

VOLUME 7A, CHAPTER 35: “SEPARATION PAYMENTS”**SUMMARY OF MAJOR CHANGES**

All changes are denoted by **blue font**.

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue, and underlined font**.

The previous version dated **October 2015** is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
350202.B.4	Clarified Special Leave Accrual carryover for Fiscal Year 2015 in accordance with Title 10, United States Code (U.S.C.), section 701.	Revision
350202.B.4 Example 3	Inserted an example supporting the revision to subparagraph 350202.B.4.	Addition
350301.A.1.b	Removed obsolete paragraph that references members who are no longer on active duty and renumbered subsequent paragraphs accordingly.	Deletion
350504.A.1 350504.A.2 350504.B 350504.D	Removed the directive type language and the statement “for the same illness or injury that caused the entitlement to disability severance pay,” in accordance with 26 U.S.C. § 104.	Deletion
3508	Removed the obsolete section on Special Separation Benefit and renumbered subsequent sections and paragraphs accordingly.	Deletion
3509	Removed the obsolete section on Voluntary Separation Incentive and renumbered subsequent sections and paragraphs accordingly.	Deletion
Table 35-6 Rule 8	Removed obsolete rule for members involuntarily discharged because of substandard performance of duty, moral or professional dereliction.	Deletion
Table 35-6 Rule 9	Removed obsolete rule for officers involuntarily discharged because of written notification that member must show cause for retention and who subsequently requests discharge or release from active duty.	Deletion
Bibliography	Updated references.	Revision

Table of Contents

3501 GENERAL.....	5
350101. Purpose	5
350102. Authoritative Guidance	5
3502 ACCRUED LEAVE PAY.....	5
350201. General Entitlement.....	5
*350202. Leave Accounting	8
350203. Leave Payments and Taxability	12
350204. Leave Payments and Debts	13
350205. Leave Payment to Beneficiaries	13
3503 SEPARATION PAY (NON-DISABILITY).....	14
350301. Entitlement	14
350302. Limitations of Eligibility	18
350303. Computation of Active Service	20
350304. Computation of Separation Pay.....	20
350305. Recoupment of Separation Pay From Retired Pay, Retainer Pay, or Department of Veterans Affairs (VA) Disability Compensation.....	20
3504 READJUSTMENT AND SEVERANCE PAY (OTHER THAN DISABILITY) PROVISIONS.....	21
350401. Repay Readjustment or Severance Pay	21
350402. Refund Upon Retirement	21
350403. Waiver or Refund Before Retirement	21
350404. VA Disability Compensation	22
3505 DISABILITY SEVERANCE PAY	22
350501. Entitlement	22
350502. Disability Incurred During Non-pay Status	22
350503. Computation	22
350504. Taxability and Withholding	23
350505. Availability to Liquidate Debts	25
350506. Recoupment From VA Compensation	25
350507. Other Benefits and Claims	25
3506 CONTRACT CANCELLATION PAY AND ALLOWANCES	25
350601. Entitlement	25
350602. Computation	25
350603. Restrictions.....	25
350604. Withholding Tax	26

350605.	Availability to Liquidate Debts	26
3507	MISCELLANEOUS SEPARATION PAYMENTS	26
350701.	Discharge Gratuity	26
350702.	Travel Allowance on Separation	26
3508	VOLUNTARY SEPARATION PAY (VSP)	26
350801.	Entitlement	26
350802.	Eligibility.....	27
350803.	Initial Term of Obligated Service.....	27
350804.	Ineligible for VSP.....	27
350805.	Application for VSP	28
350806.	Approval for VSP.....	28
350807.	Computation of VSP	28
350808.	Payment.....	28
350809.	Repayment of VSP When a Member Qualifies for and Receives Retired Pay..	29
350810.	VA Disability Compensation	29
350811.	Members Returned to Active Duty	29
3509	RETROACTIVE STOP LOSS SPECIAL PAY COMPENSATION	30
350901.	Authority	30
350902.	Amount.....	30
350903.	Limitation	30
350904.	Treatment of Deceased Members.....	31
350905.	Exclusion of Certain Former Members.....	31
350906.	Relation to Other Stop Loss Special Pay	31
350907.	Effect of Subsequent Reenlistment or Voluntary Extension of Service	31
3510	VOLUNTARY RETIREMENT INCENTIVE (VRI).....	31
351001.	Authority	31
351002.	Eligible Officers	31
351003.	Ineligible Officers	32
351004.	Payment.....	32
351005.	Members Returning to Active Duty	32
Table 35-1.	PAYMENT OF ACCRUED LEAVE – OFFICERS AND ENLISTED MEMBERS – SEPARATION WITHOUT IMMEDIATE REENTRY ON ACTIVE DUTY .	34
Table 35-2.	PAYMENT OF ACCRUED LEAVE – OFFICERS – SEPARATION WITH IMMEDIATE REENTRY ON ACTIVE DUTY	37
Table 35-3.	PAYMENT OF ACCRUED LEAVE – ENLISTED MEMBERS – SEPARATION WITH IMMEDIATE REENTRY ON ACTIVE DUTY	39

Table 35-4. PAYMENT OF ACCRUED LEAVE – ENLISTED MEMBERS – EXTENSION OF ENLISTMENT: DISCHARGE AND REENLISTMENT BEFORE EXTENSION IS COMPLETED	41
Table 35-5. COMPUTATION OF ACCRUED LEAVE PAYMENT	43
Table 35-6. SEPARATION PAY ENTITLEMENT AND COMPUTATION	45
Table 35-7. ENTITLEMENT TO DISCHARGE GRATUITY	46
*BIBLIOGRAPHY	48

CHAPTER 35

SEPARATION PAYMENTS

3501 GENERAL

350101. Purpose

This chapter prescribes the policy for entitlements that members may receive when separating from military service.

350102. Authoritative Guidance

The bibliography at the end of this chapter lists the authoritative references.

3502 ACCRUED LEAVE PAY

350201. General Entitlement

A. A member who is discharged or separated under honorable conditions is entitled to payment of unused accrued leave unless the member continues on active duty under conditions that require accrued leave to be carried forward, or in the case of a Reserve Component member, the member elects to have the leave carried forward to the member's next period of active service. An enlisted member who voluntarily extends their enlistment for the first time is also entitled to payment for unused accrued leave.

1. Conditions for Payment of Unused Accrued Leave. See Tables 35-1 through 35-4 for specific rules governing whether a member may be paid for unused accrued leave.

2. Career Leave Payment Limitation of 60 days

a. Effective February 10, 1976, a military service member is entitled to receive payment for no more than 60 days of accrued leave during a military career. Payments for unused accrued leave made before that date will be excluded from this 60-day limitation.

b. A military service member eligible for an unused accrued leave settlement is authorized an election with regard to payment or carryover of the leave. The member may elect to receive payment for a portion of the unused leave, not to exceed a career total of 60 days, and to have the remaining accrued leave carried forward to a new or extended enlistment. The total of paid and carried forward leave may exceed 60 days.

3. One-Time Leave Payment. An enlisted member of the Armed Forces who would lose accumulated leave in excess of the 120 days in subparagraph 350202.B.2 may elect to be paid for such leave up to 30 days. This election can only be taken once during a

career. This leave payment does apply against the 60 days of leave paid during a career as stated in subparagraph 350201.A.2. This one-time payment exception applies to members who:

- a. Serve on active duty for a continuous period of at least 120 days in an area in which the member is entitled to hostile fire pay/imminent danger pay;
- b. Are assigned to a deployable ship or mobile unit, or to other duty designated by the Secretary of the Military Department concerned as qualifying;
- c. On or after August 29, 2005, are performing duty designated by the Secretary of Defense (SecDef) as qualifying duty; or
- d. Serve on active duty in a duty assignment in support of a contingency operation.

4. Exceptions to the 60-Day Career Leave Payment Limitation

a. Contingency Operations. The 60-day leave payment limitation does not apply with respect to leave accrued by a member of a Reserve Component or retired Reserve; a retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps; or a member of the Fleet Reserve or Fleet Marine Corps Reserve during any period while the member also is:

(1) Serving on active duty in support of a contingency operation on or after December 5, 1991; or

(2) Serving on active duty in connection with the Persian Gulf conflict (other than for training) under authority of Title 10, United States Code (U.S.C.), section 688, § 12301, § 12302, § 12304, § 12306, or § 12307, on or after August 2, 1990.

b. Active Duty of 31 to 365 Days. The 60-day leave payment limitation does not apply to leave accrued by a member of a Reserve Component while serving on active duty, full-time National Guard duty, or active duty for training during a period of more than 30 days, but not in excess of 365 days, beginning on or after October 1, 2001.

c. Death on Active Duty. The 60-day leave payment limitation does not apply to leave accrued by a member who dies while on active duty (or a member or former member who dies after retirement or discharge, but before receiving payment of accrued leave). Payment of accrued leave for a deceased member is based upon the unused accrued leave that he or she carried forward into the leave year in which deceased, plus the unused leave that accrued during that leave year, beginning on or after February 10, 1996.

d. Career Leave Payment Total. Unused leave accrued specifically under the conditions of subparagraphs 350201.A.4.a through 350201.A.4.c is in addition to the member's career leave payment limitation of 60 days. Such unused leave may be

carried forward into a new contract period of active duty and later be eligible for payment in addition to other leave to which the 60-day career ceiling applies. See paragraph 350202 for rules that apply to accounting for accrued and used leave, and subparagraph 350203.B for calculating the payment amount and the possible application of the [Combat Zone Tax Exclusion \(CZTE\)](#).

