty members with

spouses or children who are moderately or severely mentally retarded or seriously physically handicapped. PFTH has no known counterpart in other federal or civilian health care plans. In 1971, eligibility for PFTH was extended to dependents of active duty members who died while eligible for hostile-fire pay (formerly known as combat pay), or who died from a disease or injury incurred while eligible for such pay.

CHAMPUS benefits unique to dependents of active duty members, in addition to the Program for the Handicapped, include an annual eye examination. Otherwise, the benefits for all eligible persons are the same.

The legislation allowed only extremely limited dental care under CHAMPUS: only that care necessary as an adjunct to covered medical or surgical treatment of other than a dental condition. Since "space-available" dental care for active duty families was only available under limited conditions at military facilities, in 1985 the Congress authorized a voluntary-enrollment basic dental benefit for dependents of active duty members, with enrollees sharing in the costs of monthly premiums through payroll deductions. This dental benefit, provided for in the Department of Defense Authorization Act, 1986, Public Law 99-145, 651, 99 Stat. 655-656 (1985), is not part of CHAMPUS, but is administered by a contractor.

In an attempt to improve the quality of health care for service families while at the same time controlling health care program costs, Congress, in the Department of Defense Authorization Act, 1987, Public Law 99-661, 701-702, 100 Stat. 3894-3900 (1986), supported Department of Defense initiatives to change the CHAMPUS program by enactment of a number of new provisions to Chapter 55 of Title 10, U.S. Code.

First, Section 702 of the 1987 Authorization Act required the secretary of defense, as part of the CHAMPUS Reform Initiative, to conduct a demonstration project to test the relative merits of providing alternative methods of obtaining health care for service families, besides the standard CHAMPUS program. The CHAMPUS Reform Initiative began August 1, 1988 in California and Hawaii and continued in 1994 under the

administration of the original contractor, who was selected through a competitive bidding contract award process.

Second, the act permitted the secretary of defense to contract with a variety of health care providers and insurers for the provision of basic health care services. Included within the scope of permitted contractors were health maintenance organizations, preferred provider organizations, individual providers, individual medical facilities, insurers, and consortiums of all such providers, facilities and insurers. In addition, the act specifically authorized the secretary of defense to prescribe premiums, deductible amounts, copayment percentages or amounts, and other health care charges for affected beneficiaries.

Third, while authorizing the secretary of defense to prescribe premiums, deductibles, copayments and the like, the act also specifically authorized the secretary to waive beneficiary financial liabilities. The secretary may waive such payments, or may waive limitations on the kinds of health care services that may be provided as an inducement to beneficiaries of the military health care system to enroll in alternative health care programs that offer equal or better services, at equal or lower cost.

Fourth, the 1987 Authorization Act required the secretary of defense to establish a health care enrollment system for beneficiaries of the military health care program. Under the enrollment system, beneficiaries would be permitted to choose a health care plan from a number of alternative plans designated by the secretary of defense. Eligible plans would include uniformed services medical facilities, CHAMPUS providers, all health care plans contracted for by the secretary of defense, or any combination of such plans. Freedom to choose from among available plans could be limited out of necessity to assign beneficiaries to uniformed services medical facilities in order to assure their full use in a given area.

In 1994 the Department of Defense embarked on a new program, known as TRICARE, to improve the quality, cost, and accessibility of services for its beneficiaries.

Because of the size and complexity of the military health services system (MHSS), TRICARE implementation was phased in over a period of several years. The principal mechanisms for the implementation of TRICARE were the designation of the commanders of selected Military Medical Treatment Facilities (MTFs) as lead agents for 12 TRICARE regions across the country, operational enhancements to the MHSS, and the procurement of managed care support contracts for the provision of civilian health care services within those regions. The first region, including Alaska, Oregon, and Washington, went into operation in 1995; the twelfth and final region, the Northeastern United States, went into operation in 1998. When the TRICARE regional programs were completed in 1998, all military hospitals and clinics in the United States had become part of the program coverage.

Some of the fundamental rules and standards of the CHAMPUS system, such as deductible amounts and eligibility standards, remain in the basic structure of TRICARE. Many other elements have changed since 1994. A major feature of TRICARE is the establishment of a triple option benefit. CHAMPUS-eligible beneficiaries are offered three options: they may elect to receive health care through (1) an HMO-type program called TRICARE Prime, (2) the preferred provider network on a case-by-case basis under TRICARE Extra, or (3) non-network providers under TRICARE Standard. (TRICARE Standard is the same as standard CHAMPUS.) Active-duty members are automatically enrolled in TRICARE Prime; unless they enroll specifically in another program, dependents are automatically covered by TRICARE Standard. Enrollees in TRICARE Prime obtain most of their care within the network and pay substantially reduced cost shares when they receive care from civilian network providers. Enrollees in TRICARE Prime retain freedom to use non-network civilian providers, but they have to pay cost sharing considerably higher than TRICARE Standard if they do so. Under most circumstances, beneficiaries who choose not to enroll in TRICARE Prime preserve their freedom of choice of provider by remaining in TRICARE Standard. These beneficiaries face standard CHAMPUS cost-sharing requirements, except that their coinsurance percentage is lower when they opt to use the preferred provider network under TRICARE

Extra. All beneficiaries continue to be eligible to receive care in MTFs, but active-duty family members who enroll in TRICARE Prime have priority over all other beneficiaries.

