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DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

VOLUME 7B: "MILITARY PAY POLICY - RETIRED PAY"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 7B, CHAPTER 1: "INITIAL ENTITLEMENTS – RETIREMENTS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by a * 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 September 2009 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter is being updated with hyperlinks and formatted to comply with current administrative instruction.	Update
All	Deleted the following former subparagraphs and section throughout the chapter: 010102.B – E; 010103.B and C; 010104.B.1, 2 and C; 010105.A.1; 010105.D – G; 010105.H.3; 010105.I.3, 010107.B.3.a – g and 4; 010108.A.1.b – j; 010108.A.2.e; 010109.D.5; section 0102; 010301.B.4.c.(1) – (7) and d; 010301.G; 010502.C; 010603.A – C; and 010703B.2.	Delete
0101	Added foundation section, Military Retirement Overview, a general overview of the information contained in Volume 7B.	Add
010102	Added general information on the various methods of calculating retired pay.	Add
010105	Added paragraph on the reinstated Temporary Early Retirement Authority (TERA) program.	Add
010201	Expanded the information provided on computation of creditable service for determining retirement eligibility and reorganized the paragraph for clarity.	Update
010208.F.4	Added information for member wounded or injured while serving in active status per call or order.	Add
010209.B.4	Expanded information on officer's lost time.	Update
010501.A	Incorporated the hyperlink to Comparable Grades.	Add
010501.E.5	Added restriction per statute for reducing service requirement.	Update
0106	Added cross reference and hyperlink to entitlements for judges who retire from the Armed Forces.	Add

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
010703.B	Added cross reference and hyperlink on the effect of change in citizenship of Non-Regular Retirees.	Add
Table 1-1 Notes 1, 2, 3, and 6	Updated public laws and dates according to statute.	Update
Table 1-1 Note 7	Updated the temporary authority to reduce minimum length of active service per Public Law 111-383, section 506.	Update
Table 1-2, Notes 18 and 19	Updated referenced statutes.	Update
Table 1-5 Note 1.	Deleted former Note 1 which was superseded by Note 2. Renumbered notes accordingly.	Delete
Bibliography	Updated bibliography and referenced statutes with the U.S. code.	Update

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CHAPTER 1

INITIAL ENTITLEMENTS – RETIREMENTS

*0101 MILITARY RETIREMENT OVERVIEW

010101. General

This section provides a general overview of the military retired pay entitlement. Specific details on eligibility, computation and payment are found in various chapters of this volume.

A. Military retired pay is divided into three general categories: retired pay for regular service, retired pay for non-regular (reserve/guard) service, and retired pay for physical disability. With the exception of retirement for physical disability and certain temporary authorities for early retirement, a member must be credited with completion of at least 20 years of service in order to be eligible for retired/retainer pay. See Section 0102 for determining years of service for retired/retainer pay eligibility.

B. Retired pay for all categories is computed by applying a percentage multiplier to the member's monthly retired pay base, as determined in section 0102. The percentage multiplier is generally 2.5 percent for each year of service; however, in the case of disability retirement, the percentage multiplier may optionally be the disability percentage awarded by the military service upon retirement.

C. All retiring members may participate in the Survivor Benefit Plan (SBP) that provides a continuing annuity for the lifetime of a surviving spouse or other beneficiary of up to 55 percent of the deceased member's retired pay. Both the retired pay and the survivor annuity are adjusted for inflation through annual Cost-of-Living Adjustments (COLA).

*010102. Retired Pay Base

The retired pay base is determined based upon the date the member first entered military service and whether the member is retiring under regular, reserve, or disability provisions of law. Details are in Chapter 3.

A. The Date of Initial Entry into Military Service (DIEMS) determines whether the retired pay base is the monthly basic pay of the member just before retirement or an average of the highest 36 months of basic pay applicable during the member's career.

1. Final Basic Pay: For members who first entered military service before September 8, 1980, the retired pay base is generally the final basic monthly pay that the member is receiving at the time of retirement.

2. High –Three (High-36). For members who entered the military service on or after September 8, 1980 the retired pay base is generally the average of the highest

three years (36 months) of basic pay the member received for any 36 months, whether consecutive or not, of active service.

B. For a member entitled to retired pay for non-regular (reserve) service, the final basic pay or the high-36 average is usually determined using the rates to which the member was actually paid or to which the member would have been entitled if serving on active duty immediately before the date when retired pay is to begin.

010103. Retired Pay Multiplier

The retired pay multiplier is either 2.5 percent times the years of service creditable for computing retired pay or the percentage of disability awarded by military service at retirement. See Section 0103 for determining years of service creditable for computing retired pay.

A. The years of service for computing retired pay for regular retirement are generally the total of years of active service. For non-regular (reserve) members, the years of service are the total of accumulated drill points combined with one point each day of active duty divided by 360.

B. A member who retires for disability may choose a multiplier based on years of service or based on the disability percentage awarded by the Service. However, if the member chooses the Service disability percentage, then the percentage is capped at 75 percent.

C. Regular members who have a DIEMS date after August 31, 1986, may elect a reduced retirement (REDUX) accompanied by the Career Status Bonus (CSB). The retired pay multiplier is the same as computed in subparagraph A, except that it is reduced by one percentage point for each year the member retires short of completing 30 years of service. See Volume 7A, Chapter 66 for detailed information on the CSB entitlement and election.

010104. Retired Pay Formulae

If a member entitled to retired or retainer pay would otherwise be entitled to retired pay computed under more than one formula, then the member is entitled to be paid under the applicable formula that is most favorable to the member. The retired pay formulae are more fully covered in Chapter 3. The formulae are as follows:

A. For regular and non-regular (reserve) retirement, monthly retired pay is equal to Retired Pay Base times 2.5 percent times Years of Service.

B. For disability retirement, the member may elect retired pay computed under subparagraph A, or monthly pay equal to Retired Pay Base times military disability percentage.

C. For members retiring for regular service who elected the REDUX retirement and received the CSB, retired pay is as computed in subparagraph 010104.A, except the multiplier is reduced by one percentage point for each year the member retires short of completing 30 years of service.

*010105. Temporary Early Retirement Authority (TERA)

A. The Temporary Early Retirement Authority (TERA) provides the Secretary of Defense a temporary force management tool with which to affect the drawdown of military forces and yet maintain an adequate and effective well trained military force. TERA provides the authority for voluntary retirement of members on active duty with at least 15 years, but less than 20 years of creditable service. An eligible member of the Armed Forces may apply for early retirement under the program and receive an annuity equivalent to 2.5 percent of retired pay base for each year of service completed and a deduction of one percent for each year short of 20 years of service. The request is subject to the approval of the Secretary concerned. Drawdown periods are referenced in subparagraph 010201.B. See Chapter 3 for computation of TERA payment.

B. A member of the Armed forces who is approved for early retirement must:

1. Be currently serving on active duty;

2. Complete 15 or more years of active service upon the effective date of retirement;

3. Not be under evaluation for disability retirement under ***Title 10, Chapter 61***; and

4. Meet grade, skill, years of service, and other eligibility criteria as established by the Secretary of the Military Department concerned.

010106. Survivor Benefit Plan (SBP)

Retiring members may participate in the SBP program. The SBP program pays a lifetime annuity to the designated survivor of 55 percent of a base amount elected by the member not to exceed full retired pay. A non-regular (reserve) member, upon receiving notice of having completed sufficient service to qualify for retirement, except for not having attained the appropriate age, may also participate in the SBP program. Detailed information regarding the SBP program begins in Chapter 42.

010107. Cost of Living Adjustments (COLA)

Both retired pay and survivor annuities are adjusted annually by the change in the Consumer Price Index. Detailed information on COLAs is contained in Chapter 8.

0102 SERVICE CREDITABLE FOR RETIREMENT ELIGIBILITY

*010201. General

A. Computation of Creditable Service for Determining Retirement Eligibility. A computation of creditable service, for the purpose of determining retirement eligibility, may be

required at any time during a member's military career. Generally, a member must complete at least 20 years of creditable service in order to qualify for retired or retainer pay. Upon completion of 20 years of creditable service, a member may request to be transferred to a retired or retainer status.

1. An enlisted member of the Army or Air Force who completes 20 years of creditable active service may request to be retired.

2. An enlisted member of the Navy or the Marine Corps who completes 20 years of creditable active service may request transfer to the Fleet Reserve or Fleet Marine Corps Reserve. See Chapter 2 for details regarding creditable service for transfers to the Fleet Reserve and Fleet Marine Corps Reserve.

3. An enlisted member of the regular Army, Navy, Marine Corps or Air Force who completes 30 years of creditable active service or an enlisted member in the Fleet Reserve or Fleet Marine Corps Reserve upon completion of a total of 30 years of combined active and fleet reserve service shall, upon request, be retired.

4. A regular or reserve commissioned officer may voluntarily be retired after completion of 20 years of active service, at least 10 years of which is active commissioned service.

5. A non-regular member who completes 20 years of creditable qualifying service, but has not yet attained the eligibility age applicable for retired pay, may request transfer to the inactive status list.

6. Members who incur a qualifying disability while serving on active duty; while called to active duty for training for 30 days or less; or while performing inactive duty training; may be retired for disability, at which time a service computation is required.

B. The Secretary of the Military Department concerned may reduce the 20 years of creditable service requirement to as few as 15 years, under TERA, for retirements during the periods of:

1. December 31, 2011 and ending December 31, 2018 for regular retirements only, and

2. October 23, 1992 and ending September 1, 2002 for regular and non-regular retirements.

C. The Secretary of the Military Department concerned may also reduce the 10-year active commissioned service requirement to not less than 8 years for retirements during the periods of:

1. January 7, 2011 and ending September 30, 2013;

2. January 6, 2006 and ending December 31, 2008; and

3. October 1, 1990 and ending December 31, 2001.

D. Active Duty Beyond 20 Years of Service. A member who continues on active duty after completion of 20 years of service may be retired for voluntary or involuntary reasons. Involuntary reasons include court martial sentence, poor performance, failure to qualify for promotion, high year tenure, and age.

E. Service Creditable for Retirement Eligibility. Service creditable for the purpose of determining retirement eligibility varies with each type of retirement. Retirement types and the specific service creditable for each type are found in paragraphs 010202 through 010208. Service that is not creditable is cited in paragraph 010209.

010202. Service Creditable for Regular Voluntary Retirement – Enlisted Members (Table 1-1)

A. All active service in the Uniformed Services; and

B. Service as a cadet or midshipman at Service academy.

010203. Service Creditable for Voluntary Retirement – Regular and Reserve Commissioned Officers (Table 1-1)

A. Active service in the Uniformed Services.

B. If an officer of the Regular Army or Regular Air Force in the Medical Corps, then include all full-time service performed as:

1. A contract surgeon;

2. An acting assistant surgeon; or

3. A contract physician, under a contract to serve full-time and to take and change station as ordered.

C. If retiring as an officer of the Regular Army or Regular Air Force in the Dental Corps, then include all full-time service performed as:

1. A contract dental surgeon; or

2. An acting dental surgeon.

010204. Service Creditable for Voluntary or Mandatory Retirement – Warrant Officers

A. Active service in the Uniformed Services.

B. All service as:

1. A contract surgeon;

2. A Reserve nurse;

3. A contract dental surgeon;

4. An acting dental surgeon; and

5. A veterinarian in the quartermaster department, cavalry, or field artillery.

010205. Service Creditable for Mandatory Retirement – Regular Commissioned Officers, Army and Air Force (Table 1-2)

Years of service credited at the time of original appointment in the Regular Army for the purpose of determining eligibility for promotion, except service in subparagraph 010209.C, plus all years of active commissioned service in the Regular Army after that appointment, or years of service computed as in the following subparagraphs A through G, whichever applies:

A. A Reserve judge advocate appointed in the Regular Army after becoming 21 years of age, after December 7, 1941, and before the date of that appointment, or the number of the days, months and years by which the member's age at the time of appointment exceeds 25 years, whichever is greater, plus years of active commissioned service in the Regular Army or Regular Air Force after that appointment.

B. Officer appointed in the Regular Army, except the Army Nurse Corps or Army Medical Specialist Corps before December 31, 1947, other than an officer covered by subparagraph 010205.A, or appointed in the Regular Army under the Act of December 28, 1945:

1. Years of active commissioned service in the Regular Army after that appointment, plus

2. Years of active commissioned service in the Army after becoming 21 years of age and after December 7, 1941, under any earlier appointment.

C. Officer appointed in the Regular Army, except the Army Nurse Corps or Army Medical Specialist Corps after December 31, 1947, other than an officer appointed in the Women's Army Corps, Regular Army, under section 108 of the Women's Armed Services Integration Act of 1948:

1. Years of active commissioned service in the Regular Army after that appointment, plus

2. Years of active commissioned service in the Army after becoming 21 years of age and after December 31, 1947, under any earlier appointment.

D. Officer of the Regular Air Force appointed in the Regular Army or Regular Air Force after December 31, 1947, under section 506 of the Officer Personnel Act of 1947, the sum of:

1. The years of active commissioned service in the Regular Army or Regular Air Force after that appointment;

2. The years of active commissioned service in the Armed Forces after becoming 21 years of age and after December 6, 1941, under any earlier appointment.

E. Officer of the Air Force who was appointed in the Regular Army or Regular Air Force after December 31, 1947, other than an officer covered by subparagraphs 010205.D, or F:

1. The years of active commissioned service in the Regular Army or Regular Air Force after that appointment;

2. The years of active commissioned service in the Air Force after becoming 21 years of age and after December 31, 1947, under any earlier appointment.

F. Officer of the Regular Air Force who was appointed in the Regular Air Force after July 19, 1956, other than an officer covered by subparagraph 010205.D, or who is designated as a medical or dental officer, the sum of:

1. The years of active commissioned service in the Regular Air Force after that appointment;

2. The years of active commissioned service in the Armed Forces after becoming 21 years of age and before appointment; and

3. The years credited for the purpose of determining grade, position on a promotion list, seniority, and eligibility for promotion under one of the following conditions:

a. Three years, if appointed in the Regular Air Force with a view to designation as a medical service officer, and if holding a degree of doctor of philosophy or comparable degree in science allied to medicine.

b. Not more than 8 years, if one of not more than 100 persons in any calendar year who are appointed from civil life or from Reserves of the Air Force who have qualifications not otherwise available from members of the Air Force on active duty.

c. Not more than 2 years, if appointed while on active duty in the Air Force.

G. An officer of the Army or Air Force under the Defense Officer Personnel Management Act is credited with:

1. The years of active service; and

2. The years of service, other than active service in subparagraph 010205.G.1, with which the member was entitled to be credited on May 31, 1958, in computing basic pay.

010206. Service Creditable for Mandatory Retirement - Regular Officers, Navy and Marine Corps (Table 1-2)

A. The total commissioned service of an officer on the active list in the line of the Navy or of the Marine Corps is computed from June 30 of the fiscal year in which the officer accepted that appointment. The computation applies when the officer has served continuously on the active list since appointment in the grade of ensign or second lieutenant, either upon graduation from the Naval Academy or under Title 10, United States Code 2106 ***(10 U.S.C. 2106)***, ***2107***, or ***6909*** (repealed).

B. Every other officer on the active list in the line of the Navy or Marine Corps is considered to have the same service as in subparagraph 010206.A, who:

1. Has not lost numbers or precedence; and

2. Is, or at any time has been, junior to the other officer for the purposes of eligibility for promotion and selection for promotion during the other officer's latest period of continuous service on the active list.

C. The total commissioned service of each officer on the active list of the Navy in the Supply Corps or the Civil Engineer Corps who originally was appointed as a Regular or as a Reserve in the grade of ensign in the line, or any staff corps, or in the grade of lieutenant (junior grade) in the Civil Engineer Corps, and who has served continuously on active duty since that appointment, is computed from June 30 of the fiscal year in which the officer accepted that appointment, beginning August 7, 1947.

D. The total commissioned service of each officer originally appointed in the grade of lieutenant (junior grade) or ensign in any staff corps of the Navy, except the Supply Corps and the Civil Engineer Corps, who since that appointment has served continuously on the active list of the Navy, is computed from June 30 of the fiscal year in which the officer accepted that appointment. This provision does not apply, however, to officers appointed under the Act of April 18, 1946.

E. Every other commissioned officer on the active list of the Navy in any staff corps is considered to have the same total commissioned service as the officer in the same corps described in subparagraphs 010206.C and D, having the maximum total commissioned service who:

1. Has not lost numbers or precedence; and

2. Is, or at any time has been, junior to the other officer for the purposes of eligibility for promotion and selection for promotion during that other officer's latest period of continuous service on the active list.

F. Notwithstanding the provisions of subparagraph 010206.E, officers on the active list of the Navy in the Medical Service Corps, appointed under the Act of April 18, 1946, are considered to have total commissioned service equivalent to that of their running mates.

G. Officers on the active list of the Navy in the Nurse Corps are credited with:

1. Active service in the Nurse Corps and the Nurse Corps Reserve; and

2. Active service in the Nurse Corps and the Nurse Corps Reserve, which was abolished by the Army-Navy Nurses Act of 1947.

H. An officer of the Navy or Marine Corps under the Defense Officer Personnel Management Act is credited with:

1. The years of active service; and

2. The years of service, other than the service included in subparagraph 010106.H.1, with which member was entitled to be credited on May 31, 1958, in computing basic pay.

010207. Service Creditable for Disability Retirement (Table 1-3)

A. A member of a Regular Component of the Armed Forces is credited with the greater of all service he or she is considered to have for the purpose of separation or mandatory elimination from the active list, or the sum of:

1. All active service as a member of the Armed Forces as a nurse, Reserve nurse after February 2, 1901, contract surgeon, contract dental surgeon, or acting dental surgeon.

2. Active service as a commissioned officer of the National Oceanic and Atmospheric Administration (NOAA), or the Public Health Service (PHS). Active service as a member of the NOAA includes active service as a member of the Environmental Science Services Administration and of the Coast and Geodetic Survey, the predecessor organizations to NOAA and PHS.

3. Service while participating in exercises or performing active duty training and drills in the National Guard, under ***32 U.S.C. 502***, ***503***, ***504***, and ***505***.

B. A member who is not a member of a Regular Component of the Armed Forces is credited with service calculated as the sum of subparagraphs 010207.B.1 through 3, and divided by 360:

1. All days of active service;

2. All days of full-time service while performing annual training duty or attending prescribed periods of instruction designated as a Military Service school by law or by the Secretary concerned; and

3. One day for each point, but not more than 130 days in the year of service that includes October 30, 2007 and in any subsequent year of service credited for attendance at drills or periods of equivalent instruction prescribed for that year by the Secretary concerned that conform to requirements by law or are credited as service in the Health Professions Scholarship and Financial Assistance Program under ***10 U.S.C. 2126***. Between October 30, 2000 and October 29, 2007, the maximum number was 90 days. Between September 23, 1996 and October 29, 2000, the maximum number was 75 days, and 60 days before September 23, 1996. The credit includes points at the rate of 15 per year for membership in a Reserve Component of an Armed Force, in the Army or the Air Force without component, or service before July 1, 1949 in the categories provided in ***10 U.S.C. 12732***.

010208. Service Creditable for Age and Service Retirement – Non-Regular Member (Table 1-4)

A. Creditable service for retirement includes:

1. The Uniformed Services

2. Years of service before July 1, 1949 pursuant to ***10 U.S.C. 12732***.

3. Each 1-year period after July 1, 1949 in which the member earned at least 50 points on the following basis:

a. One point for each day of active service. Service as a cadet or midshipman at a Service academy is active service for non-Regular enlisted members only;

b. One point for each day of full-time service while performing annual training or attending a prescribed course of instruction at a school designated as a Service school by law or by the Secretary concerned;

c. One point for each attendance at a drill or period of equivalent instruction prescribed for that year by the Secretary concerned;

d. Points at the rate of 15 per year for membership in a Reserve Component of the Armed Forces, in the Army or Air Force without component, or in any other category covered by ***10 U.S.C. 12732(a)(1)***, except a Regular Component; and

e. Points credited as service in the Health Professions Scholarship and Financial Assistance Program under ***10 U.S.C. 2126***.

NOTE: For the purpose of subparagraphs 010208.B.1, 2, and 3, all service in the National Guard is treated as if it were service in a Reserve Component if the member was later appointed in the National Guard of the United States or Air National Guard of the United States, or as a Reserve of the Army or Air Force and served continuously in the National Guard from date of Federal recognition to date of that appointment.

B. A member of the Armed Forces Reserve or National Guard is entitled to retired pay computed under Volume 7B, Chapter 3, Table 3-1, Rule 13 of this Regulation, for non-Regular service upon application if he or she:

1. Has attained the eligibility age applicable under subparagraph 010208.F to that member; and

2. Has performed at least 20 years of service (see subparagraph 010208.E), as shown in subparagraphs 010208.A.

3. Has completed at least 20 years of service as described in subparagraph 010208.B.2 before April 25, 2005, and performed the last 6 years of qualifying service while a member of any category named in ***10 U.S.C. 12732(a)(1)***, but not while a member of a Regular Component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except in the case of a member who completed 20 years of service before October 5, 1994, the number of years of such qualifying service shall be 8.

4. Is not entitled under any other provision of law to retired pay from the Armed Forces or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve, except as provided in Chapter 7, section 0708.

C. A member who has been notified that the years of service requirement has been met for eligibility for retired pay may not have that eligibility denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed, unless it resulted directly from fraud or misrepresentation of the member.

1. The notification of eligibility, which is based on the member's completion of the service requirement, conforms to applicable Military Department regulations. A nonconforming written notice, administratively issued, which shows completion of service requirements of eligibility for retired pay, may not result in the denial of retired pay unless evidence shows that the member caused the service record to be altered or confused.

2. The number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination. When a correction is made, the retiree is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date the retiree is granted retired pay.

3. Notwithstanding subparagraph 010208.C.2, the granting of retired pay to a retiree under ***10 U.S.C., Chapter 1223*** is conclusive as to that retiree's entitlement to such pay only if the payment of retired pay began after October 14, 1966. A notification that a member has completed the years of service required for eligibility for retired pay under ***10 U.S.C., Chapter 1223*** is conclusive as to that member's subsequent entitlement to such pay only if the notification is made after October 14, 1966.

D. Under ***10 U.S.C. 12731***, members of a Reserve Component who have reached age 60 and have at least 20 years of qualifying Federal service are qualified for retired pay. A member who has qualified for retired pay, but retained under ***10 U.S.C. 12308***, with member's consent, may be credited with the service for all purposes. A member, however, who elects to receive retired pay under 10 U.S.C. 12731, may not be retained simultaneously on active duty or in active service under 10 U.S.C. 12308.

E. A temporary special retirement qualification authority, ***10 U.S.C. 12731a***, provides for the Secretary of the Military Department concerned to allow certain members with at least 15 years of creditable service to retire during the period beginning on October 23, 1992 and ending on December 31, 2001.

F. Subject to subparagraph 010208.F.1, the eligibility age for purposes of subparagraph 010208.B.1 is 60 years of age.

1. After January 28, 2008, the eligibility age for purposes of subparagraph 010208.F shall be reduced below 60 years of age in the case of a member who, as a member of the Ready Reserve, serves on active duty or performs active service described in subparagraph 010208.F.2. The reduction shall be 3 months for each aggregate of 90 days on which the member so performs in any fiscal year after such date, subject to subparagraph 010208.F.5. A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.

2. Service on active duty described in this subparagraph is service on active duty pursuant to a call or order to active duty under a provision of law referred to in ***10U.S.C. 101(a)(13)(B)*** or under ***10 U.S.C. 12301(d)***. Such service does not include a call or order to active duty under ***10 U.S.C. 12310.***

3. Active service described in this subparagraph is also service under a call to active service authorized by the President or the Secretary of Defense under ***32 U.S.C. 502(f)*** for purposes of responding to a national emergency declared by the President or supported by Federal funds.

* 4. If the member is wounded or otherwise injured or becomes ill while serving on active duty pursuant to a call or order to active duty under subparagraph 010208.F.2, and the member is ordered to active duty under section ***10 U.S.C. 12301(h)(1)*** to receive medical care for the wound, injury, or illness, then each day of active duty under that order for medical care shall be treated as a continuation of the original call or order to active duty for purposes of reducing the eligibility age of the member under this subparagraph.

5. The eligibility age for purposes of subparagraph 010208.F may not be reduced below 50 years of age for any member under subparagraph 010208.F.1.

010209. Service Not Creditable for Determining Retirement Eligibility

A. Enlisted Member's Lost Time. The following periods of absence from duty during a term of enlistment are not creditable to an enlisted member unless they are made up by the member upon return to full duty so as to complete the term for which the member was enlisted. The periods of absence from duty are:

1. Desertion;

2. Absence from organization, station, or duty for more than 1 day without proper authority, as determined by competent authority;

3. Confinement by military or civilian authorities for more than 1 day in connection with a trial, whether before, during, or after the trial; and

4. The member's inability for more than 1 day, as determined by competent authority, to perform assigned duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from the member's misconduct.

B. Officer's Lost Time. Prior to February 11, 1996, a commissioned or warrant officer was entitled to credit for every day in a commissioned or warrant status, without regard to absence of any kind, whether authorized or unauthorized, and including confinement prior to and during trial. In addition, absence during which a member was serving on active duty as an enlisted member was creditable if the enlisted member also held a commission as a Reserve officer. After February 10, 1996, a commissioned or warrant officer may not count the following periods of absence for any purpose other than the computation of length of service for basic pay:

1. Desertion;

2. Absence from organization, station, or duty for more than 1 day without proper authority, as determined by competent authority;

3. Confinement by military or civilian authority for more than 1 day in connection with a trial, whether before, during, or after the trial; or

* 4. Inability to perform assigned duties for more than 1 day, as determined by competent authority, because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from the member's misconduct. The period of such desertion, absence, confinement, or inability to perform duties may not be counted in computing, for any purpose other than basic pay under ***37 U.S.C 205***, the officer's length of service.