Example: On January 1, 2001, a National Guard member on active duty, under Title 32, is mobilized for 3 years with his unit under 10 U.S.C. § 12301. Although previously paid for career leave of 48 days, the member elected to carry forward all 32 days of accrued unused leave from the pre-mobilization period.

On April 6, 2001, he [was](#) discharged and immediately ordered to active duty for another period of 3 years. The member used leave from April 2 through April 5, 2001 (4 days). He has 36 days accrued unused leave at discharge (32 days from his balance brought forward, plus 8 days accrued under the mobilization, minus the 4 days of leave used). He may elect to be paid for a maximum of 16 days of leave at discharge, which includes the 12 days up to the 60-day limitation, plus 4 days of excepted leave (earned 8 days excepted leave less the 4 days used).

The remaining balance of 20 days (or more, if he takes payment for less than the full 16 days of leave) may be carried forward into the new active duty period. If a payment is made for 12 days or less, then 4 days of the carryover are an exception to the 60-day payment limitation and may be paid in the future if they remain unused.

B. Under regulations prescribed by the Secretary of the Military Department concerned, a member sentenced to unsuspended dismissal or unsuspended dishonorable or bad-conduct discharge by court-martial may be required to take leave pending review of the conviction ([for example](#), appellate leave) as provided by 10 U.S.C. § 876a. Such member may elect to be paid in a lump sum for the leave accrued to his or her credit as of the day before the day the leave begins. Otherwise, each day of appellate leave will be charged as a day of leave and the member paid accordingly until all of the member's accrued leave is used. Payment will be based on the rate of basic pay to which the member was entitled on the day before the day leave is to begin.

C. A member who is discharged under other than honorable conditions forfeits all accrued leave at the time of discharge and is not entitled to payment for accrued leave, regardless of the length of time the separated member has served.

D. Except as provided in subparagraph 350201.E, a member who receives an uncharacterized discharge before completing 6 months of active duty will be considered as having received an honorable discharge with payment of accrued leave being authorized.

E. A member, who is discharged before completing 6 months of active duty because of failure to serve satisfactorily, forfeits all accrued leave at the time of discharge. Such forfeiture also applies to any member with prior military service who had a break in service of 90 or more consecutive days. The following constitute reasons for failure to serve satisfactorily.

1. Enlisted reasons include:
 - a. Defective enlistment and induction (minority and fraudulent entry only);
 - b. Entry-level performance and conduct;
 - c. Unsatisfactory performance;
 - d. Drug and/or alcohol abuse rehabilitation failure;
 - e. Misconduct, moral, and/or professional dereliction;
 - f. Separation in lieu of trial by court-martial; or
 - g. Security (unless the member receives an honorable discharge).
2. Officer reasons include:
 - a. Separation for cause (e.g., officers separated for substandard performance of duty);
 - b. Dropped from the rolls;
 - c. Misconduct, moral, and/or professional dereliction;
 - d. Separation in lieu of trial by court-martial; or
 - e. Security (unless the member receives an honorable discharge).

*350202. Leave Accounting

A. Accrued leave must be carefully accounted for and accurately identified as to the time and circumstances under which it was earned. The number of days accrued and value of unused leave that is to be sold depends upon the timeframe and circumstances under which it was earned.

1. Leave accrued on or before August 31, 1976 is valued using basic pay, Basic Allowance for Housing (BAH), Basic Allowance for Subsistence (BAS),

and if applicable to the individual, Personal Money Allowance (PMA). This leave is generally called “saved leave.”

2. Leave earned on or after September 1, 1976 is valued using only basic pay.

3. Leave accrued in a Combat Zone (CZ) or Qualified Hazardous Duty Area (QHDA), or while hospitalized as a result of action in such a zone or area, is generally known as CZTE leave. See Chapter 44, paragraph 440103 for full descriptions of the circumstances under which such leave accrues. CZTE leave for enlisted members is exempt from Federal and State income tax. CZTE leave for officers is exempt from Federal and State income tax up to a specified limit. See subparagraph 350203.B for a discussion of tax exclusion limits. All leave earned during a month in which a member serves for any period of time in a CZ or QHDA area is CZTE leave. A single day of qualifying service in such circumstance qualifies all leave accrued in that month as CZTE leave.

4. A member of a Reserve Component who accumulates leave during a period of active service may carry over any accumulated leave to the member’s next period of active service without regard to separation or release from active service if the separation or release is under honorable conditions. This accumulated leave is subject to fiscal year carry forward limitations (75 days during the period October 1, 2008 to September 30, 2015, and 60 days otherwise).

B. Leave accrues to a military service member serving on active duty for 30 days or more. It accrues at the rate of 2½ days for each month of active service, excluding periods of absence from duty without leave, periods of confinement resulting from a court-martial, and periods of leave required to be taken pending review of a court-martial conviction. For partial months, it accrues at the rate of ½ day for any period of 6 days or less.

1. A member may not carry forward a leave balance of more than 60 days into a new fiscal year, except during the period October 1, 2008 through September 30, 2015, when 75 days may be carried forward or when entitled to Special Leave Accrual (SLA), as outlined in 350202.B.1, 350202.B.2, and 350202.B.3. Members with 75 days of leave under this provision will need to use 45 days of leave during the period from October 1, 2014 to September 30, 2015; otherwise, leave in excess of 60 days on September 30, 2015 will be lost.

2. A member who serves on active duty while entitled to hostile fire/imminent danger pay for a continuous period of at least 120 days may carry forward up to 120 days of SLA into the new fiscal year. Under this exemption, unused leave may be carried forward until the end of the third fiscal year following the fiscal year in which the service in the qualifying hostile fire/imminent danger area is terminated. If the 120 days of SLA were earned during the period October 1, 2008 through September 30, 2015, then unused leave may be carried forward until the end of the fourth fiscal year following the fiscal year in which the service in the qualifying hostile fire/imminent danger area is terminated.

3. A member not qualifying for SLA for service in a hostile fire/imminent danger area may qualify and carry forward up to 120 days of unused leave when assigned to a designated deployable ship, mobile unit, or other similar prescribed duty. On or after August 29, 2005, a member may also qualify and carry forward up to 120 days of unused leave if he or she is performing qualifying duties as designated by the Secretary of the Military Department concerned.

a. The duty assignment must be under conditions where operational mission requirements prohibit normal leave utilization as determined by the military service concerned or designated commander. Under this exemption, unused SLA leave may be carried forward until the end of the third fiscal year following the fiscal year in which the qualifying service is terminated.

b. If the 120 days of leave were accumulated during the period October 1, 2008 through September 30, 2015, then unused leave may be carried forward until the end of the fourth fiscal year following the fiscal year in which the service in the qualifying assignment or other similar prescribed duty is terminated.

* 4. The maximum amount of SLA leave that may be carried forward is the leave balance at the end of the fiscal year following the end of the SLA period not to exceed 120 days. The maximum amount will be reduced to a new level whenever the leave balance drops below the previously set level. If at any time the leave balance drops to or goes below 60 days, or 75 days during the period October 1, 2008 to September 30, 2014, then there is no longer any SLA protected leave. If the leave balance is over 60 days, but is below 75 days between October 1, 2014 and September 30, 2015, then the SLA is protected. Subject to this rule, if on October 1, 2015, a member had between 60 and 75 leave days and those leave days were entitled to SLA protection, the member will retain their SLA protected leave in accordance with 10 U.S.C. § 701.

a. Therefore, the actual maximum leave that can be carried forward into succeeding fiscal years is the lowest leave balance achieved following the completion of the SLA duty or the usual 60 days, or 75 days during the period October 1, 2008 to September 30, 2015, whichever is greater. If the SLA qualifying period crosses a fiscal year, then the entire leave balance (not to exceed 120 days) will be carried forward and the leave accrued from the beginning of the new fiscal year through the end of the SLA qualifying period will be added to establish the maximum.

b. Any portion of a leave balance in excess of 60 days that could have been taken before the end of the fiscal year had the member not been assigned to SLA qualifying duty will not be included in the carryover amount.

Example 1: On August 31, 2003, a member had a leave balance of 80 days. On September 15, 2003, he was assigned to duty qualifying for SLA as described in subparagraph 350202.B.1. Had the member not been assigned to SLA duty, he could have possibly taken 15 days leave from September 16 through September 30. If the member had taken leave during this period, then there would

still have been a loss of 7.5 days (82.5 days accrued through September 30, less the 15 days potentially taken and the normal 60-day carryover restriction) at the end of the fiscal year. Therefore, since only the portion that potentially could have been taken is protected, the member may carry forward 75 days and will lose 7.5 days of leave.

Example 2: The member in example 1 continued on SLA duty until September 15, 2004. No leave was permitted during this period, and the member's accrued leave totaled 105 days at the end of September. If the leave balance does not drop at any time below 105 days, then it may be carried forward for 3 fiscal years, until September 30, 2007.

If the member took 30 days of leave from April 1 through April 30, 2005, then this would result in a leave balance of 92.5 days (105 days accrued through September, plus 17.5 days accrued from October through April, less the 30 days of leave taken) and a new maximum amount of leave that may be carried forward. If no further SLA is earned and the leave balance is not further reduced to a new lower level, then the maximum leave the member may carry forward into succeeding fiscal years (until September 30, 2007) is 92.5 days.