Effective September 1, 2002, the TRICARE Prime program added a “remote” health coverage for members and their dependents who are serving in the United States 50 miles or farther from the nearest military treatment facility. This coverage is available to active-duty personnel and their dependents and to reserve personnel and their dependents if the reservist is activated for more than 30 consecutive days. The TRICARE for Life (TFL) program, which was introduced in all regions during 2004, combines TRICARE and Medicare coverage for Medicare-eligible military retirees and dependents. Under TFL, TRICARE acts as the second payer for expenses covered by both programs, covering deductibles and certain other expenses not covered by Medicare. If hospitalization exceeds 150 days, TRICARE becomes the primary payer. TFL also provides a $3,000 cap on catastrophic expenses.

TRICARE Prime incorporates the "Uniform HMO Benefit Option", which was mandated by Section 731 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, §731, 107 Stat. 1547, 1696 (1993). It required the establishment of a Uniform HMO Benefit Option, which was required "to the maximum extent practicable" to be included "in all future managed health care initiatives undertaken by" the Department of Defense. This option is to provide "reduced out-of-pocket costs and a benefit structure that is as uniform as possible throughout the United States". The 1994 Authorization Act further requires a determination that, in the managed care initiative that includes the Uniform HMO Benefit Option, Department of Defense costs are to be "no greater than the costs that would otherwise be incurred to provide health care to the covered beneficiaries who enroll in the option".

In addition to this provision of the 1994 Authorization Act, a similar requirement was established by Section 8025 of the Department of Defense Appropriations Act, 1994, Public Law 103-139, §8025, 107 Stat. 1418, 1443-1444 (1993). As part of an initiative "to implement a nationwide managed health care program for the MHSS", the

Department of Defense was required to establish "a uniform, stabilized benefit structure characterized by a triple option health benefit feature". The Uniform HMO Benefit also implements this requirement of law. It offers reduced cost sharing to CHAMPUS-eligible beneficiaries who enroll in TRICARE Prime.

**Cost**: For the cost of the CHAMPUS and TRICARE coverages from 1978 to the present, see Table – of *Military Compensation Statistical Tables*, volume II of this edition.[2]

[2] For information on how the number of persons eligible for military medical care, by category, *i.e.*, active duty personnel and their dependents as opposed to retirees and their dependents and survivors, have changed over time, and are expected to change in the future, see Chapter III.D.1. hereof, "Retired Members Medical Care", above.

## Appendix XI

### Manpower-Related Mobilization Actions to be Taken by the Department of Defense

**Background**: Operation Iraqi Freedom, which began in 2003, required a mobilization of the nation's military manpower, both active duty and reserve forces personnel. During and preceding the process, questions arose as to manpower-related actions necessary to support such a full-scale mobilization. Some of the actions were directly compensation-related; others, having less to do with compensation, were merely manpower-related. This appendix summarizes the range of manpower-related actions the Department of Defense must take in the event of a future mobilization.

For the purposes of the following listing of manpower-related actions to be taken by the Department of Defense in support of a mobilization of the nation's military manpower, it is assumed that a declaration of war has been made by the Congress or a declaration of national emergency has been proclaimed by the President.

*** Prehostility Actions**

* Call up of reserve forces by the President. Authority/Reference: 10 U.S.C. 12304; see 10 U.S.C. §§12301, 12302, and 12303.

* Stop Loss Action Initiated by the Military Departments. Authority/Reference: 10 U.S.C. §12305.

* Designation by the Secretary of Defense of area or areas for imminent danger pay. Authority/reference: 37 U.S.C. §310(a).

* Evacuate noncombatants and insure that other noncombatants do not enter area of hostilities. Requires coordination between the State Department and the Joint Chiefs of Staff. Authority/reference: Executive Order 12656; Joint Federal Travel Regulations, Volumes I and II; Department of Defense Directives 3025.14 and 1400.11; 5 U.S.C. §5522a and 37 U.S.C. §405(a).

* Review manpower policies and personnel management actions necessary to support hostilities, with particular emphasis on:

- Manpower Acquisition Process;

- Force Quality Parameters;

- Partial Mobilization;

- Full Mobilization.

* Establish policies for treatment of U.S. prisoners of war with respect to pays and allowances, treatment, and repatriation.

* Establish policies for treatment of enemy prisoners of war.

* Preliminary planning for mobilization of the civilian work force. Authority/ Reference: Department of Defense Directive 1400.31 and Instruction 1400.32.

* Obtain inventory of personnel able to understand the language spoken in the area of hostilities. Request language inventory survey from military services, including reserves.

* Project casualties and replacement requirements. Coordinate with Joint Chiefs of Staff.

* Hostilities

* Declaration of a combat zone by Presidential Executive Order. Implications for tax exemptions for participants in hostilities. Authority/ reference: Internal Revenue Code, §112, 26 U.S.C. §112.