C. Constructive Service. Constructive service, credited under 10 U.S.C. 3287(a)(2)(A) or (B) (repealed), 10 U.S.C. 3294(b) (repealed), or section 506(c) of the Officer Personnel Act of 1947, is not included in the service computation under subparagraph 010205.A. Constructive service creditable may be:

1. Three years, if appointed as a chaplain, or for service in the Judge Advocate General's Corps or in the Veterinary Corps of the Regular Army.

2. Three years, if appointed in the Medical Service Corps and if holding the degree of doctor of philosophy or comparable degree recognized by the Surgeon General.

3. Four years (five, if member completed a 1-year internship) credited at the time of appointment in the Medical or Dental Corps for the purpose of determining grade, position on a promotion list, seniority in grade in the Regular Army, and eligibility for promotion.

D. Other Non-creditable Service. This service may not be counted for the purpose of determining retirement eligibility under paragraph 010207:

1. Service, other than active service, in an inactive section of the Organized Reserve Corps or Army Reserve, or inactive section of the officer's section of the Air Force Reserve.

2. Service, other than active service, after June 30, 1949, while on the Honorary Retired List of the Naval Reserve or of the Marine Corps Reserve.

3. Service in the inactive National Guard or in a non-federally recognized status of the National Guard.

4. Inactive service in the Fleet Reserve or Fleet Marine Corps Reserve.

5. Service in any status other than that as a commissioned officer, warrant officer, nurse, flight officer, aviation midshipman, appointed aviation cadet, or enlisted member, and that is described in paragraph 010201 as creditable.

0103 SERVICE CREDITABLE FOR COMPUTING RETIRED PAY

010301. Service for Percentage Multiple

Service authorized to be used as a percentage multiple is specified in each law section authorizing computation of retired pay for each type of retirement. Information on retirement types and service for percentage multiple are provided in this section for each are:

010302. Voluntary Retirement Enlisted Members

Service credited under subparagraph 010202.

010303. Voluntary Retirement Commissioned Officers

A. Active service in the Uniformed Services.

B. Crediting of constructive service for medical and dental officers or an internship is not authorized after September 14, 1981 unless a member was already enrolled in such a program and later graduated, and was commissioned as a medical or dental officer; however, post-September 14, 1981, time is creditable in computing retired pay provided the officer is retirement eligible. Service creditable in computing retired pay should include time an officer served in the Uniformed Services University of Health Sciences (USUHS). For an officer of the Medical Corps or Dental Corps of the Army or Navy, an officer of the Air Force designated as a medical or dental officer or an officer of the Public Health Service commissioned as a medical or dental officer, credit actual time served in the program. Any credit otherwise accrued during the same period by reason of Reserve membership would not be used in determining the multiplier for computing retired pay.

Example: An O-6 with 20 years and 6 months service under ***37 U.S.C. 205*** (excludes time at USUHS) is receiving basic pay for an O-6 over 20 years. If this member served 4 years and 6 months at USUHS, then, upon retirement, the member is to receive retired pay computed at 62.5 percent of basic pay as an O-6. The 62.5 percent is computed as 2.5 percent times 25 (20.5 plus 4.5) years of service as this computation will include the USUHS time.

C. The years of service, not included in subparagraph 010303.A, or B, with which the member was entitled to be credited on June 1, 1958, in computing basic pay as stated in Volume 7A, Chapter 1, section 0101.

D. Years of service not included in subparagraphs 010303. A, B, or C, with which the member would be entitled to be credited under ***10 U.S.C. 12733***:

1. Days of active service.

2. Days of full-time service under ***32 U.S.C. 316*** and ***32 U.S.C. 502 thru 505***, while performing annual training duty or attending a prescribed course of instruction at a school designated as a Service school by law or by the Secretary of the Military Department concerned (or designee).

3. One day for each point, but not more than 130 days in any year of service that includes October 30, 2007, and in any subsequent year of service credited for attendance at drills or periods of equivalent instruction prescribed that year by the Secretary concerned that conform to requirements by law or credited as service in the Health Professions Scholarship and Financial Assistance Program under ***10 U.S.C. 2126***. Between October 29, 2007 and October 29, 2000, the maximum number was 90 days; between September 23, 1996 and October 29, 2000, the maximum number was 75 days; and before September 23, 1996, the maximum was 60 days. The credit includes points at the rate of 15 per year for membership in a Reserve Component of an Armed Force, in the Army or the Air Force without component, or service before July 1, 1949 in the categories named in ***10 U.S.C. 12732***.

010304. Voluntary Retirement Warrant Officers.

Service credited under subparagraph 010303.

010305. Mandatory Retirement

A. Army and Air Force service credited under paragraph 010205 or subparagraph 010303 whichever is more favorable.

B. Navy and Marine Corps service credited under paragraph 010206 or subparagraph 010303 whichever is more favorable.

010306. Disability Retirement

Service credited under paragraph 010207.

010307. Age and Service Retirement, Reservist

Total days of service, as stated in subparagraphs 010303.D.1 through 3, divided by 360 equals equivalent years and any fraction of a year of service.

0104 UNIFORM RETIREMENT DATE ACT (URDA) APPLICATION (***5 U.S.C. 8301***)

010401. Authority

A. Except as otherwise specifically provided by statute, retirement is effective on the first day of the month after that in which retirement would otherwise be effective.

B. Notwithstanding subparagraph 010401.A, the rate of pay is computed as of the date retirement would have occurred but for the provisions of subparagraph 010401.A. See

Table 1-5. Members who enter a Uniformed Service after September 7, 1980 receive retired pay based on an average of basic pay rates for the period actually served, not to exceed a 36-month period. See Chapter 3 for gross pay computation.

010402. Application

A. Voluntary Retirement

1. Compute pay on the current active duty basic pay rate in effect on the first day of retirement if the member:

a. Retired on other than an active duty basic pay rate change date.

b. Retired on the same day as an active duty basic pay rate change, but was fully qualified for retirement or met requirements to be retired at least 1 month before the month immediately preceding the active duty basic pay rate change date, except for warrant officers retired under the provisions of 10 U.S.C. 564 (repealed), ***580***, ***1255*** (repealed), ***1263***, ***1293***, and ***1305***.

c. Retired as an enlisted member regardless of qualification date.

d. Retired as a commissioned officer under provisions of ***10 U.S.C. 6323***.

2. Compute pay on the active duty basic pay rate in effect on the day before the first date of retirement if the member:

a. Retired as a warrant officer under 10 U.S.C. 564 (repealed), 580, 1255 (repealed), 1263, 1293, and 1305.

b. Retired on an active duty basic pay rate change date as a commissioned officer (other than an officer retired under 10 U.S.C. 6323 or warrant officer who first qualified for retirement during the month immediately preceding the active duty rate change date; however, refer to Table 1-5, Rule 6 for an exception to this rule.

B. Mandatory Retirement

1. Compute pay on the active duty basic pay rate in effect on the date when the member met the requirements for involuntary retirement, and is retired for mandatory reasons.

2. The provision in subparagraph 010402.B.1 does not apply if:

a. Before the date scheduled for mandatory retirement, the member qualifies for and requests voluntary retirement which is approved before he or she is scheduled for mandatory retirement. See provisions for voluntary retirement in subparagraph 010402.A.

b. The member is retained on active duty beyond mandatory retirement date for physical evaluation to determine eligibility for disability retirement and is retired for disability. See provisions for disability retirement.

C. Fleet Reserve and Fleet Marine Corps Reserve. The provisions of the URDA do not apply to members transferred to the Fleet Reserve and Fleet Marine Corps Reserve.

D. Disability Retirement

1. Compute pay on the active duty rate in effect on the first day of retirement if the member:

a. Retired on other than an active duty basic pay rate change date.

b. Retired on an active duty pay rate change date and otherwise is eligible for voluntary retirement and met those requirements at least 1 month before the month immediately preceding the new basic pay rates. The new rates apply only to the formula for computation of entitlement for voluntary retirement.

2. Compute pay on the active duty basic pay rate in effect on the day before the first day of retirement if the member:

a. Retired on an active duty rate change date as a commissioned officer, warrant officer, or enlisted member, and

b. Disability retirement findings approved without the Secretary concerned having designated an earlier retirement date under ***10 U.S.C. 1221***. The effective date of retirement is governed by the provisions of the Uniform Retirement Date Act.

E. Non-Regular Service Reserve Retirement. Compute pay on the active duty basic pay rate in effect on the date when the member is granted retired pay.

010403. Special Provisions

Under specific circumstances, computation may be based on another basic pay rate that may provide greater pay. See Chapter 3, sections 0302, 0303, and 0304.

0105 RANK AND PAY GRADE

010501. General Determination

* A. Grade at Retirement. Unless entitled to a higher grade under some other provisions of law, those Regular and Reserve members who retire other than for disability will retire in the Regular or Reserve grade they hold on the date of retirement. See Volume 7A, COMPARABLE GRADES.

B. Time in Grade Requirement. A commissioned officer, other than a commissioned warrant officer, of the Army, Navy, Air Force, or Marine Corps, who voluntarily retires in a grade above major or lieutenant commander, must serve on active duty in that grade for not less than 3 years. The President may waive this requirement in cases of hardship or exceptional or unusual circumstances. The Secretary of the Military Department concerned (or designee) may reduce the service-in-grade requirement to 2 years. This authority was made permanent under ***Public Law 108-136, section 506***, dated November 24, 2003.

C. Retirement to the Next Lower Grade. An officer who does not meet the service-in-grade requirement retires in the next lower grade in which the member served on active duty satisfactorily for at least 6 months.

D. Officers in Grades 0-9 and 0-10

1. An officer in the grade of general or admiral, or lieutenant general or vice admiral, may retire in that grade if the Secretary of Defense certifies, in writing, to the President and the Congress that the officer served on active duty satisfactorily in that grade.

2. The 3-year service-in-grade requirement cannot be reduced or waived if the officer is under investigation for alleged misconduct or if an adverse personnel action is pending against the officer for alleged misconduct.

E. Reserve Officers

1. Unless entitled to a higher grade, or to credit for satisfactory service in a higher grade under some other provision of law, a member who becomes entitled to a non-Regular service Reserve retirement shall, upon application, receive credit for satisfactory service in the highest grade held in the Armed Forces, as determined by the Secretary of the Military Department concerned (or designee).

2. To receive credit for satisfactory service in a grade below lieutenant colonel or commander, other than a warrant officer grade, a member must serve satisfactorily in that grade, as determined by the Secretary of the Military Department concerned (or designee) as a Reserve commissioned officer in an active status, or in a retired status on active duty, for at least 6 months.

3. To receive credit for satisfactory service in a grade above major or lieutenant commander, a member must serve satisfactorily in that grade, as determined by the Secretary of the Military Department concerned (or designee), as a Reserve commissioned officer in an active status, or in a retired status on active duty, for at least 3 years.

a. A member who completes at least 6 months of satisfactory service in grade, upon transfer from an active status or upon discharge as a Reserve commissioned officer for mandatory age or years of service, receives credit for satisfactory service in the grade in which serving at time of transfer or discharge in that grade.

b. If a member completes at least 6 months of satisfactory service in grade while serving as adjutant general under ***32 U.S.C. 314*** or as assistant adjutant general to such adjutant general, and the member is unable to complete 3 years of service in such grade because the appointment is terminated or vacated under ***32 U.S.C. 324(b)***, then the member may be credited with satisfactory service in that grade.

c. The Secretary of the Military Department concerned (or designee) may allow credit in a higher grade to a member who has been recommended for promotion but before promotion to the recommended grade. Such credit may be allowed when a member who is in the next lower grade serves in a position after recommendation where the minimum authorized grade for the position the member is serving in is the higher grade to which the member is recommended for promotion. The period of service credit may not include any period before the date that the Senate provides advice and consent for the appointment in the recommended grade.

d. A member who qualifies for Federal recognition in a higher grade and then serves in that grade in a position for which the higher grade is the minimum authorized grade may receive credit for having served in that grade. The credit, determined by the Secretary of the Military Department concerned (or designee), is contingent upon the member being appointed as a Reserve officer in that grade. The service credit is allowed only for the period the member served in the position after Senate advice and consent for the appointment.

e. A member who completes at least 6 months of satisfactory service in a grade above colonel (or, in the case of the Navy, in a grade above captain), and while serving in an active status, is involuntarily transferred (other than for cause) from active status, may be credited with satisfactory service for the grade in which serving even though he or she does not complete 3 years of service in that grade.

4. A member whose length of service in the highest grade held does not meet the service-in-grade requirements specified in this subparagraph receives credit for satisfactory service in the next lower grade in which the member serves satisfactorily for at least 6 months as determined by the Secretary of the Military Department concerned (or designee).

* 5. The Secretary of Defense may authorize the Secretary of a Military Department concerned (or designee) to reduce the 3 year period required in subparagraph 010501.E.3 for an officer above major or lieutenant commander, to a period of not less than 2

years. However, in the case of an officer who, upon transfer to the Retired Reserve or discharge, is to be credited with satisfactory service in a general or flag officer grade, the authority provided by the Secretary of Defense to the Secretary of a Military Department concerned (or designee) may be exercised with respect to that officer only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

F. Grade on Retirement for Physical Disability. Unless entitled to a higher grade under some other provision of law, members of the Armed Forces who retire for disability are entitled to the highest of:

1. The grade or rank in which serving when placed on the Temporary Disability Retired List or, if not carried on that list, on date of retirement.

2. The highest temporary grade or rank in which member satisfactorily serves, as determined by the Secretary of the Armed Force from which he or she retired.

3. The permanent Regular or Reserve grade to which the member would have been promoted had it not been for the disability for which the member is retired that was found upon physical examination.

4. The temporary grade to which the member would have been promoted had it not been for the disability for which the member is retired, if eligibility for that promotion was required based on the cumulative years of service or years of service in grade, and the disability was found upon physical examination.

010502. Special Provisions

A. Commissioned officers of the Regular or Reserve Component of the Army or Air Force and Regular officers of the Navy or Marine Corps may, at the discretion of the President, be retired by and with the consent of the Senate, in the highest grade held at any time on the active list if they have served as:

1. Chief of Staff to the President.

2. Chief of Staff of the Army.

3. Chief of Naval Operations.

4. Chief of Staff of the Air Force.

5. Senior member of the Military Staff Committee of the United Nations.

6. General or lieutenant general in a position of importance and responsibility designated by the President.

7. Admirals or vice admirals in positions of great importance and responsibility designated by the President under ***10 U.S.C. 601***.

8. Chief or assistant chief of a branch of the Regular Army for at least 4 years.

9. Surgeon General of the Army or Air Force in the grade of lieutenant general.

10. Permanent professor of the United States Military Academy or United States Air Force Academy. If the grade is below brigadier general and service as professor is long and distinguished, then the professor may, at the discretion of the President, be retired in the grade of brigadier general.

11. Chiefs of Bureaus and Judge Advocate General.

B. Regular and Reserve commissioned officers of the Army and Air Force are entitled to the grade equal to the highest temporary grade in which they served on active duty satisfactorily for not less than 6 months. See exception in subparagraph 010501.B.

C. Where an existing statute authorizes computation of pay on the basis of a grade in which the member served satisfactorily that is higher than the pay of the grade otherwise entitled, computation is based on the higher grade:

1. Without regard to whether that grade was temporary or permanent.

2. Even though the Military Service in which the member held that higher grade is not the Military Service in which retired.

D. Retired warrant officers of the Army and Air Force, and enlisted members of the Regular Army and Regular Air Force, are entitled to be advanced on the retired list to the highest grade in which they served on active duty satisfactorily, when their active service plus time on the retired list equals 30 years.

E. Unless otherwise entitled to a higher grade, officers of the Regular Navy or Regular Marine Corps holding a permanent grade of W-1 or above, retired with 30 or more years of service, are retired in the grade in which they are serving at the time of retirement.

F. Unless otherwise entitled to a higher grade, members of the Navy and Marine Corps retired while serving in a temporary grade to which they were appointed in time of war or national emergency which terminates on date of detachment are retired in the grade they would hold if they had not received such appointment.

G. Warrant officers of the Navy and Marine Corps who retire after completion of 20 years service may elect to be retired in the highest grade entitled under any provision of law.

H. Unless otherwise entitled to a higher grade, members, other than retired members of the Navy or Marine Corps, when retired, are advanced on the retired list to the highest officer grade in which they served satisfactorily under a temporary appointment.

I. A courtesy title is not to be used for computation of pay. The grade for pay purposes is determined under the criteria of general determinations and special provisions as prescribed in this paragraph, with specific reference to the section of law that authorizes the grade for pay purposes.

J. Members promoted while missing in action, whose status is changed to killed in action, are exempted from the 6-month time-in-grade requirement since promotions received while in a missing status are "fully effective for all purposes" under ***37 U.S.C. 552(a)***. (NOTE: This provision is applicable only to members of the Army and Air Force.)

K. A member who enters a Uniformed Service after September 7, 1980, and who later retires, may receive retired pay computed from a retired pay base made up of active duty pay rates from more than one grade.

010503. Satisfactory Service

The determination as to what constitutes satisfactory service for the purpose of retirement in the highest grade is within the discretionary power of the Secretary of the Military Department concerned (or designee).

*0106 FEDERAL JUDGES

For information concerning the retirement of individuals who have served as judges on the U.S. Court of Appeals for the Armed Forces, and are eligible to elect a retirement annuity from the Department of Defense upon separation from civilian service in the Federal Government, see Chapter 5.

0107 NON-CITIZENS

010701. Philippine Constabulary/Philippine Scout

The Act of February 2, 1901, as amended by the Act of May 16, 1908, authorized the President of the United States to organize a Military Component to be known as the Philippine Scouts and make it a part of the Regular Army. Retirement eligibility was the same as for enlisted men of the Regular Army. Officers were entitled to the same pay, privileges, and retirement benefits authorized officers of like grade and service of the Regular Army. The Philippine Constabulary/Philippine Scouts are not now maintained as a continuing part of the Army.

010702. Insular Force

The Insular Force of the United States Navy was established by Executive Order on April 5, 1901, as amended on June 25, 1901. The Secretary of the Navy was authorized to enlist a total

of 500 natives of the Islands of the Philippines and Guam. Members of the Insular Force were eligible for transfer to the Fleet Reserve or to the retired list. The Insular Force is not now maintained as a continuing part of the Navy.

010703. Payment

A. Philippine Scouts. Adjustments of retired pay of Philippine Scouts will be made to reflect changes in the Consumer Price Index as provided by ***10 U.S.C. 1401a***.

* B. Change in Citizenship of Non-Regular Retirees. If a member's citizenship status changes after retirement, then it may have an impact on the member's retired pay. See Chapter 6 for additional information on change or loss of United States citizenship.

0108 HEROISM PAY

010801. Entitlement

A. Regular Retirement. Enlisted members of the Army, Air Force, Navy, and Marine Corps, retired after the completion of 20 or more but less than 30 years of active service for regular retired pay computation purposes, who are credited by the Secretary concerned with extraordinary heroism in the line of duty, shall receive a 10 percent increase to retired or retainer pay. Enlisted members of the Army and the Air Force, with 20 or more, but less than 30, years of service may not exceed a retired pay multiplier of 75 percent, including any heroism pay. Enlisted members of the Navy, Marine Corps, and Coast Guard with 20 or more, but less than 30, years of active service are eligible to have retired or retainer pay increased by 10 percent without restriction to a final multiplier of 75 percent.

B. Non-Regular Retirement. Enlisted members of the Reserve Component retired after the completion of less than 30 years of service for non-Regular retired pay computation purposes, who are credited by the Secretary concerned with extraordinary heroism in the line of duty, shall receive a 10 percent increase to their retired pay. Enlisted members so entitled may not exceed a retired pay multiplier of 75 percent. Entitlement to increased Reserve retired pay for heroism is effective from October 1, 2002, and applies with respect to retired pay for months beginning on or after that date.

C. Disability Retirement. Enlisted members retired for disability who otherwise are eligible for voluntary retirement for 20 or more, but less than 30, years of service, and who are entitled to a 10 percent increase in pay for certified acts of extraordinary heroism, are entitled to an additional computation under the computation for a length-of-service retirement. However, in no case may the retired pay multiplier for a disability retirement based upon less than 30 years of service exceed 75 percent.

010802. Determination of Entitlement

The Secretary of the Military Department concerned (or designee) has the authority to grant 10 percent of additional retired pay to an individual who has performed an act of extraordinary

heroism in the line of duty. The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

010803. Special Provisions

A. Advancement on the Retired List. Retired enlisted members of the Regular Army or Air Force receiving the 10 percent additional increase in pay for extraordinary heroism are not entitled to the 10 percent increase when advanced to a higher grade on the completion of 30 years of service. See Chapter 9.

B. Recomputation After a Period of Active Duty. For detailed information on recomputation after subsequent active duty, see Chapter 7, section 0702.

1. Retired enlisted members of the Army and Air Force are entitled to the 10 percent increase in retired pay for extraordinary heroism when pay is recomputed to reflect active service performed after date of retirement. The retired pay may not exceed 75 percent of the monthly basic pay upon which retired pay is based. Regardless of when the member's retired pay was recomputed, benefits shall not accrue under this provision for any period prior to November 1, 1992.

2. Enlisted members of the Navy and Marine Corps who elected to receive retainer pay are entitled to the 10 percent increase in their pay for extraordinary heroism when that pay is recomputed to reflect active service performed after date of transfer.

0109 PAYMENT

010901. Effective Date of Payment

Pay accrues on a day-to-day basis from and including the date on which retirement is effective, except members who are transferred to the Fleet Reserve/Fleet Marine Corps Reserve. These members become entitled to pay on the day after the date of transfer.

A. Regular Retirement. Except as otherwise provided by law, the effective date of retirement eligibility is the first day of the month after the month in which service requirements are fully met.

B. Disability Retirement. Placement on the Temporary and Permanent Disability Retired Lists may become effective on any day of the month as specified by the Secretary of the Military Service concerned (or designee).

C. Mandatory Retirement for Age and Service. Members attaining age and/or service requirements for involuntary retirements are retained on active duty through the last day of the month in which age or service requirements are met.

D. Non-Regular Retirement. Reservists are entitled to pay effective on the date on which the requirements for age and service have been met, or on the first day of any later month that the retiree may elect.

010902. Revocation of Retirement and/or Transfers

A. A member who is placed on the retired list is legally retired, and such status cannot thereafter be changed retrospectively because of a mistake or poor judgment on the part of the retiring authorities. Fully executed orders for retirement, if not cancelled before the date of retirement, are final and may not be reopened, revoked, or amended in the absence of fraud, manifest error, mathematical miscalculation, mistake of law, or substantial new evidence.

B. Transfer of members to the Fleet Reserve/Fleet Marine Corps Reserve and to the retired list of the Regular Navy or Marine Corps or the Retired Reserve is conclusive for all purposes. The Secretary may correct any error or omission in the determination as to the member's grade and years of creditable service.

C. Payment of active duty pay and allowances may be permitted after the first of the month in which retirement is effective until retirement orders are actually delivered to the member later in the same month, provided prior notice of retirement orders had not been received.

D. Where advance notice of retirement orders is given, but orders are not delivered, an attempt may be made to revoke them after they become effective and replace them with orders directing retirement at a later date. When it is apparent that the member had no knowledge of the lack of legal authority for this action, and active duty pay and allowances were received "under color of authority," the "de facto rule" permits repayment of active duty pay and allowances paid for the period and later collected.

010903. Computation

For detailed information on gross pay computation, see Chapter 3.

A. Monthly Pay. Compute monthly pay as if each month had 30 days. The daily rate is 1/30 of the monthly rate.

B. Intermediate Day. When retirement begins on an intermediate day of the month, compute pay at the rate of 1/30 for the actual number of days after date of retirement but only through the 30th day of that month. If pay begins on February 28, then pay accrues for 3 days. If the pay begins on February 29, then pay accrues for 2 days.

Table 1-1. VOLUNTARY RETIREMENT

RULE	A	B	C	D	E	F
	A person who is	**of the**	**and years of service total**	**including at least**	**may retire under 10 U.S.C.**	**with retired pay computed under Table 3-1**
1	an enlisted member	Army	20 (note 1)		3914	rule 4.
2		Air Force			8914	
3	a Regular enlisted member	Army	30		3917	
4		Air Force			8917	
5	a commissioned officer	Army	20 (note 2)	10 years of active commissioned service (Note 7)	3911	rule 5.
6		Air Force			8911	
7		Army	30 (note 2)		3918	
8		Air Force			8918	
9		Army	40 (note 2)		3924	
10		Air Force			8924	
11	a warrant officer	Armed Forces	20 (note 3)		1293	rule 3.
12		Army	40 (note 3)		3924	rule 5.
13		Air Force			8924	rule 5.
14	a Regular officer W-1 and above	Navy or Marine Corps Reserve	40 (note 2)		6321	rule 6.
15			30 (note 2)		6322	rule 7.
16			20 (note 2)	10 years of active commissioned service (Note 7)	6323 (note 4)	rule 6.