* Example 3: On September 30, 2014, a member had a leave balance of 74 days. On October 1, 2014, the member's leave balance is still 74 days. This is because, on October 1, 2014, the authorized leave carry-over amount for all leave was 75 days. On the same date, October 1, 2014, the member was assigned to duty qualifying for SLA as described in subparagraph 350202.B.1. He remains on duty there for the entire fiscal year, earning 30 days of leave. On September 30, 2015, he has 104 days of leave. Since he has 104 days at the end of the fiscal year and is entitled to SLA protection, then on October 1, 2015, he still has 104 days.

5. Effective January 28, 2008, active duty members who serve in duty assignments in support of a contingency operation are authorized to accumulate annual leave in excess of 60 days, or 75 days for the period October 1, 2008 through September 30, 2015, as shown on the end of month September Leave and Earnings Statement (LES). These members are authorized to retain up to 120 days until the end of the second fiscal year after the fiscal year in which such service on active duty is terminated.

C. Leave will be accounted for by crediting it sequentially in the chronological order in which it is accrued. Generally, when used, leave will be charged with the most recently accrued leave charged first. This method is known as Last In, First Out. As an exception, CZTE leave will be charged first regardless of when it was earned. Saved leave, described in subparagraph 350202.A.1, will be charged last.

Example 1: On August 31, 2001, a member had accrued 65 days of unused leave, 55 days of which had been accrued and remained unused from a period before September 1, 1976 (i.e., saved leave), 10 days of regular leave, and 0 days of

CZTE leave. The member took leave from September 5 through September 24, 2001 (a period of 20 days). The leave taken is first applied to the 12 days accrued since September 1, 1976. This leaves 8 days to apply to the saved leave, reducing that balance to 47 days.

Example 2: On August 31, 2001, a member had accrued 75.5 days of unused leave, 55 days of which had been accrued and remained unused from a period before September 1, 1976 (i.e., saved leave), 13 days of regular leave, and 7.5 days of accrued unused CZTE leave. The CZTE leave had been earned for two separate periods, 5 days for active service from January 2 through February 6, 2001 in a CZ and 2.5 days for active service from August 7 through August 30, 2001 in a QHDA. The member took leave from September 5 through September 24, 2001, a period of 20 days. The leave taken is first applied to the 7.5 days of CZTE leave. This leaves 12.5 days to be applied to the non-CZTE leave earned since September 1, 1976, reducing that balance to 2.5 days as of September 24, 2001. The saved leave balance remains at 55 days.

350203. Leave Payments and Taxability

A. Payments for accrued leave are normally subject to taxation and income tax withholding. Payments for saved leave accrued before September 1, 1976 will also include non-taxable allowances. See Table 35-5 for determining the elements of pay to use in the computation of accrued leave payments.

B. Payments for CZTE leave are tax-exempt from Federal taxation and not subject to Federal or State income tax withholding up to the monthly limit specified by the Internal Revenue Service (IRS). That limit is different for enlisted members and officers. The limit is fully described in Chapter 44, subparagraph 440202.A and summarized as follows:

1. Enlisted members (E-1 and above) and warrant officers (W-1 through W-5) have no limitation or ceiling on the value of payments exempt from Federal or State taxes and Federal tax withholding for any month in which they qualify for an exemption.

2. Officers (O-1 and above) are subject to a limit on the value of federal tax-exempt payments and exemption from federal and state tax withholding for each month in which they qualify for an exemption. The exemption amount for officers is set at the value of the highest rate of enlisted basic pay plus the value of any hostile fire or imminent danger pay the officer may have been entitled to in that qualifying month. The applicable rate of enlisted basic pay would be that listed in Chapter 1, Table 1-10, Note 3 for the corresponding qualifying month. To determine whether the limitation will apply to a payment for accrued unused leave, the leave must be allocated to the months in which earned and for which the officer qualified for CZTE status.

a. The value of the leave for each individual month must be added to any payments the officer has received for that tax-exempt month and the total compared to the monthly limitation amount.

b. Tax exemption may only be given for the value of the portion of the CZTE leave that does not exceed the limitation available. Any payments for CZTE leave value that exceed the limitation available will be treated as taxable income.

Example: A Reserve Component O-6 with over 12 years of service began active duty on March 25, 2012 and reported temporary additional duty to a designated CZ on March 26, 2012. He departed the zone on May 2, 2012, and was separated from active duty and paid for unused accrued leave on May 4, 2012. The officer was entitled to monthly basic pay of \$7,232.40 and to imminent danger pay of \$225. The monthly basic pay for the most senior enlisted member in each military service was \$7,489.80 per month during that period. The officer has been paid for his active duty service and is awaiting payment for his earned leave. He had previously sold back 58 days of leave at the end of other active duty periods.

The officer earned .5 days of leave in March and in May and 2.5 days for April. The total of 3.5 days leave when added to the 58 days previously sold would exceed the maximum of 60 days that may be sold in a career. This leave, however, is exempt from payment limitation since the Reserve officer was on active duty for a period of more than 30 but less than 366 days. Payment of the .5 days of leave for both March and May is fully exempt from income tax and income tax withholding since the prior tax-free payments for his basic pay and hostile fire/imminent danger pay in those 2 months was well below the tax exemption limitation value of \$7,714.80 (senior enlisted basic pay of \$7,489.80 and hostile fire/imminent danger pay of \$225).

However, only a portion of the 2.5 days of unused accrued leave attributable to April is exempt from income tax and income tax withholding. The officer has already received tax-exempt treatment of his April salary and imminent danger pay using all but \$257.40 of his available exemption (exemption equals \$7,714.80 and the amount used was the officer's base pay of \$7,232.40 plus the hostile fire/imminent danger pay of \$225, equal to \$7,457.40). The 2.5 days of leave is valued at \$602.70, leaving \$345.30 of the leave payment subject to tax and tax withholding.

350204. Leave Payments and Debts

Payments for accrued leave may be used to satisfy debts to the U.S. Government without restriction.

350205. Leave Payment to Beneficiaries

Payments for accrued leave owed at death will be paid to the eligible beneficiary or beneficiaries under the provisions of Chapter 36, section 3603.

A. If a member dies while on active duty of 30 days or more, then the accrued leave is payable along with all other unpaid pay and allowances to the eligible beneficiary.

B. If a member or former member dies after retirement or discharge, but before receiving any or all compensation for accrued leave, then the balance is payable to the eligible beneficiary and claims for payment must be submitted to the appropriate following address:

Army and Air Force Members:

Director
DFAS-Indianapolis
DFAS-JFL/IN
8899 E. 56th Street
Indianapolis, IN 46249-0845

Navy Members:

Director
DFAS-Cleveland
DFAS-JFLADA
1240 E. 9th Street
Cleveland, OH 44199-2055

Marine Corps Members:

Director
DFAS-Cleveland
MPO-JFLT
1240 E. 9th Street
Cleveland, OH 44199-2055

3503 SEPARATION PAY (NON-DISABILITY)

350301. Entitlement

A. Full Separation Pay. Full payment of non-disability separation pay is authorized to military service members of the Regular and Reserve Components who have been involuntarily separated from active duty and have met each of the following four conditions:

1. The member has met one of the following criteria for active military service:

a. The member is on active duty or full-time National Guard duty and has completed at least 6 years, but less than 20 years, of active service. Reserve members not on the active duty list when separated must have 6 years of continuous active duty or full-time National Guard duty immediately preceding separation. A period of active duty is considered continuous if any break in active service does not exceed 30 days; or

b. A member who is a Regular officer and is separated under 10 U.S.C. Chapter 36 (except under § 630(1)(A), § 643, § 580, or § 6383) must have completed at least 6 years, but less than 20 years, of active service;

2. The member's separation must be characterized as "honorable" and none of the conditions apply that are listed in paragraph 350302;

3. A member who is separated involuntarily, through either the denial of reenlistment or the denial of continuation on active duty or full-time National Guard duty, must meet one of the following four specific conditions:

a. The member must be fully qualified for retention but denied reenlistment or continuation. This includes a military service member who is eligible for promotion as established by the Secretary of the Military Department concerned, but is denied reenlistment or continuation on active duty under established promotion or high year of tenure policies;

b. The member must be fully qualified for retention but involuntarily separated under a Reduction in Force by authority designated by the Secretary of the Military Department concerned;

c. The member, if a Regular officer, commissioned or warrant, must be separated under 10 U.S.C. § 580, § 1165, § 6383, Chapter 36; if a Reserve commissioned officer other than a commissioned warrant officer, must be separated or transferred to the retired Reserve under 10 U.S.C. Chapters 573 or 861; or if a Reserve commissioned officer on the active duty list or a Reserve warrant officer must be separated for similar reasons under military service policies; or

d. The member must be denied reenlistment or continuation on active duty or full-time National Guard duty under subparagraphs 350301.A.3.a through 350301.A.3.c, and have accepted an earlier separation from active duty;

4. The member must have entered into a written agreement with the military service concerned to serve in the Ready Reserve in a Reserve Component of the Armed Forces for a minimum period of 3 years following the separation from active duty.

a. A member who enters into this written agreement and is qualified for service in the Ready Reserve will, upon separation from active duty, be enlisted or appointed, as appropriate, as a Reserve member by the military service concerned. If the person has a service obligation under 10 U.S.C. § 651 or any other law that is not completed at the time of separation from active duty, then the 3-year obligation begins on the day after the day the member completes the prior obligation;

b. A member who enters into this written agreement and is not qualified for enlistment or appointment in the Ready Reserve need not be enlisted or appointed

by the military service concerned to be considered to have met this condition of eligibility for separation pay.