* Obtain Presidential Executive Order mobilizing Commissioned Corps of the United States Public Health Service as a branch of the land or naval forces. Authority/ reference: 42 U.S.C. §217.

* Evaluate current Military Personnel Authorization (MPA) for possible funding shortfall and coordinate with DoD Comptroller to obtain adequate funds; prepare legislation and backup information for submission to Congress as necessary. Authority/ reference: 41 U.S.C. §3732 (Food and Forage Act).

* Suspend promotion laws, authorize temporary appointments, and waive ceilings on the number of general and flag officers by Presidential Executive Order. Authority/ reference: 10 U.S.C. §§527, 644, 688c, and 12305.

* Review memorandum of understanding with Selective Service System and consider advisability of resuming draft. Prepare legislation to allow conscription if deemed necessary for manpower requirements. Authority/ reference: 50 U.S.C. §467c.

* Consider induction of health care personnel.

* Increase supply of military manpower by accelerating entry date of members in the Delayed Entry Program. Authority/ reference: 10 U.S.C. §12303.

* Expand services training bases to meet surge requirements and take action necessary to obtain needed funding.

* Reduce length of instruction in officer commissioning programs to increase officer flow.

* Enhance manpower production capacity by preparing and submitting draft legislation to waive Occupational Safety and Health (OSHA) standards. Authority/reference: 29 U.S.C. §651.

* Review and implement tax-exempt savings programs for members in designated combat exclusion zones, if desired. Authority/reference: 10 U.S.C. §1035.

* Transfer Coast Guard or portions thereof to jurisdiction of the Navy pursuant to Presidential Executive Order. Authority/reference: 14 U.S.C. §3.

* Order to active duty all members of reserve components being held as hostages. Authority/reference: 10 U.S.C. §12301(g)(1).

* Develop and disseminate guidance on payment of reserve forces personnel called to active duty. Authority/reference: 10 U.S.C. §113.

* Recall military retirees. Authority/reference: 10 U.S.C. §688(a).

* Disseminate leave accrual regulations for persons missing in action (MIAs). Authority/reference: 10 U.S.C. §701(g).

* If in a period of war declared by Congress, consider suspension of incentive pays for hazardous duty and other special and incentive pays by Presidential Executive Order.

**Appendix XII**

## Poverty Guidelines in Relation to Military Compensation

**Background**: The question of how many members of the Armed Forces receive military compensation that leaves, or has left, them below the federal poverty threshold has arisen in different contexts over the years. To answer the question, the federal poverty guidelines prepared annually by the Department of Health and Human Services have been used most frequently to provide the standard by which to judge whether particular members of the Armed Forces and their families are at or below the poverty threshold for a particular year.[1] The following table sets out the federal poverty guidelines in the 48 contiguous United States from 1973 to date.

| Year | Single Person | 2-Person Family | 3-Person Family | Per-Person Increment |
|---|---|---|---|---|
| 1973 | $2,200 | $2,900 | $3,600 | $700 |
| 1974 | $2,330 | $3,070 | $3,810 | $740 |
| 1975 | $2,590 | $3,410 | $4,230 | $820 |
| 1976 | $2,800 | $3,700 | $4,600 | $900 |
| 1977 | $2,970 | $3,930 | $4,890 | $960 |
| 1978 | $3,140 | $4,160 | $5,180 | $1,020 |
| 1979 | $3,400 | $4,500 | $5,600 | $1,100 |
| 1980 | $3,790 | $5,010 | $6,230 | $1,220 |
| 1981 | $4,310 | $5,690 | $7,070 | $1,380 |
| 1982 | $4,680 | $6,220 | $7,760 | $1,540 |
| 1983 | $4,860 | $6,540 | $8,220 | $1,680 |
| 1984 | $4,980 | $6,720 | $8,460 | $1,740 |
| 1985 | $5,250 | $7,050 | $8,850 | $1,800 |
| 1986 | $5,360 | $7,240 | $9,120 | $1,880 |
| 1987 | $5,500 | $7,400 | $9,300 | $1,900 |
| 1988 | $5,770 | $7,730 | $9,690 | $1,960 |
| 1989 | $5,980 | $8,020 | $10,060 | $2,040 |
| 1990 | $6,280 | $8,420 | $10,560 | $2,140 |
| 1991 | $6,620 | $8,880 | $11,140 | $2,260 |

[1] The poverty guidelines prepared by the Department of Health and Human Services are a simplified version of the Federal Government's statistical poverty thresholds used by the Bureau of the Census to prepare statistical estimates of the numbers of persons and families in poverty. The poverty threshold determinations of the Bureau of the Census are primarily used for statistical purposes only, whereas the poverty guidelines of the Department of Health and Human Services are used administratively to determine whether a particular person or family is eligible for assistance or services under one or more federal anti-poverty programs.