***Table 1-1. VOLUNTARY RETIREMENT (Continued)**

RULE	A	B	C	D	E	F
	A person who is	**of the**	**and years of service total**	**including at least**	**may retire under 10 U.S.C.**	**with retired pay computed under Table 3-1**
17	a Regular enlisted member (note 5)	Navy or Marine Corps Reserve	30 (note 1)		6326	rule 7.
18	an officer or enlisted member		30 (note 2)		6327 (note 6)	rule 8.
19			20 (note 2)	10 years of active service served in the 11 years immediately before retirement		

NOTES:

* 1. Subparagraph 010202 (***10 U.S.C., 3683*** (repealed), ***3925***, ***8683***, (repealed) and ***8925***)). Under Temporary Early Retirement Authority, the Secretary of the Military Department concerned (or designee) may reduce the 20 years of creditable service requirement to 15 years of creditable service. ***Public Law 107-314, section 554***, December 2, 2002, extended this authority to September 1, 2002. ***Public Law 112-81, section 504***, December 31, 2011, reinstated this authority to September 30, 2018.

* 2. Subparagraph 010203 (***10 U.S.C. 3926***, ***6321***, ***6323***, and ***8926***). Under Temporary Early Retirement Authority, the Secretary of the Military concerned (or designee) may reduced the 20 years of creditable service requirement to 15 years of creditable service. ***Public Law 107-314, section 554***, December 2, 2002, extended this authority to September 1, 2002. ***Public Law 112-81, section 504***, December 31, 2011, reinstated this authority to September 30, 2018.

* 3. Subparagraph 010204 (CCA 1949, Section 511; ***10 U.S.C. 6321*** and ***6322***). Under Temporary Early Retirement Authority, the Secretary of the Military Department concerned (or designee) may reduce the 20 years of creditable service requirement to 15 years of creditable service. ***Public Law 107-314, section 554***, December 2, 2002, extended this authority to September 1, 2002. ***Public Law 112-81, section 504***, December 31, 2011, reinstated this authority to September 30, 2018.

4. Members mandatorily retired under Public Law 86-155 thereafter are considered as having retired voluntarily pursuant to ***10 U.S.C. 6323***. See section 3, Public Law 86-155. No officers processed under Public Law 86-155 after June 1, 1966.

5. Including Regular enlisted members holding temporary appointment as commissioned officer or warrant officer.

* 6. Section ***6327***. This section applies only to persons who were members of the Navy Reserve or the Marine Corps Reserve on January 1, 1953. This section terminates on January 1, 1973.

* 7. Subparagraph 010201.A.2 (***10 U.S.C. 3911***, ***6323***, and ***8911***). Under the Temporary Authority to Reduce Minimum Length of Active Service as a Commissioned Officer Required for Voluntary Retirement as an Officer, the Secretary of the Military Department concerned (or designee) may reduce the 10 year active service requirement to not less than 8 years. ***Public Law 111-383, section 506***, January 7, 2011, extended this authority to September 30, 2013.

Table 1-2. MANDATORY RETIREMENT – COMMISSIONED OFFICERS AND WARRANT OFFICERS

RULE	A	B	C	D	E	F				G
	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	is retired by Secretary of the Military Department concerned under 10 U.S.C.				with retired pay computed under Table 3-1
						Army	Air Force	Navy or Marine Corps	Armed Forces	
1	regular commis-sioned officer of the Army or Air Force		below Maj Gen (note 1)		60	3883 (note 22)	8883 (note 2)			rule 10 or 12.
2					62 (note 23)	1251	1251	1251	1251	rule 9.
3		35 years (note 2)	Maj Gen	5 years	60	3884 (note 22)	8884 (note 22)			rule 10 or 12.
4					62	3885 (note 22)	8885 (note 22)			
5					64	3886 (note 22)	8886 (note 22)			
6		20 years (note 2)	any grade (note 3)			3913 (note 22)	8913 (note 22)			
7		28 years (note 2)	Lt Col (note 4)			3916 (note 22)	8916 (note 22)			
8		30 years (note 2)	any grade (note 5)	5 years		3919 (note 22)	8919 (note 22)			rule 10 or 12.
9			Col (note 6)			3921 (note 22)	8921 (note 22)			
10			Brig Gen			3922 (note 22)	8922 (note 22)			
11			Maj Gen			3923 (note 22)	8923 (note 22)			
12	regular officer of the Navy or Marine Corps	35 years of total commis-sioned service (note 2)	Rear Admiral (notes 7 and 8)					6371 (notes 18 and 22)		rule 11.
13			Rear Adm (notes 8 and 9)	7 years				6372 (notes 19 and 22)		
14			Maj Gen (notes 8 & 10)	5 years				6373 (note 22)		

MANDATORY RETIREMENT – COMMISSIONED OFFICERS AND WARRANT OFFICERS (Continued)

RULE	A	B	C	D	E	F				G
						is retired by Secretary of the Military Department concerned under 10 U.S.C.				with retired pay computed under Table 3-1
	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	Army	Air Force	Navy or Marine Corps	Armed Forces	
15	regular officer of the Navy or Marine Corps	35 years of total commissioned service (note 2)	Rear Admiral (Navy) - Brig Gen (USMC) (note 7)					6374 (note 22)		rule 11.
16			Rear Admiral (Navy) Brig Gen (USMC) (notes 8 & 10)	5 years				6375 (note 24)		
17		30 years of total commissioned service (note 2)	Capt (Navy) Col (USMC) (notes 7 and 11)					6376 (note 22)		
18		31 years of total commissioned service (note 2)	Capt (Navy) Col (USMC) (notes 8 and 12)							
19		30 years of total commissioned service (note 2)	Capt (Navy) Col (USMC) (notes 9 & 11)					6377 (notes 20 & 22)		
20		31 years of total commissioned service (note 2)	Capt (Navy) Col (USMC) (notes 8, 9, & 12)					6377 (notes 20 & 22)		
21		26 years (note 2)	CDR (Nurse Corps) (notes 8, 9, & 11)							

Table 1-2. MANDATORY RETIREMENT – COMMISSIONED OFFICERS AND WARRANT OFFICERS (Continued)

RULE	A	B	C	D	E	F				G
						is retired by Secretary of the Military Department concerned under 10 U.S.C.				with retired pay computed under Table 3-1
	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	Army	Air Force	Navy or Marine Corps	Armed Forces	
22	regular officer of the Navy or Marine Corps	35 years (note 2)	Capt (Navy) CDR (Nurse Corps) (notes 5 & 9)		62			6378 (notes 21 & 22)		
23		26 years of total commis-sioned service (note 2)	CDR Lt Col (note 11)					6379 (note 22)		rule 11.
24		20 years of total commis-sioned service (note 2)	LCDR Major (note 11)					6380 (note 22)		
25		30 years of active naval service	any grade (note 13)					6383		
26			LCDR, Major (notes 11 & 13)							
27			any grade below Fleet Adm		62			6390 (note 22)		
28			Rear Admiral Maj Gen and Brig Gen					6394 (note 22)		

Table 1-2. MANDATORY RETIREMENT — COMMISSIONED OFFICERS AND WARRANT OFFICERS (Continued)

RULE	A	B	C	D	E	F				G
						is retired by Secretary of the Military Department concerned under 10 U.S.C.				with retired pay computed under Table 3-1
	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	Army	Air Force	Navy or Marine Corps	Armed Forces	
29	regular officer of the Navy or Marine Corps	20 years of active commissioned service (note 2)	LCDR and below (Nurse Corps)					6396 (note 22)		rule 11.
30	female regular officer of the Navy or Marine Corps	26 years of active commissioned service	CDR Lt Col (USMC)					6398 (note 22)		
31		30 years of active commissioned service	Captain Col (USMC) (note 14)							
32		20 years of active commissioned service	LCDR Maj (note 3) and below					6400 (note 22		
33	commissioned officer of the Army	30 years of commissioned service (note 17)	permanent professor, USMA			3920				rule 10.
34	commissioned officer of the Air Force		permanent professor, USAFA				8920			rule 12.
35	commissioned officer of the Army, Air Force	30 years of commissioned service (note 17)	permanent professor, USMA or USAFA		64	1251	1251			rule 9.

Table 1-2. MANDATORY RETIREMENT – COMMISSIONED OFFICERS AND WARRANT OFFICERS (Continued)

RULE	A	B	C	D	E	F				G
						is retired by Secretary of the Military Department concerned under 10 U.S.C.				with retired pay computed under Table 3-1
	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	Army	Air Force	Navy or Marine Corps	Armed Forces	
36	permanent Regular warrant officer of the Armed Forces	20 years (note 15)	WO1, WO2, and WO3 (note 11)		64				0564 (repealed), 580	
37		20 years (note 15)	WO1, WO2, WO3, and WO4		55 (note 16)				1255 (repealed)	rule 9.
38					62				1263	
39		30 years of service							1305	
40	Regular officer of the Army, Air Force, Marine Corps, or Navy	28 years of commissioned service	Lt Col, CDR (Navy)			633	633	633	633	
41		30 years of commissioned service	Col, Capt (Navy)			634	634	634	634	
42			Brig Gen Rear Admiral (Navy)	5 years		635	635	635	635	
43		35 years of commissioned service	Maj Gen Rear Admiral (Navy)			636	636	636	636	
44		38 years commissioned service	Lt General, Vice Admiral (Navy)							
45		40 years commissioned service	General, Admiral (Navy)							

NOTES:

1. Except professor or registrar of United States Military Academy or Air Force Academy.
2. ***Army or Air Force – Service under paragraph 010205 (10 U.S.C. 3927, 8927 were repealed by Public Law 96-513).***
3. Not recommended for promotion.
4. Promotion list lieutenant colonel.
5. Excessive number in any grade.
6. Promotion list colonel.
7. Not restricted in performance of duty.
8. Not recommended for continuation on active duty.
9. Restricted in performance of duty.
10. Serving as Commandant of Marine Corps.
11. Twice failed selection for promotion to next higher grade not on promotion list.
12. Not on promotion list. Retirement subject to completion of 5 years of service in grade.
13. Designated for limited duty.
14. Except female officers on promotion list or serving as assistant to Chief of Naval Personnel with rank of captain, or assistant to Commandant of Marine Corps with rank of colonel.
15. Service computed under paragraph 010204.
16. Female regular warrant officer. This statute was repealed by Public Law 90-130, November 8, 1967 (81 Stat. 374).
17. Service computed under paragraph 010203.

*18. ***Section 6371*** Executive Order 11284, May 27, 1966 was revoked by Executive Order 12553, February 25, 1986.

*19. ***Section 6372*** was repealed by Public Law 96-513, December 12, 1980 (94 Stat. 2898).

20. Section 6377(c) repealed by Public Law 90-130, November 8, 1967.
21. Any Navy captain or commander who will complete 35 years of total commissioned service or who will become age 62 in the fiscal year in which the selection board is convened is ineligible for consideration for retention.
22. Sections repealed by Public Law 96-513, December 12, 1980, effective September 15, 1981.
23. Except a permanent professor, Director of Admissions, or Registrar of United States Military Academy or United States Air Force Academy or a commissioned warrant officer, effective September 15, 1981.
24. Section 6375 was repealed by Public Law 87-123, August 3, 1961.

***Table 1-2. Mandatory Retirement - Commissioned Officers and Warrant Officers (Continued)**

Table 1-3. DISABILITY RETIREMENT

RULE	A	B	C	D	E	F
	A person who is	**of the**	**ordered to active duty for**	**and is determined**	**may retire under 10 U.S.C.**	**with retired pay computed under Table 3-1**
1	an enlisted member, warrant officer, or commissioned officer	Armed Forces entitled to basic pay	30 days or less (note 1)	unfit to perform duties of his or her office, grade, rank, or rating because of physical disability (note 2)	1204	rule 1.
2					1205	rule 2.
3			more than 30 days (note 1)		1201	rule 1.
4					1202	rule 2.

NOTES:

1. Paragraph 010207 (***10 U.S.C. 1208***).
2. Disability rating must be at least 30 percent unless the member has 20 years of service (***10 U.S.C. 1201***, ***1202***, ***1204***, ***1205***).

Table 1-4. AGE AND SERVICE, NON-REGULAR RETIREMENT

RULE	A	B	C	D	E	F
	A person who is	**of the**	**and has at least**	**and is age**	**may retire under**	**with retired pay computed under**
1	an enlisted member, warrant officer, or commissioned officer	Armed Forces, Reserve, or National Guard (note 1)	20 years of service (note 2)	60 or is otherwise eligible (note 4)	***10 U.S.C. 12731*** (note 3)	Table 3-1, rule 13.

NOTES:

1. Who performed the last 6 years of qualifying service as a member of a Reserve Component, except that in the case of a member who completed 20 years of service computed under ***10 U.S.C. 12732*** before October 5, 1994, the number of years of such qualifying service shall be eight.
2. Paragraph 010208 (10 U.S.C. Sec 12732). Under Temporary Early Retirement Authority, the Secretary concerned may reduce the 20 years of satisfactory service requirement to 15 years of creditable service for retirement under ***10 U.S.C. 12731(a)***. ***Public Law 106-398, section 571***, October 30, 2000, extended this authority to December 31, 2001.
3. Not entitled to retired or retainer pay under any other provision of law.
4. The eligibility shall be reduced below 60 years of age by 3 months for each aggregate of 90 days on which the member so performs active duty or active service pursuant to a call or order under ***10 U.S.C. 101(a)(13)(B)*** or section 12301(d) or ***32 U.S.C. 502(f)*** in any fiscal year after January 28, 2008. The eligibility age may not be reduced below 50 years of age.

Table 1-5. RATE OF BASIC PAY FOR RETIRED PAY COMPUTATION (5 U.S.C. 8301(b))(note 6)

RULE	A	B	C	D	E
	A member who	**and is**	**who fully qualified or met requirements to be retired**	**and retirement is**	**shall have retired pay computed using active duty basic pay rates in effect on**
1	retires on other than the first day of an active duty basic pay rate change	an enlisted member, warrant officer, or commissioned officer	at any time	voluntary, mandatory, disability, Reservist (age and service)	the first day of retirement (notes 1 and 3).
2	retires on the first day of an active duty basic pay rate change	an enlisted member (note 3)		voluntary	the first day of retirement (note 1).
3		a warrant officer			the day before the first day of retirement (notes 1 and 3).
4		a commissioned officer	before the month immediately preceding the active duty basic pay rate change date (note 4)		the first day of retirement (note 1).
5			at any time prior to the active duty basic pay rate change date	voluntary (note 4)	
6			during the month immediately preceding the active duty basic pay rate change date	voluntary	the day before the first day of retirement unless the member specifically requests retirement on a day later than the first day of eligibility for voluntary retirement under the applicable statute; in which case, use active duty pay rates in effect on the first day of retire-ment. (notes 1 and 7).
7		a warrant officer	any time	mandatory	the day before the first day of retirement (note 1).
8		a commissioned officer			

Table 1-5. Rate of Basic Pay for Retired Pay Computation (*5 U.S.C. 8301(b)*)

RATE OF BASIC PAY FOR RETIRED PAY COMPUTATION (*5 U.S.C. 8301(b)*)(note 6) (Continued)

RULE	A	B	C	D	E
	A member who	**and is**	**who fully qualified or met requirements to be retired**	**and retirement is**	**shall have retired pay computed using active duty basic pay rates in effect on**
9	retires on the first day of an active duty basic pay rate change	an enlisted member, warrant officer, or commissioned officer	during the month immediately preceding the active duty basic pay rate change date without Secretarial action designating an earlier retirement date	disability (note 5)	the day before the first day of retirement (note 1).
10			any time	Reservist (age and service)	the date the member is granted retired pay (note 1).

NOTES:

*1. For members who qualify for retirement on an earlier computation date under the same or some other provision of law, compute under rates in effect on that earlier date based on grade and service credited at that time, if that rate is greater (*10 U.S.C. 1401a(f)*).
2. Warrant officers voluntarily retired (*10 U.S.C. 1401*, formula 4).
3. Not applicable to Navy and Marine Corps enlisted members transferred to the Fleet Reserve or Fleet Marine Corps Reserve.
4. Applicable only to retirements under *10 U.S.C. 6323*.
5. If otherwise retirement eligible, then follow rule for that retirement.
6. A retired pay base is used in lieu of a basic pay rate in the computation of retired pay for members who enter the Uniformed Services after September 7, 1980.
7. This rule is effective for retirements on or after December 1, 2000. For retirements prior to that date, compute retired pay using active duty basic pay rates in effect on the day before the first day of retirement, regardless of the date on which the member requested to be retired. See section 0104.

Table 1-5. Rate of Basic Pay for Retired Pay Computation (*5 U.S.C. 8301(b)*) (Continued)

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VOLUME 7B, CHAPTER 2: "INITIAL ENTITLEMENTS - FLEET RESERVE/FLEET MARINE CORPS RESERVE"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated this chapter with hyperlinks and formatted to comply with current administrative instructions.	Update
Various	Modified paragraph titles; changed and rearranged words and sentences.	Update

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CHAPTER 2

INITIAL ENTITLEMENT-FLEET RESERVE/ FLEET MARINE CORPS RESERVE

0201 GENERAL

020101. Purpose

A. The Fleet Reserve and Fleet Marine Corps Reserve were established to provide an available source of experienced former members of the Regular Navy or Navy Reserve and the Regular Marine Corps or Marine Corps Reserve. These members could be organized without further training to fill billets requiring experienced personnel in the first stages of mobilization during an emergency or in time of war.

B. Members of the Fleet Reserve and Fleet Marine Corps Reserve may be ordered to active duty without their consent in time of:

1. War or national emergency declared by the Congress, for the duration of the war or national emergency and for 6 months thereafter; or

2. National emergency declared by the President or when otherwise authorized by law.

C. In time of peace, any member of the Fleet Reserve or Fleet Marine Corps Reserve may be required to perform not more than 2 months' active duty for training during each 4-year period.

020102. Retirement for Physical Disability

If a member of the Fleet Reserve or Fleet Marine Corps Reserve is found physically unfit for duty, then the member shall be transferred to the Regular retired list or Reserve retired list of the Navy or Marine Corps, as appropriate. Such retirement is by reason of physical disability.

020103. Retirement After 30 Years of Service

A. Upon completion of 30 years of active and inactive service, a member of the Fleet Reserve or Fleet Marine Corps Reserve is transferred to the Regular retired list or the Reserve retired list of the Navy or Marine Corps, as appropriate.

B. Unless otherwise entitled to higher pay, each member transferred to the retired list or the Retired Reserve is entitled to retired pay at the same rate as the retainer pay to which he was entitled at the time of his transfer to the retired list or the Retired Reserve.

C. Upon placement on the retired list, a member may be advanced to the highest officer grade in which the member served satisfactorily under a temporary appointment with retired pay based on that grade. See Chapter 9, section 0903 for advancement on the retired list.

0202 TRANSFER ELIGIBILITY-SERVICE FOR PERCENTAGE MULTIPLE PURPOSES

020201. Minimum Required Service

Upon completion of at least 20 years of active service in the Armed Forces (to include service as a cadet or midshipman), enlisted members of the Regular Navy, Regular Marine Corps, Navy Reserve, or Marine Corps Reserve may request transfer to the Fleet Reserve or Fleet Marine Corps Reserve under ***Title 10, United States Code (U.S.C.), section 6330(d)***:

A. Prior to December 31, 1977, a member became eligible for transfer upon completion of 19 years and 6 months of active service since that part of a year that is 6 months or more was creditable as a whole year. If service is creditable to the member for such purpose before December 31, 1977, then:

1. A completed minority enlistment of the member is counted as 4 years of active service; and

2. An enlistment of the member terminated within 3 months before the end of the term of enlistment is counted as active service for the full term.

B. On or after December 31, 1977, a member must complete a total of 20 years of active service to be eligible for transfer to the Fleet Reserve or Fleet Marine Corps Reserve. For such members, service creditable under subparagraph 020201.A, which was not actually served by the member, may not be counted in determining eligibility for transfer.

020202. Service Creditable for Transfer to the Fleet Reserve or Fleet Marine Corps Reserve

The following service is creditable for transfer eligibility and percentage multiple purposes if performed in an active duty (and active duty for training) status after August 9, 1956.

A. Service in the Army, Navy, Air Force, Marine Corps, and Coast Guard;

B. Service as an appointed or enlisted aviation cadet in the Navy Reserve or Marine Corps Reserve; or

C. Service as a cadet or midshipman at a service academy.

020203. Service Not Creditable for Transfer to the Fleet Reserve or Fleet Marine Corps Reserve

The following service is not creditable for transfer eligibility and percentage multiple purposes:

A. Service in the Philippine Constabulary;

B. Furlough without pay (FWOP);

C. Inactive service as a member of a Reserve Component;

D. Inactive service while on the Temporary Disability Retired List (TDRL); and

E. Time lost in excess of 1 day (24 consecutive hours) because of:

1. Sickness due to misconduct (SKMC); before June 17, 1955, the Bureau of Naval Personnel credited time lost due to SKMC for transfer purposes.

2. Nonperformance of duty before July 24, 1956, due to imprisonment because of a general court-martial sentence and while under arrest awaiting trial and during trial that results in conviction as finally approved. Nonperformance of duty after July 23, 1956 due to confinement under a sentence by any court-martial, as finally approved, before, during, and after trial. If the member is acquitted or sentence is set aside and charges dismissed, then the period of confinement is not considered time lost.

3. Absence while the member is in civil arrest (while in custody of civil authorities), unless the member is acquitted or released without making restitution or reparation.

4. Unauthorized absence, which includes absence without leave (AWOL), absence over leave (AOL), and desertion (the latter of which previously was shown as AOL or AWOL and now is shown as Unauthorized Absence).

020204. Constructive Service

Constructive service is service for which credit is given although not actually performed. Constructive service earned prior to December 31, 1977 is creditable as service for transfer eligibility and percentage multiple purposes. Constructive service is not creditable for determining basic pay rate upon which retainer pay is computed. No constructive service is creditable after December 31, 1977.

A Minority Enlistments. A minority enlistment is the enlistment of a male between the age of 14 and 18 or female between the age of 18 and 21 who enlists with the consent of his or her parents or guardians to serve in the Navy or Marine Corps until reaching the age

of 21. (The Navy policy is to accept members for enlistment at 17 years of age with written parental consent or 18 years of age without parental consent.) A completed minority enlistment, or a minority enlistment which terminates within 3 months of the expiration date of the enlistment, is counted as 4 years of active service when actual day-for-day service performed totals at least the period constituting the member's minority status upon enlistment, less 3 months.

B. Short-Term Enlistment. A short-term enlistment refers to an enlistment that is terminated within 3 months before the end of the term of enlistment. This enlistment is counted as active service for the full term when the actual day-for-day active service performed amounts to at least the full term of the enlistment, less 3 months.

C. Involuntary Extension. An involuntary extension is when an enlistment (including a minority enlistment) is extended involuntarily for a specific period. Compute service based on the constructive service principle for short-term enlistments, which applies equally for computing service for transfer by the Bureau of Naval Personnel on and after March 15, 1966, and by the Commandant of the Marine Corps on and after January 1, 1968.

D. Voluntary Extension. A voluntary extension is when the member agrees to serve beyond the scheduled term, modify the original minority or term enlistment contract by increasing the period agreed to by the member. The same rule established for crediting constructive service for short-term enlistments applies for voluntary extensions.

E. Lost Time and Inactive Service. Before crediting constructive service for a period of service, deduct any lost time and any inactive service from the member's day-for-day service. After these deductions, if the member is eligible to receive constructive service for the period of enlistment, then credit it. If, after deductions, the member is not eligible for constructive service for a period of enlistment, then give credit only for the actual day-for-day service. For the definition of lost time, see Chapter 1, subparagraphs 010209.A and B.

F. Waiver of Recoupment of Time Lost for Confinement. The circumstances under which the Secretary concerned may waive recoupment of time lost for confinement are provided in ***10 U.S.C. 972(c)***.

020205. Conclusiveness of Transfer

All transfers of members to the Fleet Reserve or Fleet Marine Corps Reserve, when effected, are conclusive for all purposes, except that the Chief of Naval Personnel or the Commandant of the Marine Corps, acting for the Secretary of the Navy, may correct any error or omission in the determination as to a member's grade and years of creditable service. When such a correction is made, the member is entitled, when not on active duty, to retainer pay based on the grade and number of years of creditable service, as corrected, from the effective date of transfer.

0203 SERVICE FOR BASIC PAY PURPOSES

The total service for basic pay purposes follows the same principle as service for percentage multiple purposes. For an explanation of service creditable for basic pay purposes, see Volume 7A, section 0101.

0204 DATE OF TRANSFER

020401. Effective Date of Transfer

Members are transferred to the Fleet Reserve and Fleet Marine Corps Reserve only by the authority of, and on the date specified by, the Chief of Naval Personnel or the Commandant of the Marine Corps. Commanding officers may defer transfers to the Fleet Reserve up to 30 days beyond the date authorized when urgent operational commitments demand the member's service. Transfers to the Fleet Marine Corps Reserve may not be made on a date other than the date specified in the authority for release. The Commandant of the Marine Corps must authorize any change in this date prior to the effective date of transfer. The date of transfer is the member's last day of active duty and the member is entitled to active duty pay and allowances for that date.

020402. Application of Uniform Retirement Date Act

Since a transfer to the Fleet Reserve or Fleet Marine Corps Reserve is not considered a retirement, the Uniform Retirement Date Act (URDA), ***5 U.S.C. 8301***, does not apply. Once the member has completed a total of 30 years of active service and is eligible for retirement, the member's date of retirement comes under the URDA. A transfer to the Fleet Reserve may be made on any intermediate day of a month as approved by the Chief of Naval Personnel. Transfers to the Fleet Marine Corps Reserve are made on the last day of the month except where transfer has been requested on the effective date of an expiration of enlistment. Except in time of war or national emergency, personnel transferred to the Fleet Marine Corps Reserve are released from active duty on the date of such transfer, unless an order to the contrary is received.