B. Sole Survivorship Discharge

1. A sole survivorship discharge is the separation of a member from the Armed Forces at the member's request when the member is the only surviving child in a family in which:

a. The father, mother, or one or more siblings served in the Armed Forces, and was killed; died as a result of wounds, accident, or disease; is in a captured or missing in action status; or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

b. The death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

2. A member who receives a sole survivorship discharge will be entitled to full separation pay, even though the member completed less than 6 years of active service immediately before that discharge.

3. The amount of the full separation pay to be paid will be based on the years of active service actually completed by the member before the member's discharge.

4. These sole survivorship discharge provisions will apply to any sole survivorship discharge granted after September 11, 2001.

5. Effective October 28, 2009, members who receive a sole survivorship discharge will not be required to repay any unearned bonus, incentive pay, or similar benefit previously paid to the member.

6. Effective October 28, 2009, the Secretary of the Military Department concerned may grant an exception to the requirement to terminate the payment of any unpaid amounts of a bonus, incentive pay, or similar benefit if he determines that termination of the payment of the unpaid amounts would be contrary to a personnel policy or management objective, would be against equity and good conscience, or would be contrary to the best interests of the United States.

C. Half Separation Pay. Half Separation Pay of non-disability separation pay is authorized to members of the Regular and Reserve Components who are involuntarily separated from active duty and have met each of the following four conditions:

1. The member must meet one of the criteria for active service specified in subparagraph 350301.A.1;

2. The member's separation must be characterized as "honorable" or "general," and none of the conditions apply that are listed in paragraph 350302;

3. The member must be separated involuntarily by the military service concerned through either the denial of reenlistment or the denial of continuation on active duty or full-time National Guard Duty under one of the following specific conditions:

a. Is not fully qualified for retention and is denied reenlistment or continuation under any of the following conditions:

- (1) Expiration of service obligation;
- (2) Selected changes in service obligation;
- (3) Convenience of the government;
- (4) Drug abuse rehabilitation failure;
- (5) Alcohol abuse rehabilitation failure;
- (6) Security; or
- (7) Weight control failure;

b. Separated under a military service specific program established as a [half separation pay](#) level by the Secretary of the [Military Department](#) concerned; or

c. Denied reenlistment or continuation on active duty or full-time National Guard duty under subparagraphs 350301.C.3.a and 350301.C.3.b, and accept an earlier separation from active duty; [and](#)

4. The member must have entered into a written agreement with the military service concerned to serve in the Ready Reserve for a minimum period of 3 years following separation from active duty.

a. A member who enters into this written agreement and is qualified for the Ready Reserve will, upon separation from active duty, be enlisted or appointed, as appropriate, as a Reserve member by the military service concerned. If the person has a service obligation under 10 U.S.C. § 651 or any other law that is not completed at the time of separation from active duty, then the 3-year obligation begins on the day after the day the member completes the prior obligation.

b. A member who enters into this written agreement and is not qualified for enlistment or appointment in the Ready Reserve need not be enlisted or appointed

by the military service concerned to be considered to have met this condition of eligibility for separation pay.

NOTE: In extraordinary instances, the Secretary of the Military Department concerned may award full separation pay to a member otherwise eligible for half separation pay when the specific reasons for the separation and the overall quality of the member's service have been such that denial of full separation pay would be clearly unjust.

350302. Limitations of Eligibility

Military service members separated under the following circumstances are not eligible for separation pay:

A. The member is separated from active duty at the member's own request. The following are considered to be separations at the member's own request:

1. A member declines training that the military service offers to qualify for a new skill or rating as a precondition to reenlistment or continuation on active duty;

2. A member requests separation under regulations established by the Secretary of the Military Department concerned as provided for in Department of Defense Directives (DoDD) 1332.14 and 1332.30;

3. A Reserve officer declines a Regular appointment at the mandatory integration point when an all-regular career force program is implemented by the Secretary of the Military Department concerned;

B. The member is separated from active duty during an initial term of enlistment or an initial period of obligated service. The initial term of enlistment or initial period of obligated service is the active service obligation that the member incurred upon initial enlistment or upon enrollment in a commissioning program. This limitation also applies to a member who desires to reenlist or continue at the conclusion of the initial term of enlistment or an initial period of obligation and is denied by the military service concerned;

C. The member is released from active duty for training or from full-time National Guard duty for training;

D. The member is immediately eligible at separation for retired or retainer pay based upon his or her military service;

E. The member is a warrant officer whose appointment is terminated and who then elects to enlist;

F. The member is separated as a result of the execution of a court-martial sentence;

G. The member is being dropped from the rolls of the military service concerned;

H. The member is being separated under other than honorable conditions;

I. The member is an enlisted member who is separated for unsatisfactory performance or misconduct, as set forth in DoDD 1332.14, except when [half separation pay](#) is authorized in subparagraph 350301.C;

J. The member is an officer who is separated for substandard performance or acts of misconduct or moral or professional dereliction, except when [half separation pay](#) is authorized in subparagraph 350301.C;

K. The member is separated under a military service-specific program established as a no-payment level by the Secretary [of the Military Department](#) concerned;

L. A determination is made by the Secretary of the Military Department concerned in an extraordinary case that the conditions under which the member is separated do not warrant a separation payment. This authority is not to be delegated. It is intended that only sparing use will be made of this discretionary authority to deny payment;

M. A Regular officer having twice failed for selection for promotion to the next higher grade is not entitled to separation pay if that officer, after such second failure of selection for promotion, is selected for and declines continuation on active duty for a period that is equal to or more than the amount of service required to qualify the officer for retirement; or

N. A Reserve officer who, is not selected for promotion to the next higher grade for the second time and is to be discharged or released from active duty, and after such failure of promotion, is selected for and declines continuation on active duty:

1. If the period of time for which the officer was selected for continuation on active duty is less than the amount of service that would be required to qualify the officer for retirement, then the officer's discharge or release from active duty will be considered involuntary; or

2. If the period of time for which the officer was selected for continuation on active duty is equal to or more than the amount of service that would be required to qualify the officer for retirement, then the officer's discharge or release from active duty will not be considered involuntary.

350303. Computation of Active Service

Compute active service time as follows:

A. Qualifying years, except as noted in subparagraph 350301.A.1, do not have to be continuous; however, the last phase of the qualifying term must end immediately before the separation from active duty occurs;

B. Fractions of years will be computed by counting each full month of [active service](#), in addition to the number of full years of active service, as 1/12 of a year. Disregard any remaining fractional part of a month;

C. Periods for which a military service member previously has received separation pay, severance pay, or readjustment pay may be counted for eligibility purposes (to ensure the member meets the minimum required years of active duty), but may not be used in the multiplier to determine the amount of separation pay for a subsequent separation;

D. Count periods of active military service in a Regular or Reserve Component. Include periods of active duty for training;

E. Do not include periods of absence without leave, confinement time awaiting trial that results in a conviction, confinement time while serving a court-martial sentence, and time lost while not [on](#) duty. Count time in service to make up for lost time; and

F. Do not include service as a cadet or midshipman while in a military service academy or a Reserve Officer Training Program.

350304. Computation of Separation Pay

A. Compute full separation pay at 10 percent of 12, [multiplied by](#) the amount of monthly basic pay to which entitled at the time of separation from active duty, times the active service time as computed in paragraph 350303. Table 35-6 also contains information related to computation of full separation pay.

B. Compute half separation pay at 50 percent of what the full separation pay would have been. Table 35-6 also contains information related to computation of half separation pay.

350305. Recoupment of Separation Pay From [Retired Pay, Retainer Pay, or Department of Veterans Affairs \(VA\) Disability Compensation](#)

Military [service](#) members who receive separation pay under any provisions of law based on service in the Armed Forces, and, subsequently, either qualify for retired or retainer pay under 10 U.S.C. [or](#) 14 U.S.C., or become eligible for disability compensation administered by the VA, are subject to the recoupment of the gross taxable separation pay they received. Recoupment from retired pay, retainer pay, or VA disability compensation will be completed as follows:

A. Retired or Retainer Pay. Recoupment will be accomplished through monthly deductions from each payment of retired or retainer pay payable to the retired member until the total amount of the deductions equals the gross taxable amount of separation pay received by the member. See Volume 7B, Chapter 4 for guidance on the calculation of the recoupment.

B. VA Disability Compensation. Recoupment will be accomplished through a deduction from the VA disability compensation payable to the retired member in an amount that is equal to the gross taxable amount of separation pay made after September 30, 1996. The amount to be deducted from the VA disability compensation will be equal to the gross taxable amount of such separation pay, less the amount of Federal income tax withheld from such pay at the flat withholding rate for supplemental payments prescribed under Publication 15, Department of the Treasury, IRS. This reduction, however, will not apply to disability compensation for which the entitlement to that disability compensation is based on a later period of active duty than the period of active duty for which the separation pay was received. See Volume 7B, Chapter 4 for guidance on the calculation of the recoupment.