| | | | | |
|---|---|---|---|---|
| 1992 | $6,810 | $9,190 | $11,570 | $2,380 |
| 1993 | $6,970 | $9,430 | $11,890 | $2,460 |
| 1994 | $7,360 | $9,840 | $12,320 | $2,480 |
| 1995 | $7,470 | $10,030 | $12,590 | $2,560 |
| 1996 | $7,740 | $10,360 | $12,980 | $2,620 |
| 1997 | $7,890 | $10,610 | $13,330 | $2,720 |
| 1998 | $8,050 | $10,850 | $13,650 | $2,800 |
| 1999 | $8,240 | $11,060 | $13,880 | $2,820 |
| 2000 | $8,350 | $11,250 | $14,150 | $2,900 |
| 2001 | $8,590 | $11,610 | $14,630 | $3,020 |
| 2002 | $8,860 | $11,940 | $15,020 | $3,080 |
| 2003 | $8,980 | $12,120 | $15,260 | $3,140 |
| 2004 | $9,310 | $12,490 | $15,670 | $3,180 |

Source: "Annual Update of the HHS Poverty Guidelines," prepared annually by the Department of Health and Human Services. The "Annual Update of the HHS Poverty Guidelines" for 2004 was published at *Federal Register*, volume 69, 7335-7338 (February 13, 2004).

The guidelines for Alaska and Hawaii have been somewhat higher throughout the period covered in this table. In 2003, the guidelines for a single person in Alaska and Hawaii were $11,200 and $10,300, respectively, and the add-on for each additional family member was $3,930 in Alaska and $3,610 in Hawaii.

Probably the most useful source of information on military compensation by pay grade, longevity step, and family size is set out in the annual report of the Directorate of Compensation, Office of the Deputy Assistant Secretary of Defense for Military Personnel Policy, which is under the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)(MPP))/Compensation, generically titled "Selected Military Compensation Tables." Those tables incorporate increases in the rates of basic pay authorized by the annual national defense authorization acts and increases in the basic allowances for housing and subsistence prescribed by formulas established in the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, and modified in the National Defense Authorization act for Fiscal Year 2001, Public Law 106-398.

Regular Military Compensation (RMC) is the measure of compensation that is typically used in comparisons with federal poverty thresholds for various family sizes. Following the 1998 consolidation of housing allowances for members stationed in the

United States and overseas, RMC includes basic pay, basic allowance for subsistence, basic allowance for housing, and federal income tax advantage. The amount of basic pay a member receives varies depending on the member's pay grade and longevity step; the amount of basic allowance for subsistence varies depending on whether one is an officer or an enlisted member, *i.e.*, by pay grade; basic allowance for housing varies depending on pay grade, duty location, and dependency status (with or without dependents); and federal income tax advantage varies by pay grade, longevity step, tax filing status (married/unmarried/head of household), and family size. Using the simplifying assumption that anyone with dependents, *i.e.*, anyone with family size greater than one, is married, thereby effectively conflating the head-of-household tax filing status with married tax filing status, the DoD publication "Selected Military Compensation Tables" shows regular military compensation and each of their constituent parts by pay grade, longevity step, and family size. Generally speaking,[2] the "regular military compensation" construct for a member in a particular pay-grade/longevity-step/family-size category is a reasonable approximation of what the member would have to make in fully taxable compensation if the member were in the civilian labor force rather than in the military--especially for members in the lower enlisted pay grades where the poverty guidelines have the greatest likelihood of being in issue.

In making comparisons between military compensation levels for members in different pay-grade/longevity-step/family-size categories with poverty thresholds, one should keep in mind how the Federal HHS poverty guidelines are used in connection with the different programs for which they serve as an input. The appropriate military compensation figure to use may, for example, depend importantly on the federal program in issue.

The number of members in the Armed Forces entitled to food stamp aid under The Food Stamp Act of 1964, Public Law 88-525, 78 Stat. 703 (1964), and its successor,

[2] But see the discussion of the various simplifying assumptions that must be made to calculate the federal income tax advantage for a member in a particular pay-grade/longevity-step/family-size category as set out in Chapter II.B.4. hereof, "Federal Income Tax Advantage," above. In particular, see text accompanying footnotes 22 to 26 of Chapter II.B.4. hereof, above.

the Food Stamp Act of 1977, as amended,[3] is a question that frequently arises in the context of the adequacy of overall military compensation levels. That some members of the Armed Forces receive food stamp aid is a fact. Whether they should or not is subject to question. Section 8121(a) of the Department of Defense Appropriation Act, 1995, Public Law 103-335, §8121(a), 108 Stat. 2599, 2649-2650 (1994), required the Department of Defense to provide information to Congress on the use of food stamps by members of the Armed Forces, including the number of members eligible to receive benefits under the food stamp program and their location, the number of members receiving benefits and their location, and an estimate of the cost of raising the basic pay of members of the Armed Forces to a rate at which no member of the Armed Forces would be eligible to receive benefits.[4]

Partly in response to Congressional concern[5], in 2003 the Department of Defense conducted a study of food stamp use by members of the Armed Forces. The summary of findings of the May 2003 Department of Defense report, entitled "Food Stamp Usage in the Military," are set out below:

> Less than two-tenths of one percent of the military members included in this study received food stamps (1478 members out of a total military population of 886,347). Furthermore, more than 50 percent of these individuals lived in government quarters. The majority of these members were eligible for food stamps because the Department of Agriculture [which oversees eligibility criteria] does not include the value of in-kind housing benefits in the income eligibility calculations.