020403. Modification of "Not Earlier Than Date"

The Chief of Naval Personnel normally does not approve a requested change of authorized date for transfer to the Fleet Reserve. In case of hardship, meritorious circumstances, or unusual conditions, a member may submit a request for a change of authorized date for the transfer to the Chief of Naval Personnel through the commanding officer and appropriate personnel distribution. If an earlier date of transfer is requested, then the commanding officer's endorsement must state whether the member's services can be spared. If approved, then the Chief of Naval Personnel issues a message to the commanding officer and sends a copy to the DFAS-Cleveland Site, Retired Pay Department.

020404. Effective Date of Retainer Pay

Members transferred to the Fleet Reserve and Fleet Marine Corps Reserve receive "retainer" pay versus "retired" pay, as they are considered to have their services retained for

possible use. A member becomes entitled to retainer pay starting on the day after the effective date of transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

020405. Retainer Pay Effective on the First Day of New Active Duty Pay Rates

A. When a member is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, compute retainer pay using the rate of active-duty pay received at the time of transfer. For example, if a member is transferred on December 31, 1991 with retainer pay effective on January 1, 1992, then compute the member's retainer pay using the January 1, 1991 active-duty pay rates. If a member transferred on January 1, 1992 with retainer pay effective on January 2, 1992, then compute retainer pay using the January 1, 1992 active-duty pay rates.

B. If a member of the Fleet Reserve or Fleet Marine Corps Reserve first became entitled to a monthly retainer pay on or after January 1, 1971, then that pay may not be less than the monthly retainer pay to which the member would be entitled if he or she had become entitled to retainer pay at an earlier date. Adjust this monthly retainer pay to reflect any applicable increase in such pay under ***10 U.S.C. 1401a(f)***. In computing the amount of retainer pay to which the member would have been entitled on that earlier date, base the computation, subject to ***10 U.S.C. 1401a(f)***, on the member's grade, length of service, and the rate of basic pay applicable at that time. This subparagraph does not authorize any increase in the monthly retainer pay to which a member was entitled for any period before October 7, 1975.

0205 RANK AND GRADE

A member transferred to the Fleet Reserve or Fleet Marine Corps Reserve has retainer pay computed based on the pay grade in which serving on the date of transfer.

020501. Pay Grade

A member who served as a temporary officer but holds permanent enlisted status shall revert to a permanent enlisted pay grade upon transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

020502. Retainer Pay

A member who has served as the Master Chief Petty Officer of the Navy or as Sergeant Major of the Marine Corps is entitled to retainer pay at the highest basic pay rate to which the member was entitled while so serving, if that rate is higher.

0206 GROSS PAY COMPUTATION

020601. Computation

See Chapter 3, section 0301 for basic computation.

020602. Extraordinary Heroism

See Chapter 1, section 0108 for guidance. See Chapter 3, subparagraph 030103.C and paragraph 030406 for computation rules.

020603. Good Conduct (Markings)

For members retired and being paid under laws in effect before October 1, 1949, a 10-percent credit for good conduct may apply. To qualify for this credit, a member must have been retired under the specific citation that contains the authority for this increase, and the member's average marks for conduct for 20 or more years must not have been less than 95 percent of the maximum.

A. Section 203 of the Naval Reserve Act of 1938, which authorized the 10 percent "good conduct" increase added to retired pay of enlisted members of the Coast Guard who retire from the Coast Guard after 20 years of service, was repealed by Public Law 88-114, dated September 6, 1963.

B. The saving provision of Public Law 88-114 retained the 10 percent increase for members on active duty with the Coast Guard on or before September 6, 1963. The provision may apply to retired enlisted members of the Coast Guard who served on active duty in the Regular Coast Guard on or before September 6, 1963. Members who served in the Regular Coast Guard before September 6, 1963, but who were not serving in the Coast Guard on September 6, 1963, and who later retired from the Coast Guard, are entitled to the 10 percent good conduct increase, if otherwise qualified.

020604. Insular Force

Members of the Insular Force were eligible for transfer to the Fleet Reserve or to the retired list. The Insular Force is no longer maintained as a continuing part of the Navy. See Chapter 1, paragraph 010702 for guidance.

0207 PAYMENT DATE

See Chapter 1, section 0109.

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0206 – GROSS PAY COMPUTATION

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VOLUME 7B, CHAPTER 3: "GROSS PAY COMPUTATION"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated references, hyperlinks and format.	Update
Table of Contents (TOC)	Expanded the TOC to include all paragraphs.	Update
All	Provided definition for each variable in all formulas used to compute retired or retainer pay.	Update
030110	Renumbered paragraph 030111 to paragraph 030110 and renamed "Special Computation for Career Status Bonus with Reduced Retirement (CSB/REDUX)". Updated to provide clarification on re-computation of retired pay at age 62. Provided further guidance for the re-computation of retired pay at age 62 for members who elected CSB/REDUX retirement and subsequently accepted early retirement under Temporary Early Retirement Authority (TERA).	Update
030111	Renumbered paragraph 030110 to paragraph 030111, to include subparagraphs. Updated paragraph for TERA pursuant to Public Law (PL) 102-484, Section 4403, October 23, 1992, amended by PL 112-81, Section 504, December 31, 2011. PL 112-81 provides the reinstatement of certain TERA effective December 31, 2011 through December 31, 2018.	Update
030111.A	Deleted references and moved to bibliography.	Delete
030111.B	Updated subparagraph to define how the reduction factor is derived and provided an example of the computation of retired pay for a member retired under TERA.	Update

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
030111.C	Added subparagraph to provide a modified retired pay computation for members who elected to receive CSB/REDUX and subsequently elected to retire under TERA. Provided an example for the modified computation of retired pay for member retired under TERA which is adjusted for CSB/REDUX.	Add
030111.D	Added subparagraph to explain no re-computation of retired pay at age 62 as it pertains to subsequent employment by a public service or community service organization.	Add
030111.E	Added subparagraph to address the entitlement rights, privileges, and responsibilities of participation in the Survivor Benefit Plan for a member retired under TERA.	Add
Table 3-5	Added note to define how the reduction factor is mathematically computed.	Add
Bibliography	Updated bibliography with current references.	Update

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CHAPTER 3

GROSS PAY COMPUTATION

0301 BASIC COMPUTATION

030101. General

In most cases, retired or retainer pay is the product of multiplying the retired pay base by the years of service multiplier. In some military disability retirement cases, retired pay is the product of multiplying the retired pay base by the percentage of disability determined by the military service.

A. Retired Pay Base. The retired pay base is determined using the active-duty basic pay entitlement of the member.

1. Pre-September 8, 1980 Member. For individuals who first became members before September 8, 1980, the retired or retainer pay base is generally the basic pay of the member on the day before retirement. Exceptions are noted in paragraphs 030102 through 030106.

2. Post-September 7, 1980 Member. For individuals who first became members after September 7, 1980, the retired or retainer pay base is generally the average of the highest 36-months of basic pay received.

a. The retired pay base for a member with 36 or more months of active service is the average monthly basic pay the member received over their highest earning 36-months. In the case of a Reserve component member, this is the total amount of basic pay to which the member was entitled during the member's high 36-months or to which the member would have been entitled if the member had served on active duty during the entire period of the member or former member's high 36-months. Only months during which the individual was a member of a uniformed service may be used. Monthly basic pay amounts, starting with the highest rate of pay, are added together until the total number of months equals 36-months. Divide the total pay derived from the sum of months by 36, and round to the nearest cent to obtain the retired pay base applicable to the member. Any lost time the member had is not to be included in the computation.

b. The retired pay base for a member with less than 36-months of active service is the member's basic pay for the entire period of the member's active service added together divided by the number of months (including any fractions thereof) of the member's active service. In the case of a Reserve component member, this is the total amount of basic pay to which the member was entitled or to which the member would have been entitled if the member had served on active duty during the entire period before being retired. The total pay is divided by the total time expressed as months plus days where days less than 30 are counted as 1/30th of a month. The result is rounded to the nearest cent.

c. A full month served counts as 1-month regardless of any interruption by a pay rate change and regardless of the number of days in that month. Service for an entire calendar month at a single rate of basic pay counts as 1-month under that rate of basic pay, regardless of the number of days in the month, i.e., 28, 29, 30, or 31-days. Service for an entire calendar month with multiple rates of basic pay applicable will be carried as applicable for the number of days paid at that rate. For example, if a member has a longevity pay increase effective February 11, then the old rate is applicable for 10-days and the new rate is applicable for 20-days (regardless of leap year). If a month has 31-days, then the 31st is ignored; i.e., if the member has a longevity pay increase effective August 11, then the old rate is applicable for 10-days and the new rate is applicable for 20-days. The 30-day months are allocated in a straightforward manner.

d. When a member serves less than a full month, count only the number of days actually paid so that each total of 30-days equals one month. If a member serves less than a full month and one or more rates of basic pay apply, then each rate should be carried as applicable for the number of days the member was actually paid at the particular rate. For example, assume the member had a break in service and returned to active duty on February 8, but has a longevity increase effective February 11. When a member serves through the end of February, the month is assumed to have 30 days. This member receives 3-days at one rate and 20-days at the new rate, or 23-days of pay, even though only 21 or 22-days were served.

Example: A member receives monthly basic pay of $17,658.30 over 14-months and 11-days:

$$\frac{\$17{,}658.30}{14\text{-months} + 11\text{-days}} = \frac{\$17{,}658.30}{14.36667} = \$1{,}229.12 \text{ Retired Pay Base}$$

$1,229.12 Retired Pay Base
x _____% Retired Pay Multiplier

= $x,xxx.xx Retired Pay Rounded

3. An individual is considered to have first become a member of a Uniformed Service when that individual, on or after September 8, 1980, is first appointed or enlisted in the Uniformed Services. A member who first enlists before September 8, 1980 under the delayed entry program; in a Reserve Component as part of the Senior Reserve Officers' Training Corps (ROTC) or ROTC Financial Assistance programs; as a student at the Uniformed Services University of Health Sciences; or as a participant in the Armed Forces Health Professions Scholarship Program, is considered to have first become a member before September 8, 1980.

4. When it is to the member's advantage, a saved pay rate under the provisions of the Tower Amendment may be used to compute retired pay. See paragraph 030203 for eligibility. The Tower Amendment authorizes the use of the basic pay rates in effect on the day before the effective date of the rates of monthly basic pay on which the member's retired pay would otherwise be based.

B. Retired Pay Multiplier

1. In computing retired or retainer pay, other than for disability or nonregular service retirement, the retired pay or retainer pay multiplier is the product of two and one-half percent and the member's years of creditable service. The term "years of creditable service" means the number of years of service that are creditable to a member in computing the member's retired or retainer pay, including credit for each full month of service in addition to full years of service. See Chapter 1, section 0103 for determining creditable years of service for computing retired pay.

2. The retired pay or retainer pay multiplier for a post-July 1986 member who has accepted the Career Status Bonus (CSB) and who retires with less than 30 years of creditable service is reduced at the time of retirement, if under age 62. See paragraph 030110 and Chapter 8, paragraph 080215 for the restoring of retired pay at age 62.

3. If retired before January 1, 2007, the retired pay or retainer pay multiplier is limited to 75 percent for a member with more than 30-years of creditable service. If retired after December 31, 2006, for other than disability, there is no restriction on the retired pay multiplier.

030102. Disability Retirement (Table 3-1, Rules 1 and 2)

A. The retired pay base pay for a disability retirement is determined as follows:

1. For a member who entered service before September 8, 1980, the retired pay base is the monthly basic pay of the grade or rank in which the member was serving when placed on the Temporary Disability Retired List (TDRL) or the highest temporary grade or rank in which the member served satisfactorily or to which the member was entitled on the day before retirement or placement on the TDRL, whichever is the higher.

2. For a member who entered service after September 7, 1980, the retired pay base is determined as prescribed in subparagraph 030101.A.

B. The retired pay multiplier for a disability retirement is determined as follows:

1. A member permanently retired for disability receives retired pay that is equal to the retired pay base under Table 3-1, Rule 1, multiplied by the member's election of either:

a. Two and one-half percent times the years of service credited for percentage purposes, except as provided in subparagraph c; or,

b. Percentage of disability, not to exceed 75-percent, on date when retired.

c. For a member with 30 or more years of service, retiring on or before January 7, 2011, the retired pay multiplier may not exceed 75-percent. The retired pay multiplier is not limited for members with 30 or more years of service who retire on or after January 8, 2011.

2. A member placed on the TDRL receives retired pay that is equal to the retired pay base under Table 3-1, Rule 2, multiplied by the member's election of either:

a. Two and one-half percent times the years of service credited for percentage purposes; or,

b. Percentage of disability, not to exceed 75-percent, on the date when his or her name was placed on the TDRL.

3. If neither multiplier above is at least 50-percent, then a minimum of 50-percent of the retired pay base shall be paid while the member is on the TDRL.

4. .For a member placed on the TDRL on or before January 7, 2011, the retired pay multiplier may not exceed 75-percent. The retired pay multiplier is not limited for members with 30 or more years of service who retire on or after January 8, 2011.

C. If a member is retired for disability and also is eligible under another provision of law, then follow the rule in Table 3-1 applicable to the section of law which is more advantageous to the member.

D. Since disability retired pay is not computed using a retired pay multiplier that is determined under ***Title 10, United States Code (U.S.C.) section 1409***, an adjustment under paragraph 030110 is unnecessary.

030103. Voluntary Retirement (Table 3-1, Rules 3 through 8)

A. The retired or retainer pay base pay for a voluntary retirement is determined as follows:

1. For a member who entered service before September 8, 1980, the retired or retainer pay base is generally the monthly basic pay rate applicable on the date of the member's retirement for the grade or rank in which the member was retired or to which the member is advanced on the retired list. The retired pay base is computed as shown in Table 3-1, Rules 3 through 8, subject to subparagraphs a through d.

a. A Reserve enlisted member, who is retired in the highest enlisted grade satisfactorily held on active duty (or in which the member served on full-time National Guard duty satisfactorily) after being administratively reduced in grade not as the result of the member's misconduct, may use the basic pay rate of the retired grade.

b. For Army and Air Force Reserve enlisted personnel, the basic pay applicable on the member's date of retirement for the retired grade is the retired pay base, in lieu of the retired pay base under ***10 U.S.C. 1406(c) or (e)***.

c. For Navy and Marine Corps Reserve enlisted personnel transferred to the Fleet Reserve/Fleet Marine Corps Reserve (FR/FMCR) in the highest grade satisfactorily held on active duty after being administratively reduced in grade not as the result of the member's misconduct, use the basic pay rate of the grade in which the member transferred for the retired or retainer pay base. This provision applies to the member who entered a Uniformed Service before September 8, 1980 and who retired (or transferred to the FR/FMCR) after September 30, 1996.

d. For warrant officers, the retired pay base is computed on the monthly basic pay to which the member would be entitled if serving on active duty in the retired grade on the day before retirement. If the member, however, is entitled to a higher rate of pay using any other warrant officer grade satisfactorily held by the member on active duty, then retired pay may be computed using the basic pay for that warrant officer grade.

2. For a member who entered service after September 7, 1980, the retired pay base is determined as prescribed in subparagraphs 030101.A.2.a and b.

a. An Army or Air Force enlisted member with less than 30-years of service who is retired under ***10 U.S.C. 3914*** or ***8914*** will have the retired pay base computed using only the rates of basic pay for months of active duty as an enlisted member.

b. A Navy and Marine Corps enlisted member who is transferred to the FR/FMCR under ***10 U.S.C. 6330*** will have the retired pay base computed using only the rates of basic pay for months of active duty as an enlisted member.

B. The retired or retainer pay multiplier for a voluntary retirement is determined in accordance with subparagraph 030101.B.

1. For service credited for percentage purposes of enlisted members, see Chapter 1, subparagraph 010302.

2. For service credited for percentage purposes of commissioned officers, see Chapter 1, subparagraph 010303.

3. For service credited for percentage purposes of warrant officers, see Chapter 1, subparagraph 010304.

4. The retired pay multiplier for a member who enters a Uniformed Service after July 31, 1986, and who has accepted the CSB, is determined under subparagraph 030101.B.2.

5. See paragraph 030111 for retired pay computation for a member retired under the Temporary Early Retirement Authority (TERA).

C. Retired or retainer pay may be increased by 10 percent of retired pay for extraordinary heroism in the line of duty. See paragraph 030406.

030104. Mandatory Retirement (Table 3-1, Rules 9 through 12)

A. The retired pay base pay for a mandatory retirement is determined as follows:

1. For a member who entered service before September 8, 1980, the retired pay base is the basic pay rate of member's grade that is applicable on member's date of retirement. Do not use the grade of brigadier general if the member was a permanent professor at a military academy and was conferred such title upon retirement. If a warrant officer is entitled to a higher rate of pay using any other warrant officer grade satisfactorily held by the member on active duty, then retired pay may be computed using the basic pay for that warrant officer grade.

2. For a member who entered service after September 7, 1980, the retired pay base is determined as prescribed in subparagraph 030101.A.

B. The retired pay multiplier for a mandatory retirement is determined in accordance with subparagraph 030101.B.

1. For service credited for percentage purposes of Army and Air Force retirees, see Chapter 1, subparagraph 010305.A.

2. For service credited for percentage purposes of Navy and Marine Corps retirees, see Chapter 1, subparagraph 010305.B.

3. The retired pay multiplier for a member who enters a Uniformed Service after July 31, 1986, and who has accepted the CSB, is determined under subparagraph 030101.B.2.

030105. Nonregular Service Retirement (Table 3-1, Rule 13)

A. The retired pay base pay for a nonregular retirement is determined as follows:

1. For a member who entered service before September 8, 1980, the retired pay base is the monthly basic pay at the rate applicable on the date when retired pay is granted, of the highest grade held satisfactorily at any time in the Armed Forces.

2. For a member who entered service after September 7, 1980, the retired pay base is determined as prescribed in subparagraph 030101.A. The high 36-months of

such a member are the 36-months for which the pay was the highest, whether or not consecutive, out of all the months before the member became entitled to retired pay or would have become entitled to retired pay. This will generally be the 36-months immediately preceding receipt of retired pay even though the member may not have been in an active status during such time. However, only months during which the individual was a member of a uniformed service may be used for this purpose.

B. The retired pay multiplier for a nonregular retirement is determined by multiplying two and one-half percent times the years of service credited for percentage purposes. See Chapter 1, subparagraph 010306 for service credited for percentage purposes. (Pursuant to ***10 U.S.C. 12733***, the formula for converting retirement points into percentage years is: total number of retirement points divided by 360. Carry the result to three decimal places; then round to two decimal places. Example: 4,735 retirement points divided by 360 equals 13.152-years, or 13.15-years for percentage purposes.)

030106. FR/FMCR Transfer (Table 3-1, Rule 14)

A member transferred to the FR/FMCR is entitled, when not on active duty, to retainer pay computed by multiplying the retainer pay base times two and one-half percent times the years of service credited for percentage purposes. In lieu of the retainer pay base computed under ***10 U.S.C. 1406(d)***, a Reserve enlisted member may use the monthly basic pay for the highest enlisted grade in which the member served satisfactorily, as determined by the Secretary of the Navy. This provision applies to an individual who first became a member of the Uniformed Service before September 8, 1980, and who at the time of transfer is serving on active duty in a grade lower than the highest enlisted grade held by the member while on active duty not as a result of the member's misconduct.

A. Pre-September 8, 1980 Member. The retainer pay base is the basic pay that the member received at the time of transfer to the FR/FMCR. The retainer pay base is multiplied by two and one-half percent times the number of years of active service (as adjusted in subparagraph 030101.A) in the Armed Forces.

B. Post-September 7, 1980 Member. The retainer pay base is the person's high-three average. The high-three average is the total amount of monthly basic pay for the highest 36-months of member's active service, whether or not consecutive, divided by 36. When a member is transferred to the FR/FMCR with less than 30-years of service, the high-36 average is computed using only rates of basic pay applicable to months of active duty as an enlisted member.

030107. Historical Pay Computations

A. The laws that governed the computation of retainer pay for a member transferred to the FR/FMCR from its inception in 1916 through June 30, 1938 are of no value since they were assimilated in the Naval Reserve Act of 1938, effective July 1, 1938. Therefore, the earlier computations are not included in this Regulation since they were restated effective July 1, 1938. See Table 3-2 for the pay computations.

B. A member transferred to the FR/FMCR was administratively placed in a class to differentiate between laws and conditions governing the computation of these pay entitlements. The following classes are applicable to these members:

COMPONENT	CODE	APPLICABLE TO
FR FMCR	F-4c 1-b	Member who is in the Naval service on July 1, 1925 and later transferred to the FR/FMCR after completion of 16-years but less than 20-years of active service.
FR FMCR	F-4d 1-c	Member who was in the Naval service on July 1, 1925 and later transferred to the FR/FMCR after completion of 20-years but less than 30-years of active service.
FR FMCR	F-5 H-1	Member who first enlisted in the Naval service after July 1, 1925, and later transferred to the FR/FMCR before August 10, 1946, after completion of 20-years but less than 30-years of active service.
FR FMCR	F-6 1-d	Member who first enlisted in the Naval service after July 1, 1925, and later transferred to the FR/FMCR on or after August 10, 1946, after completion of 20-years but less than 30-years of active service.

C. Longevity is the length of service performed by each member.

1. Before October 1, 1949, longevity pay was a big factor in computing retainer pay. Certain pay laws contained provisions for computing longevity pay. Such pay was based on the length of service. During this period, base pay and longevity were fitted into the framework of pay formulas to arrive at retainer pay. The computation for the longevity pay changed several times before being superseded by basic pay. The various computations and the periods applicable are:

a. Until May 31, 1942, for Navy members, the computation was 10-percent of base pay for the first increment of 4-years of Naval service, plus 5-percent of base pay for each 4-year increment thereafter, not to exceed 16-years, or 25-percent.

Example: Member served 18-years; on transfer to the Fleet Reserve, the longevity pay credit was computed:

1. 10-percent – 4-years

2. 5-percent – 4-years

3. 5-percent – 4-years

4. 5-percent – 4-years

5. 0-percent – 4-years

b. From June 1, 1942 to September 30, 1949, the computation was 5-percent of base pay for each 3-years of service up to 30-years, maximum of 50-percent.

2. On October 1, 1949, when basic pay became an important factor, longevity pay was not computed separately but was included in the rate of basic pay.

a. A member who transferred to the FR/FMCR on or after October 1, 1949 was required to elect the formula under which their pay would be computed. The two formulas were the fractional (under which a member would receive one third or one half of base pay) and the percentage (two and one-half percent times years of active Federal service times basic pay). Such election was indicated on the authorization for transfer to the Fleet Reserve.

b. Under Public Law 1028, effective August 10, 1956, a member who transfers to the FR/FMCR receives retainer pay computed on the formula included in the codification of the military pay laws under ***Title 10 U.S.C***. The prior computations were still in effect for the members to whom they applied. A member who enters a Uniformed Service before September 8, 1980 receives retainer pay computed under this formula.

c. A member who enters the Uniformed Service after September 7, 1980 receives retainer pay under the formula codified in 1956, except the retainer pay base is used instead of a monthly basic pay rate.

030108. Service Credit Rounding of Months

For percentage purposes in computing retired or retainer pay:

A. A member who retired before January 1, 1982 receives credit for any fractional part of a year that is 6-months or more as an additional year. Any portion of a year that is less than 6-months is disregarded. See Table 3-3. This applies to any member who, before January 1, 1982:

1. Applied for retirement;

2. Applied for transfer to the FR/FMCR;

3. Was being processed for retirement under the provisions of ***10 U.S.C. chapter 61***; or

4. Was on the TDRL and thereafter retired under the provisions of ***10 U.S.C. 1210(c) or (d)***.

B. Unless covered by subparagraph 030101.A, a member who became entitled to retired or retainer pay January 1, 1982 through September 30, 1983, inclusive,

received credit on a month-by-month basis for each full month served of 6-months or more. Any fraction of a year less than 6-months was disregarded. See Table 3-3.

C. A member who became entitled to retired or retainer pay on or after October 1, 1983 receives credit for each full month actually served. Less than full months are disregarded. See Table 3-4.

NOTE: If a member retires October 1, 1983 or later and the member is entitled to retired pay under ***10 U.S.C. 1401a(f)*** using a hypothetical retirement date which is before January 1, 1982, then service credit of 6-months or more was rounded to a full year; however, funding limitations each fiscal year prohibited payment for months in excess of whole months actually served until permanent codification was effective July 1, 1986.

D. In calculating the percentage factor under subparagraphs 030108.B or C, the percent will be rounded at least to the nearest 1/100 of one percentage point. For example, 20-years, 7-months (20.58-years) times 2.5-percent equals 51.45-percent. See Table 3-4. This rounding method will also be used if the member is entitled to retired pay computed under the saved pay provision in paragraph 030203 or under ***10 U.S.C. 1401a(f)*** in section 0303.

030109. Rounding Retired Pay

Under Public Law 98-94, the 1984 DoD Authorization Act, monthly retired or retainer pay entitlement is rounded as initially computed and as subsequently adjusted.

A. Effective October 1, 1983, the initial computation of gross retired pay, if not a multiple of $1, is rounded down to the next lower multiple of $1. All further reductions, deductions, withholdings, and allotments are made from this rounded figure. When retired pay is subsequently increased under ***10 U.S.C. 1401a*** by cost-of-living adjustments, the retired or retainer pay, if not a multiple of $1, is rounded down to the next lower multiple of $1.

B. The retired or retainer pay for a member already retired on September 30, 1983 was not rounded until the next cost-of-living adjustment, December 1, 1984. The retired or retainer pay, if not a multiple of $1, was rounded to the next lower multiple of $1. The same rounding procedure applies to all subsequent cost-of-living adjustments.