3504 READJUSTMENT AND SEVERANCE PAY (OTHER THAN DISABILITY) PROVISIONS

350401. Repay Readjustment or Severance Pay

Members, who received readjustment or severance pay before September 15, 1981 and who, on or after September 15, 1981 became entitled to retired or retainer pay under 10 U.S.C. or 14 U.S.C., are required to repay the readjustment or severance pay, in accordance with the laws in effect on September 14, 1981.

350402. Refund Upon Retirement

A Reserve member who received a readjustment payment on separation after June 28, 1962 and before September 15, 1981, and who later qualifies for retired or retainer pay under 10 U.S.C. or 14 U.S.C. (upon completing 20 years of active service), must refund 75 percent of the gross readjustment pay, without interest, by immediate deduction from retired or retainer pay. This is not required if readjustment pay had been waived or refunded under subparagraph 350403.

350403. Waiver or Refund Before Retirement

A member may waive entitlement to readjustment pay. Also, the full amount of readjustment pay may be refunded before retirement. Under either condition, the member will receive retired or retainer pay immediately upon retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

350404. VA Disability Compensation

When a member who receives readjustment pay before September 15, 1981 becomes entitled to VA disability compensation, the VA deducts 75 percent of the readjustment payment from future VA compensation. The VA does not make a deduction when VA disability compensation is based on a later period of service. A member who elected, on or before June 27, 1962, to receive readjustment pay in lieu of VA disability compensation may have been awarded disability compensation effective on and after June 28, 1962. The VA reduces the disability compensation by 75 percent of the readjustment payment, unless readjustment pay was waived or refunded.

3505 DISABILITY SEVERANCE PAY

350501. Entitlement

A member separated from the military service for physical disability is entitled to severance pay, if qualified, as prescribed in personnel regulations of the military service concerned. When a member is entitled to disability severance pay, separation orders specify this entitlement. Academy cadets and midshipmen may be entitled to severance pay if it is determined that they have a qualifying disability, and they have separated as a result of that disability.

350502. Disability Incurred During Non-pay Status

A member who incurs a disability while in a total pay forfeiture status is not entitled to disability severance pay. This is true even though the Secretary of the Military Department concerned remits the unexecuted portion of the sentence, including all uncollected forfeitures.

350503. Computation

A. Formula. To compute disability severance pay, multiply the sum of basic pay for 2 months by the number of combined years (but not over 19) of active service and inactive duty points. Do not include as basic pay the 25-percent increase prescribed under certain conditions for a Navy or Marine Corps member retained on active duty after enlistment expires.

B. Years of Service. The member's separation orders will specify the total combined years of active service and inactive duty points to be counted in computing severance pay. Round this total to the nearest whole year, with 6 months or more rounded up. The maximum number of years of service for computing the disability severance pay will be 19 years. The minimum number of years for computation purposes will be:

1. Six years in the case of a member separated from the Armed Forces for a disability incurred in the line of duty in a CZ (as designated by the SecDef) or incurred during the performance of duty in combat-related operations as (designated by the SecDef); or

2. Three years in the case of any other member.

C. Grade at Which Disability Severance Pay is Computed. Compute severance pay on basic pay of the following highest grade or rank described:

1. The grade or rank in which the member is serving at separation;
2. The permanent Reserve grade held at separation;
3. The highest temporary or permanent grade or rank in which member served satisfactorily as determined by the Secretary of the Military Department concerned; or
4. For those selected for promotion, if the disability is found during a physical examination, then the grade or rank to which the member would have been promoted if there was no disability.

Example: An E-6 has 11 years, 4 months, and 9 days of active service and 76 inactive duty training periods (points) on the date of separation for physical disability. Compute the entitlement as follows:

11 years, 4 months, 9 days = 11.3583 years

76 points / 360 = .2111 years

Total Service = 11.5694 years

Since it is a decimal greater than or equal to .5, round the total upward to 12 years. 12 years times 2 months of basic pay of an E-6 over 10 equals the amount of disability severance pay.

NOTE: For purposes of this calculation, the number of points that may be considered may not exceed 60 points for any anniversary year that closed before September 23, 1996; 75 points for anniversary years that closed on or after September 23, 1996; 90 points for anniversary years that close on or after October 30, 2000; and 130 points for anniversary years that close on or after October 30, 2007.

350504. Taxability and Withholding

A. General. Disability severance pay is normally taxable income. However, it is not subject to tax withholding or reporting if at least one of the following two conditions exists:

1. The entitlement resulted from combat-related injury or illness, as determined by the Secretary of the Military Department concerned, which happens as a result of any of the following activities:

- a. As a direct result of armed conflict;

b. While performing extra-hazardous service, even if the service does not directly involve combat;

c. Under conditions simulating war, including maneuvers or training;

d. By an instrumentality of war, such as weapons; or

2. The member has official notification from the VA approving entitlement to disability compensation.

B. Withholding Taxes. Income taxes are withheld from all payments of disability severance pay unless the member qualifies for an exemption under subparagraph 350504.A. Taxable payments of disability severance pay may become non-taxable if, after disability severance payment is made, the VA awards the member disability compensation.

NOTE: The VA may award disability compensation in either the same tax year or a subsequent tax year in which a member is paid disability severance pay. Depending upon when a member is awarded disability compensation, a refund of the income taxes withheld may be requested from DFAS or the IRS. For further information see subparagraphs 350504.C and 350504.D.

C. VA Disability Compensation Awarded in the Tax Year of the Disability Severance Pay Payment. A refund of taxes withheld from the gross taxable amount of their disability severance pay payment may be obtained from the supporting Defense Finance and Accounting Service (DFAS) site if disability compensation from the VA is awarded in the same tax year in which the member received disability severance pay. See subparagraph 350205.B for the addresses of the DFAS sites.

1. A refund request must be received and processed by December 31st of the year in which the disability severance pay payment was paid, along with documentation evidencing the VA's award of disability compensation in the same year that established the member's entitlement to disability severance pay.

2. A corrected IRS Form W-2, Wage and Tax Statement, reducing the member's taxable wages by the gross amount of the disability severance pay amount may be issued when supporting documentary evidence of the same year VA award is received by December 31 of that same year.

D. VA Disability Compensation Awarded in a Tax Year Subsequent to the Year of the Disability Severance Pay Payment. A member must obtain a refund for income taxes withheld from their disability severance pay payment from the IRS when the date of the VA's award of disability compensation is in a calendar year subsequent to the year in which the member received disability severance pay. DFAS will not issue corrected W-2 to a member for any VA documentation received in subsequent years after payment. The member is required, to claim any reduction in that year's taxable income from the IRS in accordance with their procedures.

350505. Availability to Liquidate Debts

Disability severance pay may be used to liquidate debts to the U.S. Government.

350506. Recoupment From VA Compensation

The VA deducts disability severance compensation from any VA compensation for the same disability to which the member or member's dependents become entitled. There are two exceptions:

A. No deduction will be made in the case of disability severance pay received by a member for a disability incurred in the line of duty in a CZ or incurred during performance of duty in combat-related operations (as designated by the SecDef); or

B. No deduction will be made from any death compensation to which a member's dependents become entitled after the member's death.

350507. Other Benefits and Claims

A member paid disability severance pay is not entitled to any payment from the military service for, or arising out of, service before separation. This does not prohibit payment if an amount is due the member on the date of separation or if a claim is allowed under law.

3506 CONTRACT CANCELLATION PAY AND ALLOWANCES

350601. Entitlement

Reserve members released from active duty (other than for training) without their consent before the end of their active duty agreement made under 10 U.S.C. § 12311(a) are entitled to a special payment under 10 U.S.C. § 12312. This payment is in addition to any pay and allowances to which the member is otherwise entitled.

350602. Computation

To compute the amount payable, multiply the number of years and fraction of years of the unexpired period of service under the contract, by the sum of basic pay, special pay, and allowances for 1 month to which the member is entitled on the day of release. Count a fraction of a month that is 15 days or more as a whole month and disregard a fraction of a month that is less than 15 days. Separation orders show the number of years and months of unexpired service for which contract cancellation pay and allowances are payable.

350603. Restrictions

A member is not entitled to the special payment authorized by this section if:

A. Dismissed or discharged under the sentence of a court-martial;

B. Released because of an unexplained absence without leave of at least 3 months;

C. Released because of conviction and sentence to confinement in a federal or state penitentiary or correctional institution which sentence has become final;

D. Released because of a physical disability resulting from intentional misconduct or willful neglect;

E. Eligible for retired pay, separation pay, or severance pay under another provision of law (this restriction does not apply to readjustment pay);

F. Placed on a temporary disability retired list; or

G. Released to accept an appointment, or to be enlisted, in a Regular Component of an Armed Force.

350604. Withholding Tax

Contract cancellation pay is subject to withholding tax.

350605. Availability to Liquidate Debts

Contract cancellation pay may be used to liquidate debts to the U.S. Government.

3507 MISCELLANEOUS SEPARATION PAYMENTS

350701. Discharge Gratuity

See Table 35-7.

350702. Travel Allowance on Separation

See Joint Travel Regulations (JTR), Chapter 5 and Volume 9.

3508 VOLUNTARY SEPARATION PAY (VSP)

350801. Entitlement

A member who separates voluntarily may, under conditions prescribed by the Secretary of the Military Department concerned, be paid VSP. The authority to separate a member in conjunction with VSP applies for the period October 17, 2006 through December 31, 2018.