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[3] The Food Stamp Act of 1965, Public Law 88-525, 78 Stat. 703 (1964), as amended, is classified to 7 U.S.C. §2011 *et seq.*

[4] Eligibility for food stamp aid is household- rather than family-based, depending on the number of people in the household under consideration, gross household income, net household income, and total financial household resources, as well as a number of non-financial factors. In general, gross household income of a household seeking food stamp aid may not exceed 130 percent of the federal poverty guidelines for however many people are in the household. Net household income, which is determined by subtracting from gross household income a standard cost-of-living charge, an earned-income deduction, a dependent-care deduction, an excess-shelter deduction, and a medical deduction, may not exceed 100 percent of the federal poverty guidelines for the number of people in the household. For most members of the Armed Forces, total household financial resources may not exceed $2,000 for the household to be eligible for food stamps. If the household includes a person age 60 or older, the limit is $3,000.

[5] As expressed, for example, in the National Defense Appropriations Act for Fiscal Year 1995, Public Law 103-335, section 8121(a).

Overall, in 2004 the data did not support a claim that military food stamp usage was widespread. The fact that some enlisted members and even a few officers receive food stamps is more a result of larger-than-average household sizes and whether a member lives on or off base than it is an indicator of inadequate military compensation.

The 2003 report noted that consecutive studies of the issue had showed a substantial decline in food stamp utilization. In 1991 some 19,400 members were estimated to be using food stamps. A 1995 study found 11,900 such members. The 1999 study identified food stamp utilization by only 6,300 members. The 2003 study noted the substantial decline in food stamp usage. In 1991, some 19,400 members were estimated.

Nevertheless, as noted in Chapter IIB3 of this volume, the existing need for food stamps by nearly 1 percent of the Armed Forces brought about major changes in the basic allowance for subsistence in subsequent years. In 2000, noting that more than 6,000 members still were depending on food stamps for subsistence,[6] Congress provided a BAS supplement, the Family Subsistence Supplemental Allowance (FSSA), for targeted personnel in the National Defense Authorization Act for Fiscal Year 2001. That provision was encoded in 37 U.S. Code 402(a). The supplement would raise the subsistence allowance of a member with dependents who was eligible to receive food stamps, to the point where food stamps no longer were necessary, as long as the monthly payment did not exceed $500. A member's eligibility for food stamps would be determined by the standards of the Food Stamp Act of 1977 (7 U.S.Code 201(c), taking into consideration the amount of BAH for which the member was eligible by virtue of grade, location, and dependency status. The BAH amount would be considered whether or not the member was receiving such an allowance by virtue of not living in government quarters. The supplement would be curtailed by a promotion, permanent change of station, or after payment had been made for twelve consecutive months.

[6] See, for example, House Report No. 106-616 (House Armed Services Committee, p. 375, accompanying H.R. 5408, 106th Congress, 2d Session (2000).

## Appendix XIII

### Critical Dates Relating to Hostilities and Entitlement to Various Military and Veterans Benefits

**Background**: Whether a member or former member of an armed force is or is not entitled to various military or veterans benefits frequently turns on whether the member was a member of an armed force during a particular period of time, or was assigned to specific types of duty, or duty within a qualifying locality, during a particular period of time. For example, entitlement to certain veterans' benefits, including so-called "GI Bill" educational benefits, requires active duty as a member of an armed force for a certain minimum length of time during a designated period. Other entitlements limited by specific dates include combat duty pay (now known as hostile fire or imminent danger pay) and certain income and other federal tax benefits.

The following is a brief listing of some of the more important dates for determining eligibility for and entitlement to various military and veterans benefits deriving from military service during World War II, the Korean Conflict, the Vietnam Conflict, the Persian Gulf War, and the Bosnia-Herzegovina Peacekeeping Operation.[1] If an individual member or former member of an armed force was not on active duty during one or more of the inclusive periods set out below, the member will not be entitled to the general category of benefits indicated. If the member was on active duty during one or more of the inclusive periods, the member may or may not be entitled to one or more of the benefits included within the general category of benefits indicated, depending on whether the member met certain additional requirements for receipt of those benefits. The question of what specific benefits a member or former member may be entitled to is beyond the scope of this appendix, as is the question of what the additional requirements for receipt of any particular benefit may be. For these latter two questions, the reader is referred to the requirements for receipt of benefits under specific program headings.

[1] Certain other important dates are also set out below, such as the date or dates of various precipitating and aggravating events underlying the different periods of armed conflict, the date or dates of events ending such periods, the date or dates of other important events preceding, accompanying, and following such periods, *etc*.