***030110. Special Computations for Career Status Bonus with Reduced Retirement (CSB/REDUX)**

A. The retired pay or retainer pay multiplier of members who elected the CSB with REDUX retirement will be reduced one percentage point for each full year of creditable service less than 30 and 1/12th of one percent for each full month of creditable service less than a full year.

B. Effective on the first day of the month following the member's 62nd birthday, the retired pay of members who elected the CSB with REDUX will be recomputed to equal the amount of retired pay to which the member would have been entitled on that date if the

member had not taken the CSB with REDUX retirement and had no reduction in their multiplier or COLA (see Chapter 8, paragraph 080315). Following the restoration discussed in the preceding sentence the annual COLA reduction will continue to be applied to the member's retired pay each year throughout the member's retirement.

C. Members who elected the CSB/REDUX retirement and accepted early retirement under the TERA program will have their retired pay recomputed as discussed in subparagraph 030110.A; however, they will be subject to the TERA reduction factor from Table 3-5 for the entirety of their retirement with no restoration of that reduction at age 62 or at any other time.

*030111. Temporary Early Retirement Authority (TERA)

The Secretary of Defense was provided a temporary additional force management tool under TERA legislation with which to affect the drawdown of military forces from October 23, 1992 through September 1, 2002. That legislation was amended to reinstate certain TERA provisions for the period beginning December 31, 2011 and ending on December 31, 2018. The basic TERA retired pay entitlement for members of the Army, Navy Marine Corps and Air Force will be computed as described in this paragraph.

* A. Computation of Retired Pay. The amount of retired pay otherwise prescribed for a retiring member using years of creditable service, high-36 monthly average basic pay and 2½ retired pay percentage factor is then multiplied by the applicable reduction factor from Table 3-5. The resulting reduced amount of retired pay, if not a multiple of $1, will be rounded to the next lower multiple of $1. This rounded amount is the initial gross monthly retired pay entitlement.

* B. Reduction Factor. To determine the appropriate reduction factor from Table 3-5, take the difference between 240-months (20-year career) and the number of months of active service as of the date of the member's retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve under TERA.

1. Any portion of a month of active service in excess of a whole month is rounded up to the next whole month. For example, total active service of 15-years, 7-months, and 13-days is rounded to 15-years, 8-months. The reduction factor based on 15-years and 8-months is computed as: (15 × 12) + 8 = 188-months and the applicable reduction factor corresponds to the Table 3-5 entry for 240 less 188, or 52-months. The applicable reduction factor for 52-months from Table 3-5 is .95667.

NOTE: In computing the retired pay, the 13-days in excess of 187-months of service are disregarded and retired pay is based on 187-months. The rounding up is applied only to determine the TERA reduction factor.

2. As an example, the retired pay for a member retired under TERA as an E-7, with 15-years, 7-months, 13-days of creditable service and a high 36-monthly average basic pay of $3,783.50 would be computed as follows:

RPB - Retired Pay Base (i.e. high 36 monthly average basic pay)
AS - Active Service (in months)
MO - Months in a year
RPF - Retired Pay Percentage Factor
TRF - TERA Reduction Factor (Table 3-5)

RPB × ((AS ÷ MO) × RPF) × TRF =
$3,783.50 × ((187 ÷ 12) × .025) × .95667 =
$3,783.50 × (15.5833 ×.025) × .95667 =
$3,783.50 × .3896 × .95667 =
$1,410.18

(Since this is not a multiple of $1, round down to $1,410.00.)

* C. TERA Computation Modified for Career Status Bonus (CSB)/Reduced Retirement (REDUX). The basic TERA retired pay entitlement must be modified if a member has elected to receive a CSB and is subject to the REDUX retirement plan. In such case, the normal retired pay multiplier shall first be reduced by one twelfth of one percentage point for each month that the member's creditable service is less than 30-years (360-months) under the REDUX computation before the application of the TERA reduction factor from Table 3-5.

Using the example in 030111.B.2, the TERA retired pay for a member who has elected to receive a CSB would be computed as follows:

RPB - Retired Pay Base
360 - 30-Years (360-months)
AS - Active Service (in months)
MO - Months in a year
RPF - Retired Pay Percentage Factor
RRF - REDUX Reduction Factor (1%)
TRF - TERA Reduction Factor (Table 3-5)

RPB × ((AS ÷ MO) × RPF) – (((360 – AS) ÷ MO) ×RRF)) × TRF =
$3,783.50 × ((187 ÷ 12) × .025) – (((360 – 187) ÷ 12) × .01)) × .95667 =
$3,783.50 × ((15.5833 ×.025) – ((173 ÷ 12) × .01)) × .95667 =
$3,783.50 × (.3896 – (14.42 × .01)) × .95667 =
$3,783.50 × (.3896 – .1442) × .95667 =
$3,783.50 × .2454 × .95667 =
$888.24

(Since this is not a multiple of $1, round down to $888.00.)

The amount determined in 030111.C.1 will be increased by annual Cost of Living Allowances (COLA) as determined for other members who have elected the CSB and REDUX retirement. This will result in a COLA that is reduced by one percentage whenever the standard military

retirement COLA is greater than one percent and the same COLA whenever the standard is one percent or less.

* D. Unlike the prior TERA eligibility period from 1992 through 2002, under the new TERA authority members may not earn additional credit for purposes of re-computing retired pay for any employment by a public service or community service organization.

* E. Persons retired under the TERA provisions have all the same entitlement rights, privileges and responsibilities of participation in the Survivor Benefit Plan (SBP), as retired members of their respective branch of service.

1. Full coverage under SBP means coverage on the amount of retired pay computed in subparagraph 030111.A which is the initial computation of TERA retired pay as reduced by the applicable reduction factor from Table 3-5.

2. For a CSB/REDUX member, the base amount for full SBP coverage is the amount computed using the TERA formula in 030111.A including the reduction from Table 3-5. The SBP full base amount for a CSB recipient does not include the REDUX retirement reduction in subparagraph 030111.C.1. If the member elects a reduced base amount, with spouse concurrence, at the time of retirement, even if based on the REDUX re-computation in subparagraph 030110.C.1, no increase will be made in that base amount as a result of the re-computation at age 62 other than an increase to restore the elected base amount to what it would have been in effect had full COLAs been in effect. No increase will be made in that base amount as a result of the re-computation at age 62 for the restoration of the retired pay multiplier.

030112. Exception to High-36 Month Retired Pay Computation for Members Retired Following a Disciplinary Reduction in Grade

Members or former members who entered the Uniformed Services on or after September 8, 1980 will have their retired pay base computed using the high 36-month average, except for the members described as follows, whose retired pay base is based on the final basic pay of the grade prescribed in title ***10 U.S.C. 1406***, rather than the highest 36-month average of basic pay.

A. Affected Members. A member or former member subject to the above exception is one who, by reason of conduct occurring after October 30, 2000:

1. In the case of an enlisted member retired or transferred to the FR/FMCR, is reduced in grade as a result of court-martial sentence, nonjudicial punishment, or an administrative action, unless the member was subsequently promoted to a higher enlisted grade or appointed to a commissioned or warrant grade, in which case see subparagraph 030112.B.

2. In the case of an officer, is retired in a grade lower than the highest grade in which the officer served by reason of denial of a determination or certification under ***10 U.S.C. 1370*** that the officer served on active duty satisfactorily in that grade. This

determination is to be applied only in those circumstances where such determination is the result of conduct occurring after October 30, 2000. Conduct, for the purposes of this provision shall not include failure to complete the time necessary for certification under 10 U.S.C. 1370, absent any other conduct bearing on such certification.

B. Special Rule for Enlisted Members. In the case of an enlisted member retired within 3 years after having been reduced in grade as prescribed in subparagraph 030112.A.1, and who was not subsequently promoted to a higher enlisted grade (or appointed to a warrant or commissioned grade), the retired pay base will be computed using the final basic pay rather than the high 36-month average. If, however, the member is subsequently promoted to a higher enlisted grade (or appointed to a warrant or commissioned grade), then the member's retired pay will be computed using a high 36-month average computation. The computation will use the final 36-months of basic pay, except for the months in which the member served in a grade higher than the grade in which retired. The basic pay for such months shall be the rates that would have applied to the member at that time if serving in the grade in which retired.

Examples:

1. An E-7 is reduced to E-5 and retired as E-5. This member comes under subparagraph 030112A.1., with retired pay base computed under the pre-September 1980 system, which is final pay rules using the pay of an E-5.

2. An E-7 is reduced to E-5 two years before retirement, but is promoted 1-year later to E-6 and retired as an E-6. This member uses the "Special Rule" and computes a high 36 as specified in subparagraph 030111.B rather than using the final pay of an E-6. In computing the high 36-average, it would include 12-months as an E-7, 12-months as an E-5, and 12-months as an E-6. The "Special Rule" requires that the time as an E-7 will be replaced in the high 36 formula with pay rates of an E-6.

0302 APPLICATION OF SAVED PAY

030201. Career Compensation Act, Effective October 1, 1949

A. An officer retired for disability before October 1, 1949 who failed to elect within a 5-year period to receive pay under the 1949 Act, or who did not qualify for pay under the 1949 Act, continued to receive pay under laws in effect before October 1, 1949, computed at 75-percent of the basic pay of the grade authorized.

B. A member who, on October 1, 1949, was a hospital patient and who, before January 1, 1951, retired for disability as the result of the disease or injury for which hospitalized could elect to receive retired pay:

1. Computed under laws in effect on September 30, 1949 at 75-percent of the basic pay of the grade authorized; or

2. Computed under section 402(d) of Public Law 81-351.

C. A member who, on October 1, 1949, was receiving or was entitled to receive retired pay under any provision of law was authorized to continue the entitlement to receive the pay to which entitled under the laws in effect on September 30, 1949.

030202. Military Pay Act, Effective June 1, 1958

A. A member who retired or transferred to the FR/FMCR on or after June 1, 1958 and before April 1, 1963, and who was receiving active-duty basic pay under the April 1, 1955, saved pay rates, continued to receive pay computed under the 1955 rates, based upon service credited for basic pay purposes as of June 1, 1958.

B. A member who retired or transferred to the FR/FMCR on June 1, 1958 was entitled to pay computed on the June 1, 1958 active-duty basic pay rates, or on the April 1, 1955 active-duty basic pay rates plus 6-percent, whichever was greater.

C. A member retired or transferred to the FR/FMCR after June 1, 1958, who was receiving active-duty saved pay, was entitled to retired pay computed on the April 1, 1955 active-duty basic pay rates, but was not entitled to the additional 6 percent increase.

030203. Military Pay Act, Effective October 1, 1967

A. With respect to a member entitled to retired pay computed under this paragraph, the retired or retainer pay may not be less than it would have been if the member had become entitled to that pay based on the same basic pay grade, years of service for basic pay and percentage purposes, and percent of disability (if any) on the day before the effective date of the rates of monthly basic pay on which retired or retainer pay is based. Such members receive pay:

1. Computed under the current basic pay rates in effect on the date of retirement or transfer, or

2. Computed under the rates of basic pay in effect immediately before the current rates, whichever is greater.

B. The above computations were, in some instances, subject to the provisions of the Uniform Retirement Date Act. For application of this Act, see Chapter 1, paragraph 010402.

C. The "1-year look-back" provision codified at ***10 U.S.C. 1401a(e)*** was repealed by section 921 of the DoD Authorization Act, Fiscal Year 1984. Under the provisions of that repeal, this paragraph now applies only to:

1. A member retired or transferred to the FR/FMCR October 1, 1967, through September 24, 1983, inclusive; and

2. A member eligible for retirement or transfer on or before September 24, 1983, provided the member retires or transfers on or before September 24, 1986. If the member retires or transfers after September 24, 1986, the retired or retainer pay may not be less than it would have been had the member actually retired or transferred on September 23, 1986.

0303 TOWER AMENDMENT

030301. Basic Provisions

A. A member, who retires or transfers to the FR/FMCR on or after January 1, 1971, and who fully qualifies for retirement on a date earlier than the actual retirement date, receives the most favorable rate of pay as though the member had actually retired or been transferred on the earlier date:

1. After becoming retirement-eligible on or after January 1, 1971 (see Chapter 1, section 0101),

2. Based upon the grade and the service creditable on the earlier computation date. (For retirements on or after October 5, 1994, the grade used in the computation cannot be higher than the grade in which the member is retired.),

3. Using the rate of basic pay applicable to the member on the earlier computation date in determining the retired pay base, or

4. Subject to the provisions of paragraph 030203.

B. A member, who retired or transferred to the FR/FMCR before October 7, 1975, the effective date of the Tower Amendment, is entitled to pay adjusted from October 7, 1975. No adjustment is authorized under the provisions of the amendment for any period before October 7, 1975.

C. A member who retired between October 1, 1988 and October 4, 1994 and who is reduced in grade under sentence of court-martial after initially becoming eligible for retired pay is not entitled to computation on a grade higher than the grade in which retired.

D. See subparagraph 030403.A for provision concerning an officer who served in a special position as Chairman or Vice Chairman of the Joint Chiefs of Staff or as a Chief of Service.

E. See paragraph 030405 for the provision concerning an enlisted member who served in a special position as a senior enlisted member.

030302. Earlier Computation Dates

A. Predetermined earlier computation dates are established for uniformity in computing the pay of a member who qualifies under ***10 U.S.C. 1401a(f)***, and the Tower

Amendment, as amended. Generally, the day immediately preceding an active-duty basic pay rate change is the earlier date of voluntary retirement eligibility, unless the computation is more favorable based on the first day of the month preceding an active-duty basic pay rate change.

B. A member of the FR/FMCR may transfer on any intermediate day of a month. Therefore, the earlier computation date for this member is the day before new active-duty basic pay rates are effective.

C. A warrant officer retired under provisions of ***10 U.S.C. 1293*** (see Table 3-1, rule 3), on the effective date of a change in the active-duty pay rates, receives retired pay computed by using the rate of basic pay in effect on the day before the date of retirement. Thus, the earlier retirement eligibility date under ***10 U.S.C. 1401a(f)*** computation would be one year earlier with retired pay based upon rates in effect on the day before the earlier eligibility date. If the member is entitled to use the saved pay rate under paragraph 030203, then the rate in effect immediately prior to the rate in effect on the day before the earlier retirement eligibility date is used.

030303. Computation at the Time of Retirement or Transfer to the FR/FMCR

A. A member receives the most favorable retired pay, as adjusted by applicable cost-of-living adjustments, computed by using:

1. The active-duty basic pay rate applicable on the actual retirement or transfer date, or

2. One prior active-duty basic pay rate at the same grade and service applicable on the actual retirement or transfer date if the provisions of paragraph 030203 apply.

3. Any active-duty basic pay rate in effect on or after January 1, 1971, at the grade and service credited on the earlier computation date, if retirement-eligible on the earlier date. After this rule is used, apply subparagraph 030303.A.2 without further loss of grade and service.

B. A member retiring for disability who is eligible for voluntary retirement or for transfer to the FR/FMCR on an earlier date may have gross retired pay entitlement computed in accordance with the provisions of ***10 U.S.C. 1401a(f)*** when more favorable; however, the basic pay rate applicable for an earlier retirement date under this condition for gross pay computation cannot be used for computing pay based upon the disability rating. The rate of pay based upon degree of disability may be calculated only on the basic pay rate applicable under subparagraph 030303.A.1 or A.2 (if applicable).

0304 SPECIAL PROVISIONS

030401. Entitlement Under More Than One Pay Formula

A member who is entitled to pay computed under more than one pay formula or provision of law is entitled to be paid under the formula that is most favorable.

030402. Commissioned Officer With More Than Four Years of Active Enlisted and/or Warrant Officer Service

A member, who at the time of retirement, is in pay grade O1E, O2E, or O3E, having served more than 4-years of active duty as an enlisted member and/or warrant officer, receives pay computed on the special basic pay rate that is authorized.

030403. Commissioned Officer Serving in a Special Position

A. Joint Chief of Staff and Chief of Service. An officer who serves as Chairman or Vice Chairman of the Joint Chiefs of Staff or as a Chief of the Service may receive retired pay which is computed on the highest rate of basic pay applicable to the member while serving in the special position, if that rate is higher than the rate otherwise authorized as a retired pay base for a member who first became a member before September 8, 1980. Except as provided in paragraph 030409, effective January 1, 2007, the rate of basic pay cannot exceed Level II of the Executive Schedule. The term "Chief of Service" refers to one of the following:

1. Chief of Staff of the Army,

2. Chief of Naval Operations,

3. Chief of Staff of the Air Force,

4. Commandant of the Marine Corps, or

5. Commandant of the Coast Guard.

NOTE: The member may not use the rate of the special position for computation of retired pay if, during or after serving in the special position, and by the member's conduct after October 16, 1998, the officer is not certified as having served satisfactorily in the grade of general or admiral while serving in that position.

B. Special Rule for Computation of Retired Pay Base for Commanders of Combatant Commands. An officer who serves as a Commander of a Unified or Specified Combatant Command may receive retired pay which is computed on the highest rate of basic pay applicable to the member while serving in that position. The member may not use the rate of the special position for computation of retired pay if, during or after serving in the special position and by the member's conduct after October 16, 1998, the officer is not certified as having served satisfactorily in the grade of general or admiral while serving in that position. Effective

January 1, 2007, the rate of basic pay cannot exceed Level II of the Executive Schedule. This special rule shall apply with respect to officers who first become entitled to retired pay on or after November 23, 2004.

030404. Officer in Grade O-9 or O-10

A. An officer who served in grade O-9 or O-10 for not less than 3-years is entitled to retired pay based on that grade if the Secretary of Defense certifies in writing to the President and the Congress that the officer served on active duty satisfactorily. The 3-year requirement may be reduced to not less than 2-years for retirements effective during a specified period (see Chapter 1, subparagraph 010501E.5). The 3-year time-in-grade requirement may not be reduced or waived if the officer is under investigation for alleged misconduct or while an adverse personnel action is pending against the officer for alleged misconduct.

B. An officer who served in grade O-9 or O-10 for a period of less than 3-years before retirement will have retired pay based on the next lower grade, unless a waiver of the time in grade requirement has been granted by the appropriate authority. The granting of the waiver will affect only the pay computation for the date of retirement. Computations for earlier dates on which eligible to retire must be based on the next lower grade.

C. Section 601(e) of ***Public Law 106-65***, October 5, 1999, provides that retired pay be recomputed effective January 1, 2000 for certain members who retired during the period April 30, 1999 through December 31, 1999. As a result, the retired pay of members' grade 0-9 with over 26-years of service and 0-10s with over 16-years of service will be recomputed. The new rates will be for months beginning on or after January 1, 2000 and will be computed as if the Level II limit had applied at the time of a qualified member's retirement. No increased amount is payable for any period before January 1, 2000 as a result of this provision. Retired pay rates for affected members should be recomputed as though the following rates of basic pay had been applicable at the time of retirement:

0-9	Over 26-years of service:	$9,528.00
0-10	Over 16-years of service:	$9,528.00
0-10	Over 18-years of service:	$9,528.00
0-10	Over 20-years of service:	$10,167.00
0-10	Over 22-years of service:	$10,167.00
0-10	Over 24-years of service:	$10,167.00
0-10	Over 26-years of service:	$10,491.60

030405. Enlisted Member Serving in a Special Position

The senior enlisted member of an Armed Force may receive retired pay, which is computed on the highest rate of basic pay applicable to the member while serving in that special position, if that rate is higher than the rate otherwise authorized as a retired pay base for a member who first became a member before September 8, 1980. The term "senior enlisted member" refers to one of the following:

A. Sergeant Major of the Army,

B. Master Chief Petty Officer of the Navy,

C. Chief Master Sergeant of the Air Force,

D. Sergeant Major of the Marine Corps, or

E. Master Chief Petty Officer of the Coast Guard.

NOTE: The member may not use the rate of the special position for computation of retired pay if, during or after serving in the special position, and by member's conduct after October 16, 1998, the member is reduced in grade by court-martial, nonjudicial punishment, or other administrative process.

030406. Heroism Pay

An enlisted member retired after 20-years of service, to include an enlisted member retired by reason of disability, may be entitled to an additional 10-percent retired pay for extraordinary heroism, if authorized. See Chapter 1, Section 0108.

030407. Computation Under the Uniformed Services Pay Act, October 2, 1963

A. Beginning October 1, 1963, a member retired between October 1, 1949 and May 31, 1958, including a member retired before October 1, 1949, receiving pay under the 1949 Act, received the greater of:

1. An increase of 5-percent in the retired pay to which entitled on September 30, 1963; or

2. Pay computed on the basic pay rates established under the June 1, 1958 Act without a 5-percent increase.

B. Beginning October 1, 1963, a member retired for service before October 1, 1949 and being paid under laws in effect on September 30, 1949 receives the greater of:

1. An increase of 5-percent in the retired pay to which entitled on September 30, 1963; or

2. Pay recomputed on the basic pay rates established by the Military Pay Act of 1958 without a 5-percent increase, based on actual active service creditable.

030408. Computation Under the Military Pay Act, May 20, 1958

A. A member who first became entitled to retired pay on June 1, 1958 was authorized to receive pay computed on the new June 1, 1958 basic pay rates or on the April 1, 1955 active-duty basic pay rates plus 6-percent, whichever is greater.

B. A member retired after June 1, 1958 who was receiving active duty saved pay was entitled to retired pay computed on the April 1, 1955 active-duty basic pay rate, but was not entitled to the additional 6-percent increase.

C. The basic pay rate used in the computation of pay was increased by increments of $200 for generals and admirals and $100 for lieutenant generals and vice admirals before the 6-percent increase on June 1, 1958 for a retired officer who:

1. Served in that grade for at least 180-days, and

2. Was entitled to retired pay on the day before the effective date of the Military Pay Act of 1958.

030409. Retired Pay Base for Officers Retired in General or Flag Officer Grades

A. The retired pay base of a general or flag officer who retires after September 30, 2006 will not be restricted by the requirement in ***37 U.S.C. 203 (a)(2)*** to reduce basic pay in excess of Level II of the Executive Schedule.

B. The retired pay base shall be determined using the rate of basic pay for such period provided by law, rather than such rate as reduced.

Table 3-1. Computation of Retired Pay

COMPUTATION OF RETIRED PAY							
RULE	A	B	C	D	E	F	G
	A member of the	**who is**	**under provisions of 10 U.S.C.**	**receives the retired pay base**	**multiplied by**	**plus**	**minus (note 8)**
1	Armed Forces	retired for disability	1201 1204	computed under 10 U.S.C. 1406(b) or 1407 (note 1)	the percentage of disability assigned, not to exceed 75-percent or 2.5-percent times the years of service credited for percentage purposes, except for a member retiring on or before January 7, 2011, the multiplier is limited to 75-percent (note 3)		
2			1202 1205			the amount necessary to increase the product of columns D and E to 50-percent of retired pay base	
3		voluntarily retired	1293		the retired pay multiplier from 10 U.S.C. 1409 for the years of service credited for percentage purposes (note 3)		excess over 75-percent of retired pay base upon which computation is based if member retires before January 1, 2007 (note 6)
4	Army or Air Force		3914 3917 8914 8917	computed under 10 U.S.C. 1406(c) - for Army, 1406(e) - for Air Force or 1407 (notes 1 and 10)		10-percent of the product of Columns D and E, if applicable (note 2)	
5			3911 3918 3920 3924 8911 8918 8920 8924				
6	Navy or Marine Corps		6321 6323	computed under 10 U.S.C. 1406(d) or 1407 (note 1)			

Table 3-1. Computation of Retired Pay (Continued)

COMPUTATION OF RETIRED PAY							
RULE	**A**	**B**	**C**	**D**	**E**	**F**	**G**
	A member of	**who is**	**under provisions of 10 U.S.C.**	**receives the retired pay base**	**multiplied by**	**plus**	**minus/add (note 8)**
7	Navy or Marine Corps	voluntarily retired	6322 6326	computed under 10 U.S.C. 1406(d) or 1407 (note 1)	retired pay multiplier from 10 U.S.C. 1409 for years of service credited for percentage purposes (note 3)	10-percent of columns D and E if applicable (note 2)	excess over 75-percent of retired pay base upon which computation is based, if member retired before January 1, 2007 (note 6)
8			6327		50- percent (note 5)		
9	Armed Forces	Involuntarily retired	580 633 634 635 636 1251 1263 1305 (note 9)	computed under 10 U.S.C. 1406(b) or 1407 (note 1)	retired pay multiplier from 10 U.S.C. 1409 for years of service credited for percentage purposes (note 3)		excess over 75-percent of retired pay base upon which computation is based, if member retired before January 1, 2007 (note 6)
10	Army		3920 3921 (note 6)	computed under 10 U.S.C. 1406(c) or 1407 (note 1)			
11	Navy or Marine Corps		6371 6383, (note 6)	computed under 10 U.S.C. 1406(d) or 1407 (note 1)			
12	Air Force		8920 8921 (note 6)	computed under 10 U.S.C. 1406(e) or 1407 (note 1)	retired pay multiplier for the years of service credited for percentage purposes (note 3)		

Table 3-1. Computation of Retired Pay (Continued)

COMPUTATION OF RETIRED PAY							
RULE	**A**	**B**	**C**	**D**	**E**	**F**	**G**
	A member of	**who is**	**under provisions of 10 U.S.C.**	**receives the retired pay base**	**multiplied by**	**plus**	**minus/add (note 8)**
13	Armed Forces, Reserve, or National Guard	Reservist (meets age and service require-ment)	12731	computed under 10 U.S.C. 1406(b) (2) or 1407 (note 1)	2.5-percent times the years of service credited for percentage purposes (notes 3 and 4)	10-percent of the product of columns D and E (note 2)	excess over 75-percent of retired pay base upon which computation is based if member retired before January 1, 2007 (note 6)
14	Navy or Marine Corps	transferred to the FR/FMCR	6330	computed under 10 U.S.C. 1406(d) or 1407 (notes 1 and 7)	the retainer pay multiplier for the years of service credited for percentage purposes (note 3)		

NOTES:

1. For applicable active-duty basic pay rate, see sections 0303 and 0304 and paragraphs 010402 and 030201. For a person who first became a member of a uniformed service after September 7, 1980, use the high 36-month average. For exception to high 36-months retired pay computation for members retired following a disciplinary reduction in grade, refer to paragraph 030112.