350802. Eligibility

The Secretary of the Military Department **concerned**, may offer a member the opportunity to apply for VSP if the member:

A. Has served on active duty or full-time National Guard for more than 6 years but less than 20 years;

B. Has served at least 5 years of continuous active duty or full-time National Guard duty immediately preceding the date of separation from active duty;

C. Upon separation, is not immediately eligible for retired or retainer pay based upon his/her military service;

D. Meets such other requirements as the Secretary of the Military Department **concerned**, may prescribe, which may include requirements relating to years of service; skill; rating; military specialty; competitive category, grade, or rank; remaining period of obligated service; or any combination of these factors; or

E. Requests separation from active duty or full-time National Guard duty.

350803. Initial Term of Obligated Service

Effective January 1, 2009, the member is required to complete the initial term of obligated service in addition to meeting requirements in paragraph **350802** prior to separation. Prior to January 1, 2009, a member's obligation to complete an initial term of obligated service before separation will be subject to the discretion of the Secretary of the Military Departments **concerned**. For the purpose of this section, "initial term of obligated service" means the initial period of required active-duty service incurred upon commissioning or enlistment, together with any additional period of required active-duty service incurred during the initial period of required active-duty service.

350804. Ineligible for VSP

The Secretary of the Military Department **concerned**, will not offer a member the opportunity to apply for VSP if a member:

A. Does not meet any of the eligibility requirements of paragraph **350802**;

B. Is discharged with disability severance pay under section 3505 (10 U.S.C. § 1212);

C. Is transferred to the temporary disability retired list under 10 U.S.C. § 1202 or § 1205;

D. Is being evaluated for disability retirement under 10 U.S.C. Chapter 61;

E. Has previously been discharged with VSP; or

F. Is subject to pending disciplinary action or is subject to administrative separation or mandatory discharge under any other provision of law or regulation.

350805. Application for VSP

A member may request and subsequently enter into a written agreement with the Secretary of the Military Department concerned to separate from active duty or full-time National Guard duty and accept an appointment or enlistment in, or transfer to, the Ready Reserve of a Reserve Component for a period of not less than 3 years, as a condition of receipt of VSP and benefits.

350806. Approval for VSP

The Secretary of the Military Department concerned will determine each year the number of military service members to be separated, and provided separation pay and benefits during the fiscal year beginning in such year. Eligible members will not be automatically entitled to receive VSP based solely upon request. The Secretary of the Military Department concerned will review all applications for voluntary separation and approve only those that meet the needs of the Military Departments. A member whose request is approved will be separated from active duty.

350807. Computation of VSP

A. The Secretary of the Military Department concerned will specify the amount of VSP to be paid to an individual, but the amount may not be greater than four times the full amount of separation pay that a member of the same pay grade and years of service would receive for an involuntary separation under 10 U.S.C. § 1174.

B. Compute years of active service according to the formula in subparagraphs 350303.B, D, E, and F. Do not count any period of prior military service for which the member has received separation pay under any provision of law relating to members of the Uniformed Services. When computing partial years of service, round the fractional parts of a year to the nearest 1/10 of 1 percent or 3 decimal points.

Example: If the officer has 10 years and 7 months of service, then the multiplier would be 10.583.

350808. Payment

VSP will be paid in a lump sum payment in the amount computed in paragraph 350807.

350809. Repayment of VSP When a Member Qualifies for and Receives Retired Pay

A. A member who is paid VSP and later qualifies to receive retired pay will have deducted from each payment of such retired pay a monthly installment as specified by the Secretary of the Military Department **concerned**. The total amount of retired pay deductions will equal the gross VSP amount paid to the member. More information can be found in Volume 7B, Chapter 4, section **0409**.

B. The requirement to repay VSP following retirement from the Armed Forces does not apply to a member who is eligible to retire at the time the member applied for and was accepted for VSP benefits.

C. The Secretary of the Military Department **concerned**, may waive the requirement to repay VSP if it is determined that recovery would be against equity and good conscience and would be contrary to the best interests of the United States.

D. For exception, see paragraph **350811**.

350810. VA Disability Compensation

A member who received the VSP and subsequently qualifies for disability compensation from the VA is subject to recoupment of the gross amount of VSP paid, less Federal income taxes withheld from such pay. The VA administers the recoupment program for affected members. If the disability for which the member receives VA compensation was incurred or aggravated during a period of later active duty, then no recoupment of VSP is required, regardless of when **it was** paid. In individual cases, the Secretary of the Military Department **concerned**, may waive the requirement to repay the VSP if it is determined that recovery would be against equity and good conscience and would be contrary to the best interests of the United States. A blanket waiver for **multiple** members within a service signed by a Secretary **of the Military Department concerned** is not authorized.

350811. Members Returned to Active Duty

A. Except for the provisions in subparagraphs **350811.B** and **350811.C**, members who return to active duty in a Regular or Reserve Component for 180 days or more will have deducted from each payment of basic pay a monthly installment amount specified by the Secretary of the Military Department **concerned**. The total amount of basic pay deduction will equal the gross amount of VSP paid to the member.

B. Recoupment will not be required for a member who is involuntarily recalled to active duty or full-time National Guard in accordance with 10 U.S.C. § 12301(a), (b), **and** (g); § 12302; § 12303; **or** § 12304; or 32 U.S.C. § 502(f)(1).

C. Recoupment will not be required for a member who is recalled or performs active duty or full-time National Guard duty, so long as the period of active duty is less

than 180 consecutive days with consent of the member in accordance with 10 U.S.C. § 101(d)(1), (2), and (5); § 12301(d); § 12319; § 12503; or 32 U.S.C. § 114; § 115; or § 502(f)(2).

D. The SecDef may waive, in whole or in part, repayment required under subparagraph 350811.A if the SecDef, determines that recovery would be against equity and good conscience or contrary to the best interest of the United States. Requests for waiver under this authority should be forwarded to the Under Secretary of Defense for Personnel and Readiness (USD (P&R)).

3509 RETROACTIVE STOP LOSS SPECIAL PAY COMPENSATION

350901. Authority

The Secretary of the Military Department concerned will provide Stop Loss Special Pay Compensation to members of the Armed Forces, including members of the Reserve Components, and former and retired members who served on active duty during the period beginning on September 11, 2001 and ending on September 30, 2009. To be eligible for compensation, the active duty service must have been subject to 10 U.S.C. § 123 or §12305, or any other provision of law (commonly referred to as a “stop loss authority”) that authorizes the President to extend an enlistment or period of obligated service, or suspend an eligibility for retirement of a member of the Uniformed Services in time of war or of national emergency declared by Congress or the President. This compensation is payable to members:

A. Who served on active duty while the members’ enlistment or period of obligated service was extended under a stop loss authority; or

B. Whose eligibility for retirement was suspended under a stop loss authority.

350902. Amount

The amount to be paid to or on behalf of an eligible member, retired member, or former member described in this section will be \$500 per month for each month or portion of a month during the period specified that the member was retained on active duty as a result of application of the stop loss authority.

350903. Limitation

Claims for retroactive Stop Loss Special Pay Compensation under this section will be submitted to the Secretary of the Military Department concerned no later than October 21, 2012, which is 3 years after the date the implementing rules issued by the SecDef took effect. The Secretaries concerned may not pay claims that are submitted more than 3 years after the date the implementing rules took effect.

350904. Treatment of Deceased Members

If an eligible member, retired member, or former member, described in paragraph 351101, dies before the payment required by this section is made, the Secretary of the Military Department concerned will make the payment in accordance with 10 U.S.C. § 2771.

350905. Exclusion of Certain Former Members

A former member of the Armed Forces is not eligible for a payment under this section if the former member was discharged or released from the Armed Forces under other than honorable conditions.

350906. Relation to Other Stop Loss Special Pay

A member, retired member, or former member may not receive a payment, under this section and section 3508, for the same month or portion of a month during which the member was retained on active duty as a result of application of the stop loss authority.

350907. Effect of Subsequent Reenlistment or Voluntary Extension of Service

Effective December 19, 2009, military service members, who voluntarily reenlisted or extended their service after their enlistment or period of obligated service was extended, or after their eligibility for retirement was suspended, and who received a bonus for such reenlistment or extension of service, are not eligible to receive the Retroactive Stop Loss Special Pay.

3510 VOLUNTARY RETIREMENT INCENTIVE (VRI)**351001.** Authority

The SecDef may authorize the Secretary of a Military Department to provide a VRI payment to an officer of the Armed Forces under that Secretary's jurisdiction. Any authority provided the Secretary of a Military Department concerned, will expire as specified by the SecDef, but not later than December 31, 2018. The total number of officers who may be provided a VRI payment may not exceed 675 officers.

351002. Eligible Officers

An officer of the Armed Forces is eligible for a VRI payment under this section if the officer:

A. Has served on active duty for more than 20 years, but not more than 29 years, on the approved date of retirement;

B. Meets the minimum length of commissioned service requirement for voluntary retirement as a commissioned officer in accordance with 10 U.S.C. § 3911, § 6323, or § 8911;

C. On the approved date of retirement, has 12 months or more remaining on active duty service before reaching the maximum retirement years of active service for the member's grade as specified in 10 U.S.C. § 633 or § 634;

D. On the approved date of retirement, has 12 months or more remaining on active duty service before reaching the maximum retirement age under any other provision of law; and

E. Meets any additional requirements for such eligibility as is specified by the Secretary of the Military Department concerned, including any requirement relating to years of service, skill rating, military specialty or competitive category, grade, any remaining period of obligated service, or any combination thereof.