**World War II:**

| | |
|---|---|
| * Japanese attack on Pearl Harbor | December 7, 1941 |
| * United States declares war on Japan | December 8, 1941 |
| * United States declares war on Germany, Italy | December 11,1941 |
| * Veterans' benefits of various kinds | December 7, 1941–<br>December 31, 1946 |
| * Germany surrenders unconditionally | May 7, 1945 |
| * Japan announces its intention to surrender | August 14, 1945 |
| * Formal unconditional surrender of Japan<br>(aboard "U.S.S. Missouri" in Tokyo Bay) | September 2, 1945 |
| * Presidential proclamation of end of hostilities | December 31, 1945 |
| * Formal end of war with Germany<br>(Joint resolution of Congress) | October 19, 1951 |
| * Peace treaty with Japan | April 28, 1952 |
| * Prisoner of war pay filing deadline | August 31, 1955 |

**Korean Conflict:**

| | |
|---|---|
| * North Korea invades South Korea | June 25, 1950 |
| * Combat duty pay authorized | May 31, 1950–<br>January 31, 1955 |
| * Federal tax benefits (combat zone) | June 25, 1950–<br>January 31, 1955 |
| * Veterans' benefits of various kinds | June 27, 1950–<br>January 31, 1955 |
| * Kaesong/Panmunjom truce talks begin | July 10, 1951 |
| * Cease fire announced at Panmunjom | July 27, 1953 |

| | |
|---|---|
| * Prisoner of war pay filing deadline | August 21, 1955 (subject to exceptions for persons in POW status after August 21, 1954) |
| **Vietnam Conflict:** | |
| * Armed Forces Expeditionary Medal authorized | July 2, 1958 |
| * Federal tax benefits (combat zone) | February 28, 1961–June 30, 1996 |
| * Hostile fire pay/imminent danger pay | October 1, 1963–January 31, 1976 |
| * Veterans' benefits of various kinds | August 5, 1964–May 7, 1975 |
| * Paris Peace Accord signed (cease fire) | January 27, 1973 |
| * United States forces withdraw from Vietnam | March 28, 1973 |
| * Prisoner of war pay filing deadline | June 24, 1973 (subject to exceptions for persons in POW status after June 24, 1970) |
| * Selective Service inductions terminated (implementation of "All-Volunteer Force") | June 30, 1973 |
| * Last U.S. citizen evacuated from Saigon | April 29, 1975 |
| * Republic of Vietnam (South Vietnam) surrenders to Socialist Republic of Vietnam (North Vietnam) | April 30, 1975 |
| **Persian Gulf War:** | |
| * Iraq invades Kuwait | August 1, 1990 |
| * Southwest Asia Service Medal authorized | August 2, 1990–November 30, 1995 |
| * Hostile fire/imminent danger pay authorized | August 2, 1990, to date (Discontinued August 31, 1993, for all of Southwest |

| | |
|---|---|
| | Asia except Kuwait, Iraq, Saudi Arabia, Yemen, and Persian Gulf Waters) |
| * Veterans benefits of various kinds | August 2, 1990, to date |
| * Operation Desert Shield: U.S. deploys forces into Southwest Asia | August 7, 1990 |
| * Iraq annexes Kuwait | August 28, 1990 |
| * UN Resolution 678: authorizes use of force if Iraq not out of Kuwait by January 15, 1991. U.S. begins orchestration of a 28-nation coalition with 690,000 troops, 450,000 of which were U.S. | November 29, 1990 |
| * Operation Desert Storm: air war begins | January 17, 1991 |
| * Federal tax benefits (combat zone) | January 17, 1991, to date |
| * Operation Desert Storm: ground war begins | February 24, 1991 |
| * Iraq stops resistance: cessation of hostilities | February 28, 1991 |
| * Formal cease fire establishes “no-fly zones” over Iraq | April 11, 1991 |
| **Somalia Peacekeeping Operation Restore Hope** | December 1992–March 1993 |
| **Bosnia-Herzegovina Peacekeeping Operation:** | |
| * United States and European Community recognize Bosnia-Herzegovina as an independent state | April 7, 1992 |
| * Armed Forces Service Medal authorized | June 1, 1992, to date |
| * Hostile fire/imminent danger pay authorized | June 22, 1992, to date |
| * Dayton Peace Accords initialed | November 21, 1995 |
| * Federal tax benefits (combat zone) | November 21, 1995, to date |

| | |
|---|---|
| * Secretary of Defense declares Bosnia-Herzegovina deployment to be a contingency operation | December 2, 1995 |
| * President formally authorizes deployment of United States forces | December 3, 1995 |
| * Beginning of call-up of Selected Reserves for support of Bosnia-Herzegovina peacekeeping operations | December 8, 1995 |
| * Dayton Accords formally signed in Paris | December 14, 1995 |
| * Multinational Implementation Force (IFOR) oversees military aspects of Dayton Accords | December 1995–December 1996 |
| * Stabilization Force Bosnia-Herzegovina (SFOR) succeeds IFOR, carries on multi-national peacekeeping activities | December 1996– |
| * Housing allowance system is consolidated and basic allowance for subsistence is reformed by National Defense Authorization Act for Fiscal Year 1998 | January 1, 1998 |
| **Kosovo** | |
| * Rambouillet Accord declares Kosovo autonomy | February 23, 1999 |
| * NATO Operation Allied Force bombs Serbian targets in Kosovo | March 24–June 10, 1999 |
| * Hostile fire/imminent danger pay authorized for area around Yugoslavia | April 13, 1999 |
| * Kosovo Force (KFOR) deploys, including 7,000 United States troops | June 12-20, 1999 |
| * KFOR presence in Kosovo continues | June 1999 to date |
| **Operation Enduring Freedom (Afghanistan)** | |
| * Hostile fire/imminent danger pay approved for Afghanistan | November 1, 1988 |