2. Enlisted members credited with an act of extraordinary heroism in the line of duty. For Army and Air Force enlisted members, the total retired pay to include the 10-percent increase, may not exceed the maximum pay of 75-percent. For Navy and Marine Corps enlisted members, the total maximum retired pay is 75-percent plus the 10 percent increase. Members with more than 30-years of creditable service should also have retired pay computed without the 10-percent add-on and awarded the higher of the two calculations. All members who retire under the provisions See Chapter 01 of ***10 U.S.C. 12731*** with credit for extraordinary heroism are restricted to a maximum pay of 75-percent.

3. See Chapter 1 of this volume for service creditable for percentage purposes:

Voluntary retirement:
Paragraph 010302—Enlisted members
Paragraph 010303—Commissioned Officers
Paragraph 010304—Warrant Officers

Mandatory retirement:
Subparagraph 010305.A—Army and Air Force
Subparagraph 010305.B—Navy and Marine Corps

Disability retirement:
Paragraph 010306

Reservist age and service retirement:
Paragraph 010307

4. Total number of retirement points divided by 360. Carry the resultant figure to three decimal places, then round to two decimal places. EXAMPLE: 4735 retirement points divided by 360 = 13.152 or 13.15-years of service for percentage purposes (for the section 12731 retiree only) to be multiplied by 2-1/2-percent.

5. Members retired under ***10 U.S.C. 6327*** are authorized to receive retired pay at 50 percent of the active-duty basic pay of their grade when not on active duty. This provision applies only to persons who were members of the Naval Reserve or Marine Corps Reserve on January 1, 1953. The provisions of ***10 U.S.C. 6327*** terminated on January 1, 1973. However, termination of the section did not affect any accrued rights to retired pay.

6. For members who retired on or after January 1, 2007, the retired pay multiplier is the sum of 75-percent for 30-years of service plus 2-1/2-percent for every year over 30-years.

Table 3-1. Computation of Retired Pay (Continued)

NOTES

7. In lieu of the retainer pay base computed under ***10 U.S.C. 1406(d)***, a Reserve enlisted member may be entitled to retainer pay computed by using the monthly basic pay for the highest enlisted grade in which the member served satisfactorily, as determined by the Secretary of the Navy. This provision applies to an individual who first became a member of the Uniformed Service before September 8, 1980 and who, at the time of transfer, is serving on active duty in a grade lower than the highest enlisted grade held by the member while on active duty not as a result of the member's own misconduct.

8. If a member was initially retired on or after October 1, 1983, the amount computed, if not a multiple of $1, shall be rounded to the next-lower multiple of $1. Any future adjustments to such pay must be made on the rounded figure. Retired pay of members retired on September 30, 1983 will not be rounded until there is an adjustment under ***10 U.S.C. 1401a***; then, and with each subsequent adjustment, the amount as adjusted, if not a multiple of $1, shall be rounded to the next-lower multiple of $1. The rounded amount becomes the member's entitlement and any future adjustments shall be based on this rounded entitlement.

9. Section 564 repealed by Public Law 102-190, December 5, 1991. Section 1255 repealed by Public Law 90-130, November 8, 1967. An officer who was on active duty on September 15, 1981 and who is retired under Section 1251 is entitled to retired pay of at least 50-percent of the basic pay upon which the retired pay is based.

10. For a Reserve enlisted member retired under ***10 U.S.C. section 3914*** or ***8914*** after September 30, 1996, the retired pay base is the monthly basic pay of the member's retired grade (based on rates applicable on date of member's retirement) in lieu of the retired pay base under ***10 U.S.C. 1406(e)***.

Table 3-2. Historical Pay Computations – Fleet Reserve and Fleet Marine Corps Reserve

HISTORICAL PAY COMPUTATIONS – FLEET RESERVE AND FLEET MARINE CORPS RESERVE						
RULE	**A**	**B**	**C**	**D**	**E**	**F**
	If member retires in class	**during period**	**with years of service at least**	**then pay computation formula is**	**plus**	**and applicable law is**
1	F-4c 1-b	pre-1938 to May 31, 1942	16; less than 20	1/3 x base pay rating in which transferred (note 1)	longevity pay (25-percent maximum), extraordinary heroism (10-percent)	52 Stat 1179, section 203, 34 U.S.C. 854b.
2	F-4d 1-c		20; less than 30	1/2 x base pay rating in which transferred (note 1)	longevity pay (25-percent maximum), extraordinary heroism (10-percent), or good conduct (10-percent)	
3	F-5 H-1					52 Stat 1179, section 204, 34 U.S.C. 854c.
4	F-4c 1-b	June 1, 1942 to August 9, 1946	16; less than 20	1/3 x base pay rating in which transferred (note 1)	longevity pay (50-percent maximum), extraordinary heroism (10-percent)	56 Stat 359, Public Law 607, June 6, 1942.
5	F-4d 1-c		20; less than 30	1/2 x base pay rating in which transferred (note 1)	longevity pay (50-percent maximum), extraordi-nary heroism (10-percent), or good conduct (10-percent)	
6	F-5, H-1					
7	F-4c 1-b	August 10, 1946 to September 30, 1949	16; less than 20 (note 2)	1/3 x base pay rating in which transferred (notes 1 or 2)	longevity pay (50 percent maximum), extraordinary heroism (10-percent)	60 Stat 993, Public Law 720, August 10, 1946.
8	F-4d 1-c		20; less than 30	1/2 x base pay rating in which transferred (note 2)	longevity pay (50-percent maximum), extraordinary heroism (10-percent), or good conduct (10-percent)	
9	F-6 (note 3) 1-d		20	1/2 x base pay rating in which transferred (note 1) or		
				2.5-percent x years of active federal service multiplied by base pay of rating in which transferred (note 2)	longevity pay (75-percent maximum), extraordinary heroism (10-percent)	

Table 3-2. Historical Pay Computations – Fleet Reserve and Fleet Marine Corps Reserve (Continued)

HISTORICAL PAY COMPUTATIONS – FLEET RESERVE AND FLEET MARINE CORPS RESERVE						
RULE	**A**	**B**	**C**	**D**	**E**	**F**
	If member retires in class	**during period**	**with years of service at least**	**then pay computation formula is**	**plus**	**and applicable law is**
10	all classes	transferred before October 1, 1949, effective on October 1, 1949	at least 20	pay received on 9/30/49 (saved pay) or 2.5-percent x years of active service = percent; percent x basic pay of highest federally recognized rating satisfactorily held (note 4)		Public Law 351, 81st Congress, October 1, 1949.
11	F-4c 1-b	on or after October 1, 1949		1/3 x basic pay receiving at transfer (note 5) or 2.5-percent x years of active federal service = percent; percent x basic pay of rating in which transferred (notes 6 and 8)	extraordinary heroism (10-percent)	
12	F-4d 1-c			1/2 x basic pay receiving at transfer (note 5) or 2.5-percent x years of active federal service = percent; percent x basic pay of rating in which transferred (notes 6 and 8)	extraordinary heroism (10-percent), or good conduct (10-percent)	
13	F-6 1-d			1/2 x basic pay receiving at transfer (note 5) or 2.5-percent x years of active federal service = percent;	extraordinary heroism (10-percent)	

Table 3-2. Historical Pay Computations – Fleet Reserve and Fleet Marine Corps Reserve (Continued)

HISTORICAL PAY COMPUTATIONS – FLEET RESERVE AND FLEET MARINE CORPS RESERVE						
RULE	**A**	**B**	**C**	**D**	**E**	**F**
	If member retires in class	**during period**	**with years of service at least**	**then pay computation formula is**	**plus**	**and applicable law is**
14	F-6 1-d	on or after August 10, 1956	at least 20-years	2.5-percent x years of active service in Armed Forces = percent; percent x basic pay receiving at transfer (notes 7 and 8)	extraordinary heroism (10-percent)	Public Law 1028, August 10, 1956, 10 U.S.C. 6330.

NOTES:

1. Fractional year of 6 months or more not creditable as 1 year for longevity or transfer.
2. Fractional year of 6 months or more creditable equals full year for transfer and longevity, effective August 10, 1946.
3. Effective August 10, 1946, class F-5 changed to class F-6.
4. Six months or more equals 1 year for active service; 6 months or more does not equal 1 year for basic pay; no good conduct or extraordinary heroism.
5. Six months equals 1 year for basic pay and not for computing years of Naval service for transfer.
6. Six months or more equals 1 full year for active service and basic pay.
7. Six months equals 1 year for active service (include constructive service in active service). Six months equals 1 year for basic pay (do not include constructive service in service for basic pay).
8. If member entered a Uniformed Service after September 7, 1980, then substitute the retainer pay base for the base or basic pay.

Table 3-3. Pre-1982 Retirement Percentage Multiple Conversions

PRE-1982 RETIREMENT PERCENTAGE MULTIPLE CONVERSIONS							
At Least			Not More Than				
Years	Months	Days	Years	Months	Days	Converted Years	Percentage
0	6	0	1	5	29	1	2.5
1	6	0	2	5	29	2	5
2	6	0	3	5	29	3	7.5
3	6	0	4	5	29	4	10
4	6	0	5	5	29	5	12.5
5	6	0	6	5	29	6	15
6	6	0	7	5	29	7	17.5
7	6	0	8	5	29	8	20
8	6	0	9	5	29	9	22.5
9	6	0	10	5	29	10	25
10	6	0	11	5	29	11	27.5
11	6	0	12	5	29	12	30
12	6	0	13	5	29	13	32.5
13	6	0	14	5	29	14	35
14	6	0	15	5	29	15	37.5
15	6	0	16	5	29	16	40
16	6	0	17	5	29	17	42.5
17	6	0	18	5	29	18	45
18	6	0	19	5	29	19	47.5
19	6	0	20	5	29	20	50
20	6	0	21	5	29	21	52.5
21	6	0	22	5	29	22	55
22	6	0	23	5	29	23	57.5
23	6	0	24	5	29	24	60
24	6	0	25	5	29	25	62.5
25	6	0	26	5	29	26	65
26	6	0	27	5	29	27	67.5
27	6	0	28	5	29	28	70
28	6	0	29	5	29	29	72.5
29	6	0				30	75

NOTE: This Table applies to members retired before January 1, 1982, with several exceptions covered in paragraph 030108.

Table 3-4. Post-1981 Retirement Percentage Multiplier Conversions

POST-1981 RETIREMENT PERCENTAGE MULTIPLIER CONVERSIONS											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
		00.	3		7.50	6		15.00	9		22.50
	1	00.20	3	1	7.70	6	1	15.20	9	1	22.70
	2	00.43	3	2	7.93	6	2	15.43	9	2	22.93
	3	00.63	3	3	8.13	6	3	15.63	9	3	23.13
	4	00.83	3	4	8.33	6	4	15.83	9	4	23.33
	5	1.05	3	5	8.55	6	5	16.05	9	5	23.55
	6	1.25	3	6	8.75	6	6	16.25	9	6	23.75
	7	1.45	3	7	8.95	6	7	16.45	9	7	23.95
	8	1.68	3	8	9.18	6	8	16.68	9	8	24.18
	9	1.88	3	9	9.38	6	9	16.88	9	9	24.38
	10	2.08	3	10	9.58	6	10	17.08	9	10	24.58
	11	2.30	3	11	9.80	6	11	17.30	9	11	24.80
1		2.50	4		10.00	7		17.50	10		25.00
1	1	2.70	4	1	10.20	7	1	17.70	10	1	25.20
1	2	2.93	4	2	10.43	7	2	17.93	10	2	25.43
1	3	3.13	4	3	10.63	7	3	18.13	10	3	25.63
1	4	3.33	4	4	10.83	7	4	18.33	10	4	25.83
1	5	3.55	4	5	11.05	7	5	18.55	10	5	26.05
1	6	3.75	4	6	11.25	7	6	18.75	10	6	26.25
1	7	3.95	4	7	11.45	7	7	18.95	10	7	26.45
1	8	4.18	4	8	11.68	7	8	19.18	10	8	26.68
1	9	4.38	4	9	11.88	7	9	19.38	10	9	26.88
1	10	4.58	4	10	12.08	7	10	19.58	10	10	27.08
1	11	4.80	4	11	12.30	7	11	19.80	10	11	27.30
2		5.00	5		12.50	8		20.00	11		27.50
2	1	5.20	5	1	12.70	8	1	20.20	11	1	27.70
2	2	5.43	5	2	12.93	8	2	20.43	11	2	27.93
2	3	5.63	5	3	13.13	8	3	20.63	11	3	28.13
2	4	5.83	5	4	13.33	8	4	20.83	11	4	28.33
2	5	6.05	5	5	13.55	8	5	21.05	11	5	28.55
2	6	6.25	5	6	13.75	8	6	21.25	11	6	28.75
2	7	6.45	5	7	13.95	8	7	21.45	11	7	28.95
2	8	6.68	5	8	14.18	8	8	21.68	11	8	29.18
2	9	6.88	5	9	14.38	8	9	21.88	11	9	29.38
2	10	7.08	5	10	14.58	8	10	22.08	11	10	29.58
2	11	7.30	5	11	14.80	8	11	22.30	11	11	29.80

Table 3-4. Post-1981 Retirement Percentage Multiplier Conversions (continued)

POST-1981 RETIREMENT PERCENTAGE MULTIPLIER CONVERSIONS											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
12		30.00	15		37.50	18		45.00	21		52.50
12	1	30.20	15	1	37.70	18	1	45.20	21	1	52.70
12	2	30.43	15	2	37.93	18	2	45.43	21	2	52.93
12	3	30.63	15	3	38.13	18	3	45.63	21	3	53.13
12	4	30.83	15	4	38.33	18	4	45.83	21	4	53.33
12	5	31.05	15	5	38.55	18	5	46.05	21	5	53.55
12	6	31.25	15	6	38.75	18	6	46.25	21	6	53.75
12	7	31.45	15	7	38.95	18	7	46.45	21	7	53.95
12	8	31.68	15	8	39.18	18	8	46.68	21	8	54.18
12	9	31.88	15	9	39.38	18	9	46.88	21	9	54.38
12	10	32.08	15	10	39.58	18	10	47.08	21	10	54.58
12	11	32.30	15	11	39.80	18	11	47.30	21	11	54.80
13		32.50	16		40.00	19		47.50	22		55.00
13	1	32.70	16	1	40.20	19	1	47.70	22	1	55.20
13	2	32.93	16	2	40.43	19	2	47.93	22	2	55.43
13	3	33.13	16	3	40.63	19	3	48.13	22	3	55.63
13	4	33.33	16	4	40.83	19	4	48.33	22	4	55.83
13	5	33.55	16	5	41.05	19	5	48.55	22	5	56.05
13	6	33.75	16	6	41.25	19	6	48.75	22	6	56.25
13	7	33.95	16	7	41.45	19	7	48.95	22	7	56.45
13	8	34.18	16	8	41.68	19	8	49.18	22	8	56.68
13	9	34.38	16	9	41.88	19	9	49.38	22	9	56.88
13	10	34.58	16	10	42.08	19	10	49.58	22	10	57.08
13	11	34.80	16	11	42.30	19	11	49.80	22	11	57.30
14		35.00	17		42.50	20		50.00	23		57.50
14	1	35.20	17	1	42.70	20	1	50.20	23	1	57.70
14	2	35.43	17	2	42.93	20	2	50.43	23	2	57.93
14	3	35.63	17	3	43.13	20	3	50.63	23	3	58.13
14	4	35.83	17	4	43.33	20	4	50.83	23	4	58.33
14	5	36.05	17	5	43.55	20	5	51.05	23	5	58.55
14	6	36.25	17	6	43.75	20	6	51.25	23	6	58.75
14	7	36.45	17	7	43.95	20	7	51.45	23	7	58.95
14	8	36.68	17	8	44.18	20	8	51.68	23	8	59.18
14	9	36.88	17	9	44.38	20	9	51.88	23	9	59.38
14	10	37.08	17	10	44.58	20	10	52.08	23	10	59.58
14	11	37.30	17	11	44.80	20	11	52.30	23	11	59.80

Table 3-4. Post-1981 Retirement Percentage Multiplier Conversions (Continued)

POST-1981 RETIREMENT PERCENTAGE MULTIPLIER CONVERSIONS											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
24		60.00	27		67.50	30		75.00	33		82.50
24	1	60.20	27	1	67.70	30	1	75.20	33	1	82.70
24	2	60.43	27	2	67.93	30	2	75.43	33	2	82.93
24	3	60.63	27	3	68.13	30	3	75.63	33	3	83.13
24	4	60.83	27	4	68.33	30	4	75.83	33	4	83.33
24	5	61.05	27	5	68.55	30	5	76.05	33	5	83.55
24	6	61.25	27	6	68.75	30	6	76.25	33	6	83.75
24	7	61.45	27	7	68.95	30	7	76.45	33	7	83.95
24	8	61.68	27	8	69.18	30	8	76.68	33	8	84.18
24	9	61.88	27	9	69.38	30	9	76.88	33	9	84.38
24	10	62.08	27	10	69.58	30	10	77.08	33	10	84.58
24	11	62.30	27	11	69.80	30	11	77.30	33	11	84.80
25		62.50	28		70.00	31		77.50	34		85.00
25	1	62.70	28	1	70.20	31	1	77.70	34	1	85.20
25	2	62.93	28	2	70.43	31	2	77.93	34	2	85.43
25	3	63.13	28	3	70.63	31	3	78.13	34	3	85.63
25	4	63.33	28	4	70.83	31	4	78.33	34	4	85.83
25	5	63.55	28	5	71.05	31	5	78.55	34	5	86.05
25	6	63.75	28	6	71.25	31	6	78.75	34	6	86.25
25	7	63.95	28	7	71.45	31	7	78.95	34	7	86.45
25	8	64.18	28	8	71.68	31	8	79.18	34	8	86.68
25	9	64.38	28	9	71.88	31	9	79.38	34	9	86.88
25	10	64.58	28	10	72.08	31	10	79.58	34	10	87.08
25	11	64.80	28	11	72.30	31	11	79.80	34	11	87.30
26		65.00	28		72.50	32		80.00	35		87.50
26	1	65.20	29	1	72.70	32	1	80.20	35	1	87.70
26	2	65.43	29	2	72.93	32	2	80.43	35	2	87.93
26	3	65.63	29	3	73.13	32	3	80.63	35	3	88.13
26	4	65.83	29	4	73.33	32	4	80.83	35	4	88.33
26	5	66.05	29	5	73.55	32	5	81.05	35	5	88.55
26	6	66.25	29	6	73.75	32	6	81.25	35	6	88.75
26	7	66.45	29	7	73.95	32	7	81.45	35	7	88.95
26	8	66.68	29	8	74.18	32	8	81.68	35	8	89.18
26	9	66.88	29	9	74.38	32	9	81.88	35	9	89.38
26	10	67.08	29	10	74.58	32	10	82.08	35	10	89.58
26	11	67.30	29	11	74.80	32	11	82.30	35	11	89.80

Table 3-4. Post-1981 Retirement Percentage Multiplier Conversions (Continued)

POST-1981 RETIREMENT PERCENTAGE MULTIPLIER CONVERSIONS											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
36		90.00	38		95.00	40		100.00	42		105.00
36	1	90.20	38	1	95.20	40	1	100.20	42	1	105.20
36	2	90.43	38	2	95.43	40	2	100.43	42	2	105.43
36	3	90.63	38	3	95.63	40	3	100.63	42	3	105.63
36	4	90.83	38	4	95.83	40	4	100.83	42	4	105.83
36	5	91.05	38	5	96.05	40	5	101.05	42	5	106.05
36	6	91.25	38	6	96.25	40	6	101.25	42	6	106.25
36	7	91.45	38	7	96.45	40	7	101.45	42	7	106.45
36	8	91.68	38	8	96.68	40	8	101.68	42	8	106.68
36	9	91.88	38	9	96.88	40	9	101.88	42	9	106.88
36	10	92.08	38	10	97.08	40	10	102.08	42	10	107.08
36	11	92.30	38	11	97.30	40	11	102.30	42	11	107.30
37		92.50	39		97.50	41		102.50	43		107.50
37	1	92.70	39	1	97.70	41	1	102.70	43	1	107.70
37	2	92.93	39	2	97.93	41	2	102.93	43	2	107.93
37	3	93.13	39	3	98.13	41	3	103.13	43	3	108.13
37	4	93.33	39	4	98.33	41	4	103.33	43	4	108.33
37	5	93.55	39	5	98.55	41	5	103.55	43	5	108.55
37	6	93.75	39	6	98.75	41	6	103.75	43	6	108.75
37	7	93.95	39	7	98.95	41	7	103.95	43	7	108.95
37	8	94.18	39	8	99.18	41	8	104.18	43	8	109.18
37	9	94.38	39	9	99.38	41	9	104.38	43	9	109.38
37	10	94.58	39	10	99.58	41	10	104.58	43	10	109.58
37	11	94.80	39	11	99.80	41	11	104.80	43	11	109.80

NOTE: To derive multipliers for service in excess of 43-years and 11-months, divide the number of whole months by 12, compute the quotient to 3 digits, round to 2 digits, and add this to the number of years. Then, multiply by .025.

Example 1: 20-years, 7-months, 13-days
7-months ÷ 12 = .583 (.58)
20.58 × .025 = 51.45%

Example 2: 44-years, 8-months, 28-days
8-months ÷ 12 = .667 (.67)
44.67 × .025 = 111.68%

Exception: Members who retire between January 1, 1982 and September 30, 1983 and meet requirements of paragraph 030107 will round service credit of 6-months or more, as shown on the Table.

*Table 3-5. Reduction Factors Applicable to Temporary Early Retirement Authority

REDUCTION FACTORS APPLICABLE TO TEMPORARY EARLY RETIREMENT AUTHORITY					
Months Less than 240	**Reduction Factor**	**Months Less than 240**	**Reduction Factor**	**Months Less than 240**	**Reduction Factor**
1	.99917	2	.99833	3	.99750
4	.99667	5	.99583	6	.99500
7	.99417	8	.99333	9	.99250
10	.99167	11	.99083	12	.99000
13	.98917	14	.98833	15	.98750
16	.98667	17	.98583	18	.98500
19	.98417	20	.98333	21	.98250
22	.98167	23	.98083	24	.98000
25	.97917	26	.97833	27	.97750
28	.97667	29	.97583	30	.97500
31	.97417	32	.97333	33	.97250
34	.97167	35	.97083	36	.97000
37	.96917	38	.96833	39	.96750
40	.96667	41	.96583	42	.96500
43	.96417	44	.96333	45	.96250
46	.96167	47	.96083	48	.96000
49	.95917	50	.95833	51	.95750
52	.95667	53	.95583	54	.95500
55	.95417	56	.95333	57	.95250
58	.95167	59	.95083	60	.95000

NOTE: Mathematically, the reduction factor (RF) is one minus one twelve hundredth of the difference between 240 and the number of months or remaining portion of a month of active service of such member. Thus, for 188-months the reduction factor is computed as:

RF = 1.0 – [(240-188)/1200]
1.0 – [52/1200]
1.0 – .04333
.95667

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VOLUME 7B, CHAPTER 4 "RECOUPMENT OF SEPARATION PAYMENTS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by a * 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 January 2012 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and reformatted to comply with current administrative instructions.	Update
Table of Contents	Expanded the Table of Contents to include paragraphs.	Add
040102.G	Updated subparagraph by striking the date, "December 31, 2012" and inserting "December 31, 2018" as amended by Public Law 112-81, section 526, (National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012).	Update
040201.C	Rephrased subparagraph for clarity by striking the phrase, "after a period of enlisted service, is retired for temporary or permanent disability and also qualifies for service retirement as a Reserve officer" and inserting "later qualifies for retired pay upon completion of 20 years of active service."	Update
040201.A 040201.B 040201.C 040201.D	Updated subparagraph by striking the phrase, "refund 75 percent of the readjustment payment" and inserting "have the retired pay reduced until the full amount of the readjustment pay has been recovered." The verbiage "refund" implied that the member may repay by remitting funds contrary to statutory legislation.	Update
040202.B	Consolidated subparagraphs 1 and 2.	Update
040301	Updated paragraph by striking the word "refund" wherever it appears and replacing with the word "recoupment".	Update

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
040302	Merged contents of subparagraph 040302.A into paragraph 040302.	Update
040302.A 040302.B	Deleted subparagraphs A and B. Contents of subparagraph B were added to paragraph 040901, with the exception of that part which inferred to the refund by direct remittance.	Delete
040502.A.3	Added exceptions to the recoupment of disability severance pay as stated in Volume 7A, Chapter 35, paragraph 350406.	Add
040602	Deleted information in this paragraph and relocated it to Chapter 23. Added sentence to redirect reader to new location in Chapter 23 to obtain information on beneficiary payment procedure.	Delete
040603.C.2	Inserted the word "both" between the words "from" and "the". Replaced the words "with any residual" with "and the".	Update
040801	Updated paragraph by striking December 31, 2012 and inserting December 31, 2018 as amended by Public Law 112-81, section 526, (NDAA FY 2012).	Update
040901	Added the following at the end of this paragraph, "The member may authorize deduction in an amount greater than that required by law." (Formerly subparagraph 040302.B.)	Update
040902.A	Added the following after the word "deducted", "to recoup the separation payment".	Update
040902.B	Deleted the first two sentences and replaced with "The gross monthly amount of the VA disability compensation will be subtracted from the gross monthly amount of the retired pay subject to recoupment."	Update
040904.A	Added the words "or adjusted gross" following the word "gross".	Update
040904.A	Added the following at the end of sentence, "except when the member has authorized withholding at a higher monthly rate."	Update
Bibliography	Added corresponding United States Codes amended by listed public laws.	Update

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CHAPTER 4

RECOUPMENT OF SEPARATION PAYMENTS

0401 GENERAL PROVISIONS

040101. Purpose

This chapter provides guidance for the recoupment of payments made to certain members upon involuntary discharge, release from active duty, disability separation, or voluntary separation; when members are later placed on a retired list.