351003. Ineligible Officers

The following officers are not eligible for a VRI payment under this section:

- A. An officer being evaluated for disability under 10 U.S.C. Chapter 61;
- B. An officer projected to be retired under 10 U.S.C. § 1201 or § 1204;
- C. An officer projected to be discharged with disability severance pay under 10 U.S.C. § 1212;
- D. A member transferred to the temporary disability retired list under 10 U.S.C. § 1202 or § 1205;
- E. An officer subject to pending disciplinary action or subject to administrative separation or mandatory discharge under any other provision of law or regulation; or
- F. Any member serving a service related commitment due to an accession or retention bonus program.

351004. Payment

The amount of the VRI payment will be an amount determined by the Secretary of the Military Department concerned, but not to exceed an amount equal to 12 times the amount of the officer's monthly basic pay at the time of the officer's retirement. The amount may be paid in a lump sum at the time of retirement.

351005. Members Returning to Active Duty

- A. An officer, who after having received all or part of a VRI under this section, returns to active duty, will have deducted from each payment of basic pay, in such

schedule of monthly installments as the Secretary of the Military Department concerned will specify, until the total amount deducted equals the total amount of the VRI received.

B. The SecDef may waive, in whole or in part, repayment required under subparagraph 351005.A if the Secretary of the Military Department concerned, determines that recovery would be against equity and good conscience or would be contrary to the best interest of the United States. This authority may be delegated only to the USD (P&R) and the Principal Deputy USD (P&R).

C. Members who are involuntarily recalled to active duty or full-time National Guard duty under any provision of law will not be subject to repayment of this incentive.

Table 35-1. PAYMENT OF ACCRUED LEAVE – OFFICERS AND ENLISTED MEMBERS – SEPARATION WITHOUT IMMEDIATE REENTRY ON ACTIVE DUTY

(Note 1)

R U L E	A	B	C
	If a member has been on active duty for 30 or more consecutive days and	and	then accrued leave is
1	is discharged (including as a result of resignation)	separation is under honorable conditions (note 2)	payable (notes 3 and 4).
2	is released from active duty (note 5)		payable (notes 3, 4, 6, and 7).
3	retires		payable (notes 3, 4, and 8).
4	is transferred to Fleet Reserve or Fleet Marine Corps Reserve		
5	is discharged for fraudulent enlistment after completing 6 months of active duty	discharge characterization is under other than honorable conditions	not payable (note 9).
6	is released from duty because of void enlistment or void induction due to erroneous enlistment or defective enlistment after completing 6 months of active duty	discharge characterization is under other than honorable conditions	
7	is discharged from service as a cadet or midshipman at a military service academy, or as a midshipman elsewhere		
8	dies on or after August 28, 1965, while on active duty	member was not put to death as lawful punishment for a crime or a military offense	payable to beneficiary with other unpaid pay and allowances as prescribed in Chapter 36, section 3603 (notes 4 and 10).

Table 35-1. PAYMENT OF ACCRUED LEAVE – OFFICERS AND ENLISTED MEMBERS – SEPARATION WITHOUT IMMEDIATE REENTRY ON ACTIVE DUTY (Continued)

(Note 1)

R U L E	A	B	C
	If a member has been on active duty for 30 or more consecutive days and	and	then accrued leave is
9	receives a discharge that is not characterized before completing 6 months of active duty	separation is for failure to serve satisfactorily for any reason set forth in subparagraph 350201.E	not payable.
		separation is not for unsatisfactory performance or misconduct for any reason set forth in subparagraph 350201.E	payable.

NOTES:

1. Any member who is discharged under other than honorable conditions forfeits all accrued leave.
2. If member is discharged or relieved from active duty because of expiration of term of service (ETS) and is under investigation as an alleged security risk, do not pay accrued leave until investigation is completed and the character of the discharge determined. If discharge is under honorable conditions, then accrued leave may be paid.
3. The period when a member is home awaiting further orders in connection with physical evaluation board proceedings is charged as leave, to the extent that leave is available, beginning with the day after member arrives home or the day after constructive travel time ends, whichever is earlier. Limit payment to accrued leave remaining at time of retirement or discharge. Authorized absence under these circumstances in excess of accrued leave is not chargeable as leave.
4. On and after February 10, 1976, a member may be paid for a maximum of 60 days accrued leave during a military career. See subparagraph 350201.A.3 for exceptions.
5. A period of active duty as a Reserve or National Guard member meets the 30-day requirement if it covers 30 or more consecutive days, even though it may be directed by more than one order covering unrelated duties.
6. If a Reserve member is entitled to pay and allowances during a disability period after a specified tour of active duty has expired, then the period after that expiration date is not included in the period for which accrued leave is paid.

Table 35-1. PAYMENT OF ACCRUED LEAVE – OFFICERS AND ENLISTED MEMBERS
– SEPARATION WITHOUT IMMEDIATE REENTRY ON ACTIVE DUTY (Continued)

(Note 1)

NOTES:

7. Reserve members may elect to carry forward unused accrued leave to their next period of active duty.
8. A member may not take accrued leave in lieu of payment beyond the effective date of retirement.
9. These rules do not apply when an individual inducted or enlisted into the military service is discovered by military service medical authorities to have been medically unfit for induction at the time of entrance into the military service and such individual is released from military control for such reason.
10. Accrued leave is payable retroactive to February 28, 1961 for a member in a missing status whose death is prescribed under Chapter 34, section 3407. Payment is made according to Chapter 34, section 3410.

Table 35-2. PAYMENT OF ACCRUED LEAVE – OFFICERS – SEPARATION WITH IMMEDIATE REENTRY ON ACTIVE DUTY

R U L E	A	B	C	D
	If	has been on active duty for 30 or more consecutive days and is	and	then accrued leave is
1	an officer of any military service	retired	immediately reenters on active duty	not payable.
2		separated, on a day other than the end of the specified period of active duty, for the purpose of reentering on active duty in any status within any Uniformed Service (note 1)		
3		transferred to a different Uniformed Service by separation and immediate reappointment	immediately enters on active duty with the other military service	
4		separated for having failed selection to a higher grade	immediately reenters on active duty in an enlisted status	payable (notes 2 and 3).
5	a Reserve officer of any military service	released from active duty under honorable conditions under 10 U.S.C. § 12313 or similar laws authorizing release of Reserve officers at convenience of government, not for the purpose of reentering active service	immediately reenters on active duty (including active duty in enlisted or warrant officer status) for the purpose of retirement	payable (note 3).
6		released from active duty under honorable conditions at end of a specified period of time member agreed to serve or was obligated to serve (notes 1 and 4)	immediately reenters on active duty (note 1)	payable (notes 3 and 5).

Table 35-2. PAYMENT OF ACCRUED LEAVE – OFFICERS – SEPARATION WITH IMMEDIATE REENTRY ON ACTIVE DUTY (Continued)

R U L E	A	B	C	D
	If	has been on active duty for 30 or more consecutive days and is	and	then accrued leave is
7	a commissioned officer of any military service, who simultaneously holds a warrant officer appointment	released from active duty as a commissioned officer	reverts to warrant officer status and continues on active duty	not payable.
8	a temporary officer of the Navy or Marine Corps whose enlistment has expired	reverted to enlisted status and simultaneously discharged	immediately reenlists	payable at rate of pay of rank held at time of reversion (note 3).

NOTES:

1. A National Guard member serving on active duty under Title 10 or Title 32, who is ordered to active duty under the other title (Title 10 or Title 32), is considered to have met the obligated service period for which the member agreed to serve (for the purposes of accrued, unused leave payment only), regardless of the unexpired time remaining on that Title 10 or Title 32 obligation. The member is not considered separated for the specific purpose of reenlisting or reentering active duty. Accrued unused leave is payable.
2. Officers who, after notification of an impending discharge, resign for the purpose of continuing a military career are not entitled to payment of accrued leave.
3. On or after February 10, 1976, a member may be paid for a maximum for 60 days of accrued leave during a military career. See subparagraph 350201.A.3 for exceptions.
4. A Reserve officer, who remains on active duty beyond ETS of initial obligation while awaiting Regular officer appointment, is not entitled to payment of unused accrued leave, as the separation to accept the appointment is not considered to be at the end of a specified period. The officer must be separated on the expiration date of the initial obligation for entitlement to exist.
5. Reserve members may elect to carry forward unused accrued leave to their next period of active duty.

Table 35-3. PAYMENT OF ACCRUED LEAVE – ENLISTED MEMBERS – SEPARATION WITH IMMEDIATE REENTRY ON ACTIVE DUTY

R U L E	A	B	C	D
	If an enlisted member	has been on active duty for 30 or more consecutive days and	and	then accrued leave is (note 1)
1	of any military service	on or after October 5, 1999, is discharged for the specific purpose of enlisting or reenlisting (note 2)	immediately reenlists or immediately reenters on active duty	payable.
2		prior to October 5, 1999, is separated under honorable conditions upon expiration of enlistment or is released from active duty under honorable conditions at the end of a specified period of time or was obligated to serve (notes 3, 4, and 5)		
3		prior to October 5, 1999, is separated before ETS or obligated period of duty for the specific purpose of enlisting or reenlisting (notes 5 and 6)		not payable.
4		is discharged for the purpose of accepting a commission or appointment as a warrant officer in any Uniformed Service		
5		enlistment is extended		
6		extension of enlistment is canceled before or during service under the extension		is contingent on rules in Table 35-4.
7		is retired	continues on or is recalled to active duty	not payable.
8		accepts an appointment as a cadet or midshipman without being discharged from enlisted status	enters on duty as a cadet or midshipman	payable as though member was discharged on day before date appointment was accepted.