| | |
|---|---|
| * Missile attacks on suspected terrorist sites in Sudan and Afghanistan in response to bombings of United States embassies in Kenya and Tanzania | August 1998 |
| * National Defense Authorization Act for Fiscal Year 2000 reforms retired pay system | October 5, 1999 |
| * Terrorist attack on U.S.S. Cole in Aden harbor | October 12, 2000 |
| * Terrorist hijackers attack World Trade Center and Pentagon | September 11, 2001 |
| * Multinational Operation Enduring Freedom begins in Afghanistan | October 7, 2001 |
| * Interim government of Hamid Karzai is seated | December 22, 2001 |
| * Georgia designated for hostile fire/imminent danger pay | July 30, 2002 |
| * Djibouti, Eritrea, and Kenya designated for hostile fire/imminent danger pay | July 31, 2002 |
| * Imminent danger pay increases to $225 per month and family separation allowance to $250 per month | October 1, 2002 |
| * Ivory Coast designated for hostile fire/imminent danger pay | February 27, 2003 |
| * NATO takes role in Afghanistan by assuming command of International Security Assistance Force | August 11, 2003 |
| * Occupation and security operations of Operation Enduring Freedom continue | October 2001– |

**Operation Iraqi Freedom**

| | |
|---|---|
| * Launch of Operation Iraqi Freedom | March 19, 2003 |
| * United States forces enter Baghdad | April 9, 2003 |
| * First meeting of Iraq governing council | July 13, 2003 |
| * Saddam Hussein captured | December 13, 2003 |

| | |
|---|---|
| * Phase-in of full concurrent receipt begins for retired disabled members | January 1, 2004 |
| * Provisional government installed in Iraq; occupation coalition retains military control | June 30, 2004 |

**Appendix XIV**

## United States Casualties in Wars of the 20th and 21st Centuries

| War/Conflict | Service | Number Serving | Casualties and Percentage | | Deaths and Percentage | |
|---|---|---|---|---|---|---|
| World War I (1917-1918) | Total | 4,734,991 | 320,518 | 6.8 | 116,516 | 2.5 |
| | Army | 4,057,101 | 300,041 | 7.4 | 106,378 | 2.6 |
| | Navy | 599,051 | 8,106 | 1.4 | 7,287 | 1.2 |
| | Marines | 78,839 | 12,371 | 15.7 | 2,851 | 3.6 |
| World War II (1941-1945) | Total | 16,122,566 | 1,077,245 | 6.7 | 405,399 | 2.5 |
| | Army | 11,260,000 | 884,135 | 7.9 | 318,274 | 2.8 |
| | Navy | 4,183,466 | 100,392 | 2.4 | 62,614 | 1.5 |
| | Marines | 669,100 | 92,718 | 13.9 | 24,511 | 3.7 |
| Korean Conflict (1950-1953) | Total | 5,720,000 | 140,197 | 2.5 | 36,913 | 0.6 |
| | Army | 2,834,000 | 107,757 | 3.8 | 30,161 | 1.1 |
| | Navy | 1,177,000 | 2,224 | 0.2 | 648 | 0.1 |
| | Marines | 424,000 | 28,352 | 6.7 | 4,608 | 1.1 |
| | Air Force | 1,285,000 | 1,864 | 0.2 | 1,496 | 0.1 |
| Vietnam Conflict (1964-1973) | Total | 8,744,000 | 211,480 | 2.4 | 58,177 | 0.7 |
| | Army | 4,368,000 | 134,997 | 3.1 | 38,195 | 0.9 |
| | Navy | 1,842,000 | 6,740 | 0.4 | 2,562 | 0.1 |
| | Marines | 794,000 | 66,229 | 8.3 | 14,837 | 1.9 |
| | Air Force | 1,740,000 | 3,514 | 0.2 | 2,583 | 0.1 |
| Persian Gulf War (1991) | Total | 2,050,790 | 849 | .04 | 383 | .02 |
| | Army | 744,981 | 480 | .06 | 224 | .03 |
| | Navy | 576,124 | 67 | .01 | 56 | .01 |
| | Marines | 200,358 | 160 | .08 | 68 | .04 |
| | Air Force | 529,287 | 44 | .01 | 35 | .01 |
| Operation Enduring Freedom (2001-)* | Total | 2,819,943 | 340 | .01 | 112 | .004 |
| | Army | 1,272,072 | 269 | .02 | 71 | .005 |
| | Navy | 641,993 | 10 | .002 | 10 | .002 |
| | Marines | 133,605 | 21 | .02 | 12 | .01 |
| | Air Force | 677,589 | 40 | .06 | 19 | .03 |

| | | | | |
|---|---|---|---|---|
| Operation Iraqi Freedom (2003-)* | Total | 2,641,900 | 3,410 .1 | 570 .02 |
| | Army | 1,183,000 | 2,961 .3 | 2,492 .2 |
| | Navy | 563,000 | 20 .004 | 10 .002 |
| | Marines | 272,900 | 389 .1 | 83 .03 |
| | Air Force | 612,300 | 40 .01 | 8 .002 |