040102. Definitions

A. Readjustment Pay. This pay is a lump-sum payment to members of a Reserve Component of any Military Service, members of the Army or Air Force without component, and Regular Army commissioned officers below the grade of O-4 who were on active duty (other than for training) on September 14, 1981, and were involuntarily released after completing at least 5 years of continuous active duty and who did not qualify for retirement. This pay was superseded by Separation Pay.

B. Nondisability Severance Pay. This pay is a lump-sum payment to certain commissioned and warrant officers, who were on active duty (other than for training) on September 14, 1981, and were involuntarily discharged from active duty under certain conditions. This pay was superseded by Separation Pay.

C. Separation Pay. This pay is a lump-sum payment to a member of the Uniformed Services who is discharged involuntarily or released from active duty and who does not qualify for retired pay. For more information, see Volume 7A, Chapter 35.

D. Disability Severance Pay (DSP). DSP is a lump-sum payment to a member of the Uniformed Services who is involuntarily separated from the military service for minor physical disability and who does not qualify for disability retired pay.

E. Voluntary Separation Incentive (VSI). VSI is an annual payment to members who separated voluntarily from service before December 31, 2001, under conditions prescribed by the Secretary of the Military Department concerned (or designee). This pay was superseded by Voluntary Separation Pay (VSP).

F. Special Separation Benefit (SSB). SSB is a lump-sum payment to members who separated voluntarily from service before December 31, 2001, under conditions prescribed by the Secretary of the Military Department concerned (or designee). This pay was superseded by Voluntary Separation Pay.

* G. Voluntary Separation Pay (VSP). VSP is an annual or lump-sum payment to certain members to encourage them to voluntarily leave active duty. The authority to separate

a member in conjunction with VSP applies for the period October 17, 2006 through December 31, 2018.

H. Recoupment. The term recoupment is used for the recovery of readjustment pay, nondisability severance pay, separation pay, disability severance pay, VSI, SSB, or VSP previously received, due to entitlement to retirement benefits based on the same active service.

I. Reserve Special Separation Pay (RSSP). RSSP is payable to Reserve members who had completed more than 20 years of service but who had not reached age 60. Payment of RSSP is not subject to recoupment from retired pay. For more information see Volume 7A, Chapter 58.

0402 READJUSTMENT PAY

040201. General Provisions

* A. A member who received readjustment pay before September 15, 1981, because of involuntary discharge or release from active duty after June 28, 1962, and who later qualifies for retired pay under title ***10*** or ***14*** of the United States Code (U.S.C.) upon completion of 20 years of active service, must have the retired pay withheld until a total of 75 percent of the readjustment pay has been recovered. For this purpose, a member who transferred to the Fleet Reserve or the Fleet Marine Corps Reserve is considered to have "qualified for retired pay under a statute authorizing retirement upon completion of 20 years of active service," even though such transfer may have occurred after completion of less than 20 years of actual service. See Table 4-1.

* B. A Regular Army commissioned officer in the grade of O-1, O-2, or O-3 who received readjustment pay from December 30, 1974 through December 30, 1977, and who later qualifies for retired pay upon completion of 20 years of active service, must have the retired pay withheld until a total of 75 percent of the readjustment pay has been recovered. See Table 4-1.

* C. A member of the Uniformed Services who served on active duty as a temporary officer and held a Reserve officer status upon release from active duty, and received readjustment pay after June 28, 1962 but before September 15, 1981, and who, later qualifies for retired pay upon completion of 20 years of active service, must have the retired pay withheld until a total of 75 percent of the readjustment pay has been recovered. See Table 4-1.

* D. A member who received readjustment pay on September 15, 1981 or later, and who later qualifies for retired pay, must have the retired pay reduced until the full amount of the readjustment pay has been recovered. See subparagraph 040202.B of this chapter.

040202. Recoupment of Readjustment Pay

A. Readjustment Pay Received Before September 15, 1981

1. A total of 75 percent of the gross readjustment pay without interest is deducted immediately from retired pay.

2. There is no entitlement to retired pay until 75 percent of the lump-sum readjustment pay is recovered. Cost for coverage under the Survivor Benefit Plan must be paid by direct remittance to the servicing finance activity during the period that the member is not entitled to retired pay.

* B. Readjustment Pay Received September 15, 1981 or Later. A member who received readjustment pay on September 15, 1981 or later, and who subsequently qualifies for retired pay shall have the retired pay reduced in accordance with section 0409 until the full amount of the readjustment pay has been recovered.

0403 SEVERANCE PAY – NONDISABILITY

*040301. General Provisions

Before September 15, 1981, certain provisions of law governing separation from the active list required recoupment of severance pay upon a member's retirement. See Table 4-2 for conditions governing recoupment of severance pay received before September 15, 1981. Members who receive severance pay on September 15, 1981 or later, and who subsequently qualify for retirement, are subject to recoupment under paragraph 040302 of this chapter.

*040302. Recoupment of Nondisability Severance Pay

Lump-sum severance pay must be recouped by deducting from retired pay each month an amount, as specified in section 0409, until the total deducted equals the amount of the severance pay received.

0404 SEPARATION PAY

040401. General Provisions

Separation pay has replaced readjustment pay and non-disability severance pay for involuntary separation of all members of the active and reserve forces other than those separated for disability. For information on eligibility requirements for separation pay, see Volume 7A, Chapter 35.

040402. Recoupment of Separation Pay

A. A member who received separation pay and who later qualifies for retired or retainer pay under Titles ***10*** or ***14*** of the U.S.C., shall have deducted from payment of such retired or retainer pay a monthly installment as specified in section 0409.

B. A member who receives separation pay, and who also is eligible for disability compensation from Department of Veteran Affairs (VA), will repay an amount equal to the total amount of separation pay received from the disability compensation awarded. No deduction for separation pay shall be made from disability compensation based on service performed after the separation pay was received.

0405 DISABILITY SEVERANCE PAY

040501. General Provisions

Upon determination by the Secretary concerned that a member of the armed forces is unfit to perform the duties of his office, grade, rank or rating because of physical disability rated less than 30 percent, the member may be separated with severance pay. For information on eligibility requirements for disability severance pay, see Volume 7A, Chapter 35, section 3504.

040502. Recoupment of Disability Severance Pay

When the Secretary concerned approves a recommendation from the Physical Disability Board of Review (PDBR) to award military disability retirement, action must be taken to recoup any disability severance pay previously paid to that member. Recoupment will be consistent with the parameters established in section 0409, except as noted in paragraphs 040502.A and B.

A. In most cases, members entitled to disability severance pay will also qualify for VA disability compensation. In order to avoid duplicate collection, the amount of disability severance pay to be recouped shall be reduced by any amount already separately recovered by VA through reduction of VA disability compensation. In such cases, the amount deducted by the VA from the disability compensation shall reduce the gross amount of disability severance pay to be recouped by the Department of Defense (DoD).

1. To determine the retroactive entitlement of retired pay that is payable to the member, offset the entire VA disability compensation amount that is awarded (prior to any reduction of such VA disability compensation to offset the collection of disability severance pay) from the total retroactive retired pay entitlement. This will result in an amount of VA disability compensation plus military retired pay paid to the member that is equal to that which the member would have been entitled to had he/she originally been retired instead of separated.

2. The entire amount of any retroactive retired pay and/or Combat-Related Special Compensation (CRSC) entitlement shall first be applied to any required recoupment of disability severance pay without regard to the percentage limitations specified in

section 0409. In determining the retroactive entitlement to retired pay, service members must be treated as though they were retired on the original date of separation, without regard to any disability severance payment received or any reduction in VA disability compensation to recoup previously paid disability severance pay. In order to determine the amount subject to recoupment, as well as any amount payable to a member, the Defense Finance and Accounting Service (DFAS) shall determine the amount of retired pay that would have been available had the member originally been retired instead of separated. The total amount to be recouped will be the full gross amount of disability severance pay originally paid to the member.

* 3. As stated in subparagraph 040502.A, VA deducts disability severance compensation from any VA compensation for the same disability to which the member or member's dependents become entitled under any law administered by VA. 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 combat zone or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense.

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

B. Members shall be promptly notified that future payments of disability retired pay will be subject to reduction until the gross amount of the disability severance pay has been recovered.

040503. Survivor Benefit Plan (SBP) Participation

A. Members whose record is corrected to a military disability retirement under the PDBR process, and who were married on the retirement effective date, shall receive automatic full spouse coverage under the SBP, unless the member makes an affirmative election on a Department of Defense (DD) Form 2656 (Data for Payment of Retired Personnel) for less than full spouse coverage within 90 days of being provided a DD Form 2656. If the member elects less than full spouse coverage, including an election not to participate in SBP program or an election for child-only coverage, the election must include a spousal concurrence signed by the person who was the member's spouse on the effective retirement date, as determined by the PDBR, unless such person is deceased. If the member was married on the effective retirement date, but has since divorced that spouse, the member must still submit a concurrence to elect less than full spouse coverage signed by the person who was the member's spouse on the effective retirement date, unless the whereabouts of the member's now former spouse are unknown and the member submits an affidavit verifying that the former spouse's whereabouts are unknown, along with a copy of the parties' divorce decree. The spouse's concurrence on the DD Form 2656 must be signed on or after the date of the member's signature and otherwise conform to an election regarding spouse coverage.

B. A spouse who was married to the member on the effective date of retirement, who was subsequently divorced from the member and who has not signed the spousal

concurrence on DD Form 2656, has 1 year from the date of the approved PDBR recommendation authorizing disability retirement to make a deemed former spouse SBP election, provided there is already in effect a court-approved written agreement or court order requiring the member to elect to provide such an annuity to the former spouse.

C. If the member had a former spouse on the effective retirement date, the member may elect former spouse SBP coverage. There is no requirement for spousal concurrence for a former spouse election, although the member's current spouse should be provided written notice of the former spouse election. A member who was not married and had no dependent child on the effective date of retirement, who remarries or acquires a dependent child subsequent to the effective date of retirement, may elect to participate in the SBP. The member has 1 year from either the date of acquiring a spouse or dependent child or the date of the approved PDBR recommendation authorizing disability retirement, whichever is later.

D. If the member had no spouse or dependent child on the effective retirement date and is not otherwise required to provide former spouse coverage, the member may elect to provide an annuity for an insurable interest person, if such individual would have been qualified on the effective date of retirement.

E. Monthly SBP premiums for automatic or properly elected coverage must be charged from the effective retirement date, with the exception that no SBP premiums will be due if the member elects not to participate in the SBP program with proper spousal concurrence within 90 days of the PDBR action awarding a disability retirement or 90 days of the date that the member has been provided a DD Form 2656 to elect SBP participation.

F. If a member, who is retired for disability as a result of an approved PDBR action, had previously made a Reserve Component Survivor Benefit Plan (RCSBP) election, that RCSBP election shall be considered of no effect if the PDBR action is approved prior to the date that the member would have become eligible for reserve retired pay under ***10 U.S.C., Chapter 1223***.

0406 VOLUNTARY SEPARATION INCENTIVE (VSI)

040601. General Provisions

Certain members who voluntarily separated before December 31, 2001 received annual payments of VSI based on their grade or rank at separation and number of years of service creditable for retirement purposes. For eligibility requirements, see Volume 7A, Chapter 35.

*040602. Beneficiary Payment Procedures

Upon the death of the member, the DFAS-Cleveland Site will pay all remaining installments to the designated beneficiaries. If a valid designation was not made or received, then distribute payments according to the legal order of precedence. For more information regarding beneficiary payment procedures see Chapter 23.

040603. Recoupment of VSI

A. A member who has received VSI, who later qualifies for retired or retainer pay under Titles ***10*** or ***14*** of the U.S.C., shall have deducted from each payment of such retired or retainer pay by a monthly installment not to exceed 40 percent of the member's gross retired pay as specified in paragraph 040904. The gross retired pay amount paid does not include any amounts offset because of the member's receipt of military compensation between the date of separation which caused the VSI to begin and the date that he or she became eligible for receipt of retired pay.

B. In a case in which a member is receiving simultaneous VSI and retired pay, the member may elect to terminate the receipt of VSI. Such election is permanent and irrevocable. Under these circumstances, effective after such election to terminate VSI, the rate of monthly recoupment from retired pay of VSI received in accordance with subparagraph 040502.A shall be reduced. The rate of recoupment shall be reduced in accordance with the following formula: Divide the total number of months that would not be paid as a result of the member's election to terminate the VSI by the number of months that the VSI was scheduled to be paid. The resulting fraction is a percentage rate of reduction that is multiplied by the percentage in subparagraph 040502.A to compute a percentage that is the proportionate rate of reduction; and, subtract the proportionate rate of reduction from the original rate of reduction in subparagraph 040502.A to determine the reduced rate of recoupment from retired pay.

C. A member who is receiving VSI payments shall not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by VA, but there shall be deducted from VSI payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from VSI payments for any disability compensation received because of an earlier period of active duty if the VSI is received because of discharge or release from a later period of active duty.

1. Any reduction in VSI as a result of receipt of VA disability compensation shall reduce the gross amount of VSI paid, as described in subparagraph 040602.A, and shall not be recovered through recoupment from retired pay.

* 2. In a case in which a member is receiving simultaneous VSI and retired pay, the amount of any VA disability compensation shall be deducted from both the retired pay and the VA disability compensation deducted from the VSI payment. See paragraph 040903 for the effect on entitlement to concurrent receipt programs.

0407 SPECIAL SEPARATION BENEFIT (SSB)

040701. General Provisions

A member who separated voluntarily from a Military Service before December 31, 2001 could, under conditions prescribed by the Secretary concerned, elect to receive a SSB.

040702. Recoupment of SSB

If a member who has received an SSB payment later qualifies for retired or retainer pay under Titles ***10*** or ***14*** of the U.S.C., the gross amount of SSB received shall be recouped at a monthly installment from each payment of such retired or retainer pay as specified in section 0409.

0408 VOLUNTARY SEPARATION PAY (VSP)

*040801. General Provisions

Certain members who voluntarily separate between October 17, 2006 and December 31, 2018, may receive a lump-sum VSP in an amount up to four times the full amount of the separation pay a member may receive (see Volume 7A, Chapter 35, section 3509).

040802. Recoupment of VSP

A. A member who is paid VSP and who later qualifies for retired or retainer pay under Titles ***10*** or ***14*** of the U.S.C., shall have deducted from each payment of such retired or retainer pay a monthly installment specified by the Secretary of the Military Department concerned (or designee). The total amount of retired or retainer pay deductions shall equal the total amount paid to the member.

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

C. The Secretary of the Military Department concerned (or designee) 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. Upon approval, the Military Department concerned shall forward a copy of all waivers to the Deputy Under Secretary of Defense, Military Personnel Policy.

D. Waivers by the Secretary of the Military Department concerned (or designee) must be determined on a case-by-case basis, which requires identification of the individual member, the amount of debt, and the circumstances of each case. The Principal Deputy Under Secretary of Defense, Personnel and Readiness, shall review, in coordination with the DoD Office of General Counsel, any waiver by a Secretary of a Military Department (or designee) that applies to more than one individual. This review process shall ensure a consistent consideration of the equities in such cases throughout DoD.

0409 RECOUPMENT OF SEPARATION PAY, SEVERANCE PAY, OR READJUSTMENT PAY

*040901. Members Affected

Service members who received separation pay, severance pay, or readjustment pay under any provision of law based on service in the Armed Forces, and who subsequently qualify under Titles ***10*** or ***14*** of the U.S.C. for retired or retainer pay shall have deducted an amount equal to the total amount of separation pay, severance pay, and readjustment pay without regard to any withholding for taxes. Such deductions will be made from each payment of retired or retainer pay until the total amount recouped is equal to the total amount of separation pay, severance pay, or readjustment pay. The member may authorize deduction in an amount greater than that required by law.

040902. Veterans Administration (VA) Disability Compensation

* A. In some cases, members entitled to disability retired pay will also qualify for VA disability compensation. In such cases, the amount deducted to recoup the separation payment by VA shall reduce the gross amount of separation, severance or readjustment pay to be recouped by DoD.

* B. The gross monthly amount of VA disability compensation will be subtracted from the gross monthly amount of the retired pay subject to recoupment. This adjusted gross retired pay will be used in place of gross retired pay for members with a VA waiver. In cases where the amount of VA disability compensation award is greater than military retired pay, recoupment of disability severance pay will be suspended until, when or if, the amount of gross retired pay exceeds the monthly VA disability compensation except as provided in paragraph 040903.

040903. Concurrent Receipt Programs

Members who meet all the eligibility criteria for the CRSC program or the Concurrent Retired and Disability Pay (CRDP) programs shall have their CRSC or CRDP entitlement computed based on the full amount of retired pay and the full amount of the applicable VA disability compensation (i.e., before any reductions for recoupment of separation, severance, or readjustment pay). In other words, the CRSC or CRDP entitlement amount shall be computed without regard to the recoupment of separation, severance, or readjustment pay. The CRSC or CRDP entitlement shall be added to the adjusted gross retired pay remaining after VA disability compensation offset in determining the amount of the monthly disability severance pay recoupment and shall, along with the adjusted gross retired pay, be available for reduction.

040904. Recoupment Rates

The maximum rate of recoupment shall be no more than an amount equal to 40 percent of the member's gross retired pay.

* A. The monthly recoupment rate shall be recomputed when gross or adjusted gross retired pay is increased for cost-of-living adjustments, except when the member has authorized withholding at a higher monthly rate.

B. No income tax withholding is made from retired pay used for satisfying the recoupment of separation pay, severance pay, or readjustment pay. Neither is such pay included on Internal Revenue Service Form 1099-R (Distribution from Pensions, Annuities, Retirement Profit Sharing Plans, IRAs, Insurance Contracts, etc.), nor is it reported as taxable income. Only the difference between the amount of the recoupment and gross retired pay is to be considered as the gross taxable income.

C. DFAS shall provide written notification to members subject to recoupment. This notice is to be sent 90 days in advance of the initial collection from their retired pay. It shall provide the current outstanding balance and the proposed monthly recoupment amount and explain the options of a more lenient repayment request if the member asserts that the maximum rate of recoupment imposes a financial hardship. (See paragraph 040906.) The written notification will also explain the requirement for concurrent recoupment of the separation or severance pay by both DFAS and the VA.

040905. Exceptions

A. Those members whose recoupment rates were suspended in May 2009, by the direction of the Office of the Under Secretary of Defense (Comptroller) memorandum, dated May 18, 2009, and whose recoupment rates under the previous formula were less than the new maximum percentage shall be reinstated at the previously established lower rate.

B. Members may, at their personal direction, request to increase their recoupment to a rate greater than maximum, in order to shorten the term of recoupment.

040906. Financial Hardship

A member whose retired pay is subject to recoupment may, at any time, request a review of the amount recouped based upon materially changed circumstances such as disability, divorce, or illness that results in the imposition of undue financial hardship on the member and the member's dependents. A member requesting such a review shall submit the basis for claiming that the current rate of recoupment results in an undue financial hardship along with supporting documentation. DFAS shall consider any information submitted and make a determination in accordance with the following procedures and standards.

A. A rate of recoupment results in an undue financial hardship for a member and his dependents if the recoupment amount prevents the member from meeting the costs necessarily incurred for essential subsistence expenses of the member and the member's dependents. These essential subsistence expenses include costs incurred for food, housing, necessary public utilities, clothing, transportation and medical care.

B. In determining whether the recoupment amount prevents the member from meeting the essential subsistence expenses described in subparagraph 040906.A, DFAS will consider the following:

1. The income from all sources of the member, the member's spouse, and dependents;

2. Whether these essential subsistence expenses have been minimized to the greatest extent possible; and

3. The extent to which the member and the member's spouse and dependents have other exceptional expenses that should be taken into account and whether these expenses have been minimized.

C. If an undue financial hardship is found, the recoupment rate will be reduced based on the member's financial condition. Any reduction of the recoupment rate will be effective for 1 year. Upon the expiration of 1 year, the recoupment rate will revert back to 40 percent unless the member has reapplied for a reduction in rate and can again demonstrate financial hardship.

D. DFAS shall adjust the rate of recoupment based on the following formula:

1. Subtract the total monthly living expenses from the total monthly income. The result is the net income available for monthly recoupment.

2. The net income available for monthly recoupment shall be divided by the gross monthly retired pay to determine the actual recoupment percentage. If the result is 40 percent or greater, the recoupment is limited to 40 percent. A result of 10 percent or less limits the recoupment to 10 percent. Any factor within the range of 10 to 39 percent shall be applied as the actual percentage with any fractional portions of a percentage point to be rounded down to the lower whole percentage point.

Figure 4-1 provides two typical calculation examples.

Figure 4-1. Financial Hardship Calculation Examples

EXAMPLE A:

Gross Monthly Income:		**Actual Monthly Expenses:**	
Member's income	$ 3,460.00	Rent/Mortgage	$ 1,500.00
Spouse's income	$ 500.00	Electric	$ 80.00
Total Income	$ 3,960.00	Natural Gas	$ 125.00
		Telephone	$ 35.00
		Water	$ 20.00
		Food	$ 400.00
		Car Payment	$ 280.00
		Health Care	$ 500.00
		Total Expenses	$ 2,940.00

Total Income	$ 3,960.00	
Total Expenses	$ 2,940.00	
Net Income	$ 1,020.00	(Available for recoupment)

Divide the member's Net Income ($1,020.00) by the gross retired pay ($3,000.00) which equals .34 or a recoupment rate of 34%. Note: The member's income of $3,460.00 includes other income of $460.00 in addition to retired pay.

EXAMPLE B:

Gross Monthly Income:		**Actual Monthly Expenses:**	
Member's income	$ 2,000.00	Rent/Mortgage	$ 800.00
Spouse's income	$ 500.00	Electric	$ 80.00
Total Income	$ 2,500.00	Natural Gas	$ 125.00
		Telephone	$ 35.00
		Water	$ 20.00
		Food	$ 200.00
		Car Payment	$ 280.00
		Health Care	$ 900.00
		Total Expenses	$ 2,440.00

Total Income	$ 2,500.00	
less: Total Expenses	$ 2,440.00	
Net Income	$ 60.00	(Available for recoupment)

Divide the member's Net Income ($60.00) by the gross retired pay ($2,000.00) which equals .03. In this case, it defers to the minimum recoupment rate of 10% or $200.00 as referenced in subparagraph 040906.D.2.

Figure 4-1. Financial Hardship Calculation Examples

Table 4-1. Recoupment of Readjustment Pay Received Before September 15, 1981(note 1)

	A	B	C	D
RULE	**If a member was a**	**and received before September 15, 1981 (note 1)**	**and later qualifies for retirement**	**then readjustment pay is**
1	Reserve member (or member of the Army or Air Force without component (temporary))	readjustment payment upon involuntary release after at least 5 years of continuous active service after June 28, 1962	after 20 years of active service (note 2)	recouped immediately upon retirement at the rate of 75 percent of the gross readjustment pay (note 3).
2	regular Army officer below the grade of O-4	readjustment payment upon involuntary release after at least 5 years of continuous active service because of a reduction in force for the period December 30, 1974 through December 30, 1977		
3	temporary officer on active duty and held a Reserve officer status	readjustment payment upon involuntary release after at least 5 years of continuous active service after June 28, 1962	for disability after a period of enlisted service and also qualifies for retirement for 20 years of active service	

NOTES:

1. For recoupment of readjustment pay received September 15, 1981, or later, see subparagraph 040202.B.
2. Includes transfer to Fleet Reserve or Fleet Marine Corps Reserve with less than 20 years of active service if otherwise qualified.
3. Payment of readjustment pay before June 28, 1962 is not recouped from retired pay.

Table 4-1. Recoupment of Readjustment Pay Received Before September 15, 1981

Table 4-2. Recoupment of Severance Pay Received Before September 15, 1981

	A	B	C	D	E
RULE	**If a member was**	**and was discharged**	**and received before September 15, 1981 (note)**	**and later qualifies for**	**then**
1	a Regular commissioned Air Force or Army officer	because of failure of selection for promotion to grade O-3 or above	severance pay	retired pay	do not deduct severance pay.
2		because of moral or professional dereliction, or unsatisfactory performance			
3	a Regular commissioned officer of the Navy, Marine Corps, or Coast Guard	because of unsatisfactory performance with less than 20 years			deduct full amount of severance pay.
4		because of failure of selection for promotion to grade O-3 or above			
5	a Regular warrant officer of any Military Service	because of unfitness or unsatisfactory performance of duty and did not reenlist			
6		because of failure of selection for promotion and did not reenlist or was not retained on active duty as a regular warrant officer			
7	an officer of the Navy or Marine Corps	because found not qualified from causes arising from own misconduct upon reexamination for promotion			do not deduct severance pay.