Table 35-3. PAYMENT OF ACCRUED LEAVE – ENLISTED MEMBERS – SEPARATION WITH IMMEDIATE REENTRY ON ACTIVE DUTY (Continued)

R U L E	A	B	C	D
	If an enlisted member	has been on active duty for 30 or more consecutive days and	and	then accrued leave is (note 1)
9	inducted under the Universal Military Training and Service Act, or enlisted in the Regular Army under that Act	is separated under honorable conditions at the end of the period member is required to serve	immediately enlists or reenlists	payable.
10	of the Army or Air Force, who has more than 20 but less than 30 years of service,	is retired and transferred to the Reserve Component of the member's military service	is immediately ordered into active service	not payable.
11	of the Navy or Marine Corps	is transferred to the Fleet Reserve or Fleet Marine Corps Reserve	continues on active service without a break in active service	

NOTES:

1. On or after February 10, 1976, a member may be paid for a maximum of 60 days of accrued leave during a military career. See subparagraph 350201.A.3 for exceptions.
2. For these purposes, the term “discharge” means separation or release from active duty under honorable conditions, or termination of an enlistment in conjunction with the commencement of a successive enlistment (without regard to the date of the expiration of the term of the enlistment being terminated).
3. A member is considered as discharged upon expiration of enlistment if discharged not more than 1 year before the normal expiration date of the enlistment. The date of normal expiration of enlistment is excluded in computing the 1-year period.
4. An extension of the active duty obligation does not create an entitlement under this rule.
5. A National Guard member serving on active duty under Title 10 or Title 32, who is ordered to active duty under Title 10 or Title 32, is considered to have met the obligated service period for which the member agreed to serve (for the purposes of accrued unused leave payment only), regardless of the unexpired time remaining on that Title 10 or Title 32 obligation. The member is not considered separated for the specific purpose of reenlisting or reentering active duty. Accrued unused leave is payable.
6. A member is not considered as having been discharged for the purpose of enlisting or reenlisting if discharge occurs not more than 3 months before the normal expiration of the extension period (effective January 2, 1968). The date of normal expiration of the extension period is excluded in computing the 3-month period.

Table 35-4. PAYMENT OF ACCRUED LEAVE – ENLISTED MEMBERS – EXTENSION OF ENLISTMENT: DISCHARGE AND REENLISTMENT BEFORE EXTENSION IS COMPLETED

R U L E	A	B	C	D
	If an enlisted member of	has been on active duty for 30 or more consecutive days and	and member	then accrued leave is (note 1)
1	any military service	enlistment is involuntarily extended	continues on active duty in extension period	not payable until discharge.
2		voluntarily extends enlistment, regardless of duration of extension		payable on day before effective date of extension (leave accrued during extension is paid on discharge after extension is completed) (note 2).
3	any military service, whose enlistment has been involuntarily extended	is separated under honorable conditions upon expiration of the involuntary extension of enlistment	immediately reenlists	payable.
4		is separated under honorable conditions, before extension period expires, for purpose of reenlisting		
5	any military service, who has voluntarily extended enlistment	prior to October 5, 1999, extension is canceled before service under it begins and member is discharged under honorable conditions at normal expiration of enlistment		
6		prior to October 5, 1999, extension is canceled after service under it begins and member is discharged under honorable conditions, for purpose of reenlisting		not payable.

Table 35-4. PAYMENT OF ACCRUED LEAVE – ENLISTED MEMBERS – EXTENSION OF ENLISTMENT: DISCHARGE AND REENLISTMENT BEFORE EXTENSION IS COMPLETED (Continued)

R U L E	A	B	C	D
	If an enlisted member of	has been on active duty for 30 or more consecutive days and	and member	then accrued leave is (note 1)
7	any military service, who has voluntarily extended enlistment	on or after October 5, 1999, extension is canceled after service under it begins and member is discharged under honorable conditions, for purpose of reenlisting		payable.

NOTES:

1. On and after February 10, 1976, a member may be paid for a maximum of 60 days of accrued leave during a military career. See subparagraph 350201.A.3 for exception.
2. No payment can be made on second or subsequent extensions.

Table 35-5. COMPUTATION OF ACCRUED LEAVE PAYMENT
(Note 1)

R U L E	A	B	C			
	If member is entitled to accrued leave payment under Table 35-1, 35-2, 35-3, or 35-4, and is an	and member has	the complete payment for the number of days accrued leave, but not more than 60 in a military career, to include (note 2):			
			Basic Pay (note 3)	BAS (note 1)	BAH (note 1)	and PMA (note 1)
1	enlisted member in pay grades E-5 to E-9	dependents (note 4)	at rate applicable on date of separation (note 5)	at 70 cents per day	at \$1.25 per day	none.
2		no dependents			none	
3	enlisted member in pay grades E-1 to E-4					
4	officer	dependents (note 4)		at rate applicable on date of separation (prorate for number of days of accrued leave)	at rate contained in JTR, Chapter 10 for member with dependents on date of separation (notes 5 and 6)	if officer was receiving this allowance on date of separation (limited to allowances listed in Chapter 31). Compute at rate payable on that date (note 5).
5		no dependents			at rate contained in JTR, Chapter 10 for member without dependents on date of separation (notes 5 and 6)	

Table 35-5. COMPUTATION OF ACCRUED LEAVE PAYMENT (Continued)
(Note 1)

NOTES:

1. Cash settlement of leave accrued as of August 31, 1976 will be on the basis of basic pay, BAS, BAH-II, and PMA, as appropriate. Cash settlement of leave accrued on and after September 1, 1976 will be on the basis of basic pay only for all grades, officer and enlisted. See paragraph 350202 for examples.
2. When the final leave balance includes a one-half day total, compute the amount to be paid by crediting the member with one-half of a day entitlement. Round the total to the nearest penny.
3. Do not include in basic pay the 25-percent increase authorized certain Navy and Marine Corps members retained beyond normal ETS.
4. A dependent who is on active duty is not considered a dependent in determining right to BAH.
5. Date of separation is date of discharge, release from active duty, transfer to Reserve, or death; day before effective date of retirement; day before date of appointment as cadet or midshipman; or day before effective date of extension of enlistment.
6. Pay BAH even though the member is not receiving BAH on date of separation because public quarters are occupied or available.

Table 35-6. SEPARATION PAY ENTITLEMENT AND COMPUTATION

R U L E	A	B	C
	If a member is	and is involuntarily discharged or released from active duty because of (note 1)	then compute separation pay at
1	an officer (notes 2 and 3)	failure to be selected for promotion (note 4)	10 percent of 12 months of basic pay multiplied by years and fractions of a year based on additional full months of active service.
2	a warrant officer separated during the 3-year probationary period	failure to be selected for promotion	
3	a warrant officer	second failure to be selected for promotion and does not enlist or the request to enlist, is denied, and is not retained on active duty in grade above W-4	
4	a Reserve member	non-selection for an additional tour of active duty for which the member volunteered unconditionally	
5	a chaplain	failure to maintain professional qualifications	
6	a Reserve member	separation at any time prior to the completion of a specified period of active duty or indefinite period of active duty	
7	a warrant officer or Reserve officer	age (notes 5 and 6)	

NOTES:

1. Includes member's acceptance of an earlier release before the scheduled involuntary separation date, as directed by the Secretary of the military service concerned.
2. Includes a Regular commissioned officer with more than 6 years of commissioned service.
3. Includes a Regular officer continued on active duty pursuant to 10 U.S.C. § 637(a) or a Reserve officer continued on active duty after failure to be selected for promotion, upon expiration of the period of continuation on active duty, or upon separation if continuation is declined.
4. Includes officer not found qualified for promotion to grade of First Lieutenant or Lieutenant Junior Grade.
5. Includes members separated after expiration of Secretarial retention period.
6. If the member is eligible for voluntary retirement, then the member is not entitled to separation pay even though the member does not apply for retirement concurrently with release from active duty.

Table 35-7. ENTITLEMENT TO DISCHARGE GRATUITY

R U L E	A	B	C	D	E	F
	If	is	and	and	and	then
1	an enlisted member of any military service	a prisoner released from confinement in a military or contract prison to parole, appellate review leave, or expiration of sentence			has less than \$25 in possession	pay the member the difference between funds in possession and \$25 (note).
2		discharged for fraudulent enlistment	discharge is not for returning member to	the member is present to receive the discharge		
3		discharged under other than honorable conditions	another branch of the Armed Forces on account of absence without authority from that branch			
4		discharged from active duty because of void enlistment	enlistment is void because it was contracted when member was under age			

Table 35-7. ENTITLEMENT TO DISCHARGE GRATUITY (Continued)

R U L E	A	B	C	D	E	F
	If	is	and	and	and	then
5	an enlisted member of any military service	discharged from active duty because of void enlistment	enlistment is void because it was contracted when member was mentally incompetent			do not pay a discharge gratuity.
6		discharged for minority with pay and allowances payable through date of discharge				

NOTE:

Funds in the member's possession include personal funds and any item paid at the time of discharge or release, excluding mileage and cash advanced incident to furnishing transportation in kind.

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