*Figures for Operation Enduring Freedom and Operation Iraqi Freedom as of March 2004, based on U.S. Department of Defense website http://web1.whs.osd.mil/mmid/mmidhome.htm and International Institute for Strategic Studies, *The Military Balance 2003-2004* (London: Oxford University Press, 2003), 18-23. Figures for Operation Enduring Freedom include casualties incurred in and around Afghanistan and in the Philippines, Southwest Asia, and other locations.

## Appendix XV

### Statute of Limitations for Claims Against the Federal Government for Back Pay and Other Matters

**Background**: Questions frequently arise concerning the entitlement of a member or former member of the Armed Forces to compensation for or on account of service or other compensable action that took place in the distant past. In the absence of a specifically controlling statute of limitations that provides for a longer period of time in which a suit may be brought against the Federal Government, claims against the Federal Government must generally be brought with six years after the claim or cause of action accrues.[1] Thus, Section 2401 of Title 28, United States Code, 28 U.S.C. §2401, provides that every civil action against the United States, other than an action based on a tort claim, must be brought within six years after the cause of action "first accrues," provided that if the claimant is "under a legal disability" or "beyond the seas" when the claim accrues, an action may be brought within three years "after the disability ceases". 28 U.S.C. §2401(a). An action against the United States premised on a tort claim, on the other hand, must generally be brought within two years after the cause of action accrues. 28 U.S.C. §2401(b). The same rule applies to claims against the United States over which the United States Court of Claims has jurisdiction. 28 U.S.C. §2501.

An exception to these general rules applies if the claim of a member or former member of the Armed Forces accrues during wartime or within five years before war begins, in which case the claim must be presented to the Department of Defense "within five years after peace is established"[2] or within six years after the claim accrues,[3]

[1]The question of when a particular claim or cause of action accrues, or accrued, for the purpose of applying a statute of limitations is beyond the scope of this appendix. The question has, however, been the subject of much dispute and extended litigation in various contexts over the years.

[2] The question when "peace is established" with respect to a particular war or a particular claimant is beyond the scope of this appendix.

[3] See footnote 1 hereof, above.

whichever is later. 31 U.S.C. §3702(b)(2).[4] The National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, 110 Stat. 2543, amended 31 U.S.C. §3702 by providing that the Secretary of the relevant department can waive the peacetime six-year limit for claims of outstanding pay or allowances if the amount of the claim is less than $25,000.

[4] As originally provided, the Comptroller General was required to settle all claims against the Federal Government under 31 U.S.C. §3702. The Comptroller General's functions under former 31 U.S.C. §3702 were transferred, effective June 30, 1996, to the director of the Office of Management and Budget by Section 211 of the Legislative Branch Appropriations Act, 1996, Public Law 104-53, §211, 104 Stat. 514, 535 (1995). Insofar as those functions relate to claims for military pay, travel, retirement, survivor benefits, and other matters falling within the purview of the Department of Defense, the director of the Office of Management and Budget has delegated those function to the Department of Defense.

# Selected References and Citations

## Public Laws

## Public Laws

**Public Laws**

| Public Law by Statutes at Large Citation | Cross Reference |
|---|---|
| 37 Stat. 707 | *See* Public Law 62-401 |
| 39 Stat. 211 | *See* Public Law 64-85 |
| 42 Stat. 625 | See Public Law 67-235 |
| 44 Stat. 782-783 | *See* Public Law 69-446 |
| 48 Stat. 283 | *See* Public Law 73-78 |
| 49 Stat. 120 | See Public Law 74-29 |
| 49 Stat. 620 | *See* Public Law 74-271 |
| 54 Stat. 885 | *See* Public Law 76-783 |
| 54 Stat. 1008 | *See* Public Law 76-801 |
| 54 Stat. 1178 | *See* Public Law 76-861 |
| 54 Stat. 1205 | *See* Public Law 76-872 |
| 55 Stat 240 | *See* Public Law 77-98 |
| 56 Stat. 148 | *See* Public Law 77-490 |
| 56 Stat. 359 | *See* Public Law 77-607 |
| 56 Stat. 611 | *See* Public Law 76-649 |
| 56 Stat. 736 | *See* Public Law 77-697 |
| 56 Stat. 990 | See Public Law 77-761 |
| 57 Stat. 126 | *See* Public Law 78-68 |
| 58 Stat. 648 | *See* Public Law 78-393 |
| 58 Stat. 682 | *See* Public Law 78-409 |
| 59 Stat. 462 | *See* Public Law 79-137 |
| 60 Stat. 859 | *See* Public Law 79-604 |
| 60 Stat. 964 | *See* Public Law 79-704 |
| 61 Stat. 495 | *See* Public Law 80-253 |

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