Table 4-2. Recoupment of Severance Pay Received Before September 15, 1981

RECOUPMENT OF SEVERANCE PAY RECEIVED BEFORE SEPTEMBER 15, 1981 (note)					
	A	B	C	D	E
RULE	If a member was	and was discharged	and received before September 15, 1981 (note)	and later qualifies for	then
8	a woman officer of the Regular Navy or Regular Marine Corps in grade O-3	because she is not on a promotion list and has completed 13 years of active service in the Navy or Marine Corps	severance pay	retired pay	do not deduct severance pay.
9	a woman officer of the Regular Navy or Regular Marine Corps in grade O-2	because she is not on a promotion list and has completed 7 years of active service in the Navy or Marine Corps			
10	an ensign in the Navy or a second lieutenant in the Marine Corps	because found not professionally qualified upon reexamination for promotion			
11	a Reserve member of any Military Service	without the member's consent before active duty agreement under 10 U.S.C. 12311(a) expired			
12	a Regular commissioned officer of the Coast Guard	because performance is below standard or because of moral or professional dereliction			

NOTE: For recoupment of severance pay received September 15, 1981 or later, see paragraph 040302.

Table 4-2. Recoupment of Severance Pay Received Before September 15, 1981 (Continued)

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040102.D	10 U.S.C. 1212
040102.E	10 U.S.C. 1175
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0407 – SPECIAL SEPARATION BENEFIT (SSB)

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VOLUME 7B, CHAPTER 5: "EMPLOYMENT"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 June 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted to comply with current administrative instruction.	Update
050202.C	Added subparagraph on restoration of retired pay and or annuity.	Add
050203.A and B	Added subparagraphs on convictions that may affect receipt of retired pay and or annuity.	Add

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CHAPTER 5

EMPLOYMENT

0501 CONFLICT-OF-INTEREST

050101. General

A. Conflict-of-interest statutes are intended to safeguard the integrity of public administration and prevent government officials from using their positions and influence for personal gain.

B. Conflict-of-interest statutes applicable in general to those whose government service has ended accomplished these purposes by:

1. Imposing limitations in some cases upon the employment of former Department of Defense (DoD) procurement personnel by Defense contractors;

2. Requiring the employment of former DoD procurement personnel by Defense contractors in other instances be reported;

3. Restricting the activities of former DoD officers and employees in representing or assisting their employers in claims-related matters or becoming personally involved in the process of "selling" to the government.

C. A comprehensive digest of laws, including conflict-of-interest laws applicable to retired military personnel, is set forth in ***DoD 5500.7-R***, "Joint Ethics Regulation," Chapters 5 and 9, and Appendix A.

050102. Withholding Retired Pay

Retired pay may be withheld or forfeited when the employment falls under certain categories of activities prohibited under conflict-of-interest laws.

050103. Forfeiture of Annuities and Retired Pay

Although violation of conflict-of-interest laws may result in the imposition of criminal penalties (including fines and imprisonment) or administrative fines and sanctions, entitlement to military retired pay is directly affected only in circumstances provided under subparagraphs A and B of this paragraph and section 0502 of this chapter.

A. A retired Regular officer is convicted of "selling" during any period prior to October 13, 1994. "Selling," as an activity under the conflict-of-interest laws, is prohibited during any time prior to October 13, 1994 under Title 18, United States Code, section 281(a) (18 U.S.C 281(a)). A retired Regular officer may not, during the 2-year period following retirement, represent any person in the sale of anything to DoD in which the officer holds retired status. This

statute has been interpreted by the Department of Justice as prohibiting a retired Regular officer from representing any party other than himself or herself in connection with a contract for the sale of services or for the sale of supplies. Since an officer is disqualified from holding any office, or position of honor, trust, or profit of the United States (U.S.) as a result of conviction, entitlement to retired pay ceases.

Note: Title 18 U.S.C. 281(a) has been repealed.

B. The prohibition against selling has been broadly interpreted to include virtually all activities involved in the selling process and to apply in any case reasonably within the scope of the statute where the conduct at which it was directed could arise.

0502 CONVICTION FOR CRIMES AFFECTING RETIRED PAY – HISS ACT VIOLATIONS

050201. General

Entitlement to retired pay is directly affected when a retiree is convicted of violating the Hiss Act, ***5 U.S.C. 8311 – 8322***.

*050202. Violation of 5 U.S.C. 8312

The receipt of retired pay by the retired member, or receipt of the annuity by the retired member's survivor or beneficiary is prohibited, subject to certain exceptions described in section 8311(2) or (3) of title 5:

A. If a retired member is convicted of any crime as described in 5 U.S.C. 8312(b) after September 1, 1954, then payment is prohibited.

B. If a retired member is convicted of any crime as described in 5 U.S.C. 8312(c) after September 26, 1961, then payment is prohibited.

* C. If an individual who was convicted of an offense named by 5 U.S.C. 8312; or an offense constituting a violation of section 8314 or 8315 of Title 5; is pardoned by the President, then, in accordance with ***5 U.S.C. 8318***, the right of the individual and his survivor or beneficiary to receive annuity or retired pay previously denied under this paragraph is restored as of the date of the pardon or the effective date of restoration prescribed by the President.

* D. After January 6, 1996, the spouse of an individual whose annuity or retired pay is forfeited under 5 U.S.C. 8312 or ***8313*** shall be eligible for spousal pension benefits if the U. S. Attorney General determines that the spouse fully cooperated with the Federal authorities in the conduct of a criminal investigation and subsequent prosecution of the individual which resulted in the forfeiture.

*050203. Convictions Under Other Statutes

* A. An individual, or his or her survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in ***5 U.S.C. 8311***(2) and (3), if the individual before, on, or after September 1, 1954:

1. Refuses, or knowingly and willfully fails to appear, testify, or produce documents relating to his or her service as an employee, before a Federal grand jury, U. S. court, court-martial, or congressional committee, in a proceeding concerning past or present relationship with a foreign government; or a matter involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the U. S., according to ***5 U.S.C. 8314***,

2. Knowingly and willfully makes false, fictitious, or fraudulent statements or representations, concealing material facts concerning his or her past or present membership, affiliation, association with, or support of the Communist Party, chapter, branch, or subdivision, in or outside the U. S., or other organization, party, or group advocating:

a. The overthrow, by force, violence, or other unconstitutional means, of the Government of the United States; or

b. Establishment, by force, violence, or other unconstitutional means, of a Communist totalitarian dictatorship in the United States; or

c. The right to strike against the United States;

as stated in ***5 U.S.C. 8315***.

* B. The prohibition on payment of annuity or retired pay under subparagraph 050203.A.1, applies to the period after the date of the failure or refusal of the individual, or after September 1, 1954, whichever is later.

C. Fines levied for convictions under other statutes may result in debts to the United States that may be collected in accordance with Chapter 28 of this volume. However, they do not affect a convicted member's entitlement to receive retired pay.

0503 FOREIGN GOVERNMENT EMPLOYMENT

050301. Background

A. Employment of retired members by a foreign government is restricted. The primary restriction is in Article I, section 9, clause 8 of the Constitution of the United States, which reads: "No Title of Nobility shall be granted by the United States: And no person holding any Office of Profit or Trust under them, shall, without the Consent of Congress, accept any present, emolument, office, or title, of any kind whatever, from any King, Prince, or foreign state."

The Comptroller General interpreted this to prohibit employment of all retired personnel, including members of the Fleet Reserve or Fleet Marine Corps Reserve, by a foreign government unless congressional consent is granted.

B. The conditions for accepting foreign employment were modified by Public Law 95-105, section 509(a)(1) and (2). The Congress granted consent for retired members to accept employment or compensation from foreign governments if the members obtain the approval of the Secretary of the Military Department concerned (or designee) and the Secretary of State before accepting employment or compensation.

1. The approval by the Secretary of the Military Department concerned (or designee) and Secretary of State for a member to accept foreign employment is only effective prospectively from the date the approval is granted and may not be made retroactively to authorize foreign employment and compensation received before approval is granted.

2. The compensation received from the foreign government without approval is considered received by the retired member for the United States. A debt in favor of the government is created which is to be collected by withholding from retired pay. The debt is an amount equal to the compensation received from the foreign government. When the compensation earned during the period of unauthorized employment exceeds the amount of retired pay accrued during the same period, only the retired pay amount may be collected.

050302. Legislative History

A. The history of the constitutional provisions under consideration indicates that the condition intended to be avoided is the exercise of undue influence by a foreign government upon retired members of the United States.

B. In determining the existence of an employer-employee relationship between a retired member and a foreign government, or instrumentality thereof, the common law rules of agency are applied to determine whether such instrumentality has the right to control and direct an employee in performance of his or her work and the manner in which the work is done.

C. There are at least five criteria that may be considered in determining whether the relationship of employer and employee exists. They are:

1. The selection and engagement of the employee.

2. The payments of wages.

3. The power to discharge.

4. The power to control the employee's conduct.

5. The relationship of the work to the employer's business, whether the work is a part of the regular business of the employer.

D. The decisive test to determine the existence of an employer-employee relationship is whether the employer has the right to control and direct the employee in the performance of his or her work and in the manner in which the work is to be done. Additionally, the Comptroller General has ruled that a corporation incorporated in the United States, which maintains a separate identity and appears to be a separate legal entity from its dominant shareholder, does not necessarily become an instrumentality of a foreign government when its principal shareholder is a foreign corporation substantially owned by a foreign government.

050303. Types of Employment

A. Employment by educational or commercial institutions owned, operated, or controlled by a foreign government is included within the scope of this restriction.

B. Employment with a foreign government which requires acquisition of foreign citizenship results in forfeiture of entitlement to retired pay. See Chapter 6 of this volume for additional information.

C. Employment by international agencies, such as the United Nations, is not prohibited.

050304. Adjustment to Retired Pay

A. Withhold retired pay in an amount equal to the amount of compensation received from the foreign government. Compensation includes salary, free transportation, household goods shipments at employer's expense, housing allowances, and gifts. To determine the amount to be withheld from a member because of the nonmilitary elements of compensation, the value should be set fairly, considering the actual value or estimates of the compensation received. A gift of more than minimal value is deemed to have been accepted on behalf of the United States. It is deposited by the donee for use and disposal as property of the United States.

B. Amounts of retired pay withheld from members of the Uniformed Services who accept foreign employment without congressional consent, as required by the United States Constitution, should be treated as though the member has no entitlement to them and should not be "held in trust" for them pending possible future congressional consent to their receipt.

0504 FEDERAL JUDGES

050401. General

A. ***Title 10, U.S.C. 945***. A person who has completed a term of service as a judge of the U.S. Court of Appeals for the Armed Forces is eligible for a retirement annuity upon separation from civilian service in the Federal Government. Retirement annuities and survivor annuities for judges retired from the United States Court of Appeals for the Armed Forces are paid from the DoD Military Retirement Fund.

B. ***Title 28, U.S.C. 371***. Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after meeting the following age and service requirements, whether continuous or otherwise; and during the remainder of his or her lifetime, receive an annuity equal to the salary they were receiving at the time they retired.

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

C. Retention of Office After Retirement From Active Service. Any justice or judge of the United States appointed to hold office during good behavior may retain the office, but retire from regular active service after meeting the age and service requirements, whether continuous or otherwise; and during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements in ***28 U.S.C. 371(e)***.

050402. Limitations

A. Title 10, U.S.C. 945. A person who is receiving a retirement annuity by reason of service as a judge of the United States Court of Appeals for the Armed Forces, and who subsequently is appointed to a position in the Federal Government, is entitled to the higher of the retirement annuity as a judge or the pay for the Federal Government position.

B. Title 28, U.S.C. 371. A member who became a judge could not receive military retired pay while performing regular judicial active service as a judge. On and after October 1, 1999, this restriction has been repealed and military retired pay shall be resumed without reduction.

0505 SERVICE IN MILITARY FORCE OF NEWLY DEMOCRATIC NATIONS

050501. Determination of Newly Democratic Nation

The Secretary of the Military Department concerned (or designee) and the Secretary of State shall jointly determine whether a nation is a newly democratic nation.

050502. Consent of Congress

A. Consent. The Congress consents to a retired member of the Uniformed Services accepting employment by, or holding an office or position in, the military forces of a newly democratic nation; and accepting compensation associated with such employment, office, or position.

B. Approval Required. The consent provided for a member of the Uniformed Services to accept employment or hold an office or position shall apply to a retired member only if the Secretary of the Military Department concerned (or designee) and the Secretary of State jointly approve the employment or the holding of such office or position.

050503. Continued Entitlement to Retired Pay and Benefits

The eligibility of retired members to receive retired or retainer pay and other benefits arising from the retired member's status as a retired member of the Uniformed Services may not be terminated by reason of employment or holding of an office or position consented to in paragraph 050502. The eligibility of such retired member's dependents to benefits may not be terminated based on the retired member's status consented to under this section.

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050401.B	28 U.S.C. 371
050401.C	28 U.S.C. 371(e)
050402.A	10 U.S.C. 945(f)

050402.B	28 U.S.C. 371(e), as amended by Public Law 106-398, section 654, October 30, 2000

0505 – SERVICE IN MILITARY FORCE OF NEWLY DEMOCRATIC NATIONS

050501	10 U.S.C. 1060
050502	10 U.S.C. 1060
050503	10 U.S.C. 1060

VOLUME 7B, CHAPTER 6: "FOREIGN CITIZENSHIP AFTER RETIREMENT"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 May 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted to comply with current guidance.	Update
060101.A	Added hyperlink and reference to the emolument clause of the United States Constitution to facilitate ease of understanding the definition to "hold an office".	Add
060102.B	Added U.S. Code and hyperlink to Title 10, Chapter 61 for clarity.	Add
060301	Restructured paragraph to avoid repetition.	Update
Bibliography	Updated bibliography	Update

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CHAPTER 6

FOREIGN CITIZENSHIP AFTER RETIREMENT

0601 GENERAL APPLICATION

*060101. Retired Pay Based on Military Status

The right to retired pay based on years of active service or disability for Regular or Reserve officers and Regular enlisted personnel, is generally contingent upon the continuation of their military status.

* A. Article I, section 9, clause 8 of the Constitution of the United States prohibits any person "holding any Office of Profit or Trust" under the United States from accepting any present, emolument, office or title, "of any kind whatever," from a foreign government without the consent of Congress. This provision prohibits employment by a foreign government of retired personnel with a continuing military status, including Fleet Reserve or Fleet Marine Corps Reserve, unless prior congressional consent is granted. Without prior congressional consent, it also subjects such persons to withholding of their retired pay in an amount equal to the amounts received from the foreign government. This constitutional provision also considers retired regular officer and enlisted members of regular components to hold an office under the United States military.

B. While receiving retired pay a retiree remains subject to rules, regulations, and recall to active duty as required. A retired member of the Armed Forces who becomes a citizen of a foreign country by naturalization and who voluntarily renounces his United States citizenship loses the right to retired pay when entitlement to the retired pay depends upon the retiree's continued military status.

C. The effect of a member's loss of United States citizenship upon payment of retired pay must be determined by reviewing each case according to individual circumstances, governing laws and regulations.

*060102. Retired Pay Not Based on Military Status

A. A recognized distinction exists between the term "retired" and "entitled to retired pay."

* B. It is the law under which a member is retired or becomes entitled to retired pay which governs member's "retired" status and fixes the rights. The award of disability retirement pay under ***Title 10, United States Code, (10 U.S.C.) Chapter 61***, Retirement or Separation for Physical Disability, to Army of the United States officers does not confer a retired status to such personnel but merely authorized their entitlement to retired pay without relation to continued military status.

0602 FOREIGN RESIDENCE

A citizen of the United States may live outside the United States indefinitely without losing United States citizenship.

0603 LOSS OF UNITED STATES (U.S.) CITIZENSHIP

*060301. Loss of Citizenship

Generally, loss of U.S. citizenship requires a measure of voluntary positive action. A retiree cannot renounce U.S. citizenship on behalf of their minor child(ren) (reference subparagraphs 060301.E and F). After having attained age 18 years or older, a person who is a citizen of the U.S. loses that citizenship, by voluntarily taking one of the following actions with the intention of relinquishing U.S. citizenship:

A. Obtaining citizenship in a foreign state upon his or her application or upon an application filed on his or her behalf by a duly authorized agent; or

B. Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; or

C. Entering, or serving in, the Armed Forces of a foreign state if:

1. Such Armed Forces are engaged in hostilities against the United States, or

2. Such persons serve as a commissioned or non-commissioned officer; or

D. Accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof if:

1. He or she has or acquires the nationality of such foreign state; or

2. The acceptance of the office, post, or employment requires the retiree to take an oath, affirmation, or declaration of allegiance thereof; or

E. Making a formal renunciation of nationality before a diplomatic or consular officer of the U.S. in a foreign state, in such form as may be prescribed by the Secretary of State; or

F. Making in the U.S. a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the U.S. shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

G. Committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the U.S., violating or conspiring to violate any of the provisions of Title 18 of the United States Code, section 2383 (***18 U.S.C. 2383***), or willfully performing any act in violation of ***18 U.S.C. 2385***, or violating section ***18 U.S.C. 2384***, by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when convicted thereof by a court martial or by a court of competent jurisdiction.

060302. Loss of Citizenship at Issue

If the loss of U.S. citizenship is put at issue in any action or proceeding commenced on or after September 26, 1961, then the burden of proof shall be upon the person or party stating the claim. Any person who has renounced his or her citizenship or performs any act of expatriation under the provisions of this section or any other Act shall be presumed to have done so voluntarily unless it can be proven otherwise by a preponderance of the evidence.

060303. Comptroller General Decisions on Loss of Citizenship

See Table 6-1 for decisions of the Comptroller General pertaining to loss of U.S. citizenship upon acquisition of foreign citizenship.

0604 CONDITIONS NOT SUBJECTED TO LOSS OF UNITED STATES CITIZENSHIP AND/OR LOSS OF ENTITLEMENT TO RETIRED PAY

060401. Retired Pay for Non-regular Service

Retired pay benefits authorized for non-regular members of the Uniformed Services in ***10 U.S.C., Chapter 1223*** are viewed as a pension and entitlement to retired pay under ***10 U.S.C. 12731*** is not dependent on the continuation of military status.

A. A member entitled to receive retired pay under 10 U.S.C. 12731(a)(1), who acquires foreign citizenship and/or status in a foreign military service prior to becoming eligible to receive retired pay does not lose entitlement to retired pay at the age of eligibility. See Chapter 1 of this volume for information regarding entitlements to retired pay under 10 U.S.C. 12731.

B. A member who receives retired pay pursuant to ***10 U.S.C. 12731*** is not required to forfeit such pay upon becoming a citizen of a foreign country. Further, if the retiree enters the Armed Forces of the foreign country, then the retiree's entitlement to retired pay continues if:

1. The foreign country is not one that is engaged in hostile military operations against the U.S.; or

2. The retiree is not serving as a commissioned or non-commissioned officer of the foreign services.

C. A right to retirement pay for non-regular members retired for disability under the provisions of the Act of August 27, 1940 is not conditioned on their remaining in military service. Therefore, these non-regular members are entitled to retirement pay without regard to whether they remain citizens of the U.S., since that retired pay is viewed in the nature of a pension.

060402. Retired Alien Enlisted of the Armed Forces

A retired alien enlisted member of a Regular Component of the Armed Forces who lives in a foreign country does not lose the right to retired pay in the absence of some provision of law or regulation affecting the member's right in such circumstances.

0605 DUAL CITIZENSHIP AND/OR SERVICE IN THE ARMED FORCES OF A FOREIGN COUNTRY

060501. Dual Citizenship

A retired member of a Regular Component, who resides in a foreign country and acquires foreign citizenship by operation of that country's law, and who does not relinquish U.S. citizenship is considered to have dual citizenship. Dual citizenship alone does not require a member to lose entitlement to retired pay.

060502. Service In The Armed Forces Of A Foreign Country

A. Service in the military force of a foreign country by a retired member of the Regular Component is inconsistent with the obligations of a Regular retired status, as well as being prohibited without congressional consent under article I, section 9, clause 8 of the Constitution. Conditional congressional consent to accept foreign government "civil employment" granted by ***37 U.S.C. 908*** does not apply to foreign military service.

B. Retired pay must be discontinued when a retired member becomes a member of a foreign military service without legislation indicating congressional intent. The eligibility of a retired member to receive retired or retainer pay and other benefits arising from the retired member's status as a retired member of the uniformed services, and the eligibility of dependents of the retired member to receive benefits based on the retiree's status, may not be terminated by reason of employment or holding of an office or position consented to by Congress. See Volume 7B, Chapter 5, section 0505 for provisions regarding service in military forces of newly democratic nations.

Table 6-1. Comptroller General Decisions-Foreign Citizenship

COMPTROLLER GENERAL DECISIONS—FOREIGN CITIZENSHIP	
Decision Number	**Synopsis**
1. 37 Comp Gen 207	The right of a retired member of Regular Navy to receive retired pay is contingent upon continuation of a status in the Regular Navy and loss of United States citizenship by a member is inconsistent with continuation of military status. Therefore, the right to retired pay terminates if a member of the Regular Navy becomes a citizen of a foreign country.
2. 41 Comp Gen 715	a. Retired Reserve officers, receiving retired pay under laws other than 10 U.S.C. 12731, who lose U.S. citizenship by acquiring foreign citizenship are no longer eligible for involuntary recall to active duty in times of war or national emergency, and the acquisition of foreign nationality would be inconsistent with the oath prescribed for Reserve officers to support and defend the Constitution of the United States in section 16 of title 5. Therefore, in the absence of any law authorizing continuation of an officer's membership in a Reserve organization after the officer becomes a citizen of a foreign country, payment of retired pay may not be approved. b. A Reserve officer may not terminate retired status through resignation or other means, then acquire foreign citizenship and continue to receive retired pay. c. Retired enlisted members of the Regular Components remain a part of the Armed Forces, and their right to retired or retirement pay is dependent on continuation of their military status.
3. 44 Comp Gen 51	a. A retired enlisted member of a Regular Component of the Armed Forces who loses United States citizenship when he or she acquires citizenship in a foreign country has taken a voluntary action so inconsistent with the oath of allegiance to the United States and status as a member of the Armed Forces to warrant termination of retired pay. b. United States citizenship is not a prerequisite to receipt of retired pay; however, if a citizen of the United States by birth acquires foreign citizenship, then his or her retired pay may be terminated.
4. 44 Comp Gen 227	A retired member who voluntarily loses U.S. citizenship by becoming a citizen of a foreign country is regarded as having taken a voluntary action inconsistent with an oath of allegiance to the United States to warrant termination of retired pay.
5. 48 Comp Gen 699	Retired pay benefits authorized non-Regular service members under 10 U.S.C. 12731, viewed as a pension, are not dependent on continuation of military status. Member acquiring foreign citizenship and/or status in a foreign military service before age 60 does not lose entitlement to retired pay at age 60. Neither is retired pay forfeited upon becoming a citizen of a foreign country, and/or entry in the armed forces of a foreign country, provided that country is not one engaged in hostile military operations against the United States.
6. 50 Comp Gen 269	Payment of retired pay to an alien who chooses to live outside the United States after retirement would not constitute a bar to the receipt of retired pay in the absence of some provision of law or regulation affecting retiree's right in such circumstances.
7. MS Comp Gen B-144694, Feb 14, 1961	An enlisted member of the Regular Air Force-an alien who had met the statutory requirement for enlistment by filing a legal intention to become a citizen of the United States-when retired is entitled to receive retired pay. In the absence of a provision of law barring the payment of retired pay to an alien or indicating the lack of citizenship is consistent with status as a retired member of the Regular Air Force, it would appear that so long as member's allegiance status remains unchanged after retirement, the fact that he or she chooses to live outside the United States after retirement would not in and of itself constitute a bar to the receipt of retired pay.
8. MS Comp Gen B-157646, Oct 5, 1965	A naturalized citizen retired for disability under 10 U.S.C. 1201, who returned to the country of birth and resumes former nationality because of employment, loses retired status. Member receives retired pay, as distinguished from a grant of retirement pay, and upon transfer to the retired Reserve is subject to recall to active duty.

Table 6-1. Comptroller General Decisions-Foreign Citizenship (Continued)

COMPTROLLER GENERAL DECISIONS—FOREIGN CITIZENSHIP	
Decision Number	**Synopsis**
9. 58 Comp Gen 566	a. A retired Regular Army officer residing in Israel acquired Israeli citizenship by operation of Israeli law, but also remains a United States citizen. While the loss of United States citizenship is inconsistent with status as a retired Regular officer and thus results in loss of status as an officer and loss of entitlement to retired pay, dual Israeli/United States citizenship alone does not require loss of entitlement to retired pay. b. A retired Regular Army officer residing in Israel who has dual Israeli/United States citizenship is subject to service in the Israel Defense Forces, the Israeli armed force. Such service in a foreign armed force by a retired Regular officer appears inherently inconsistent with the position as a Regular Army officer, as well as being prohibited (without congressional consent) by article I, section 9, clause 8 of the Constitution of the United States. Thus, service in the foreign armed force would make the status as a retired Army officer very doubtful. Retired pay may not be paid without authorizing legislation.
10. MS Comp Gen B-212481, Feb 2, 1984	A retired member of the Armed Forces who becomes a citizen of a foreign country by naturalization and who voluntarily renounces United States citizenship loses the right to retired pay since entitlement to retired pay depends upon the continuation of the individual's status as a retired member of the military service available for service as required and that status is incompatible with renunciation of United States citizenship. Such a person, however, who elected to participate in the Survivor Benefit Plan and from whose retired pay the required deductions were being made for coverage under the plan when United States citizenship is renounced, may continue coverage under the plan by making the required payments into the Treasury.

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0602 – Foreign Residence

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0603 – Loss of United States Citizenship

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0604 – Conditions Not Subjected to Loss of United States Citizenship and/or Loss of Entitlement to Retired Pay

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0605 – Dual Citizenship and/or Service in the Armed Forces of a Foreign Country

060502.B	10 U.S.C. 1060

VOLUME 7B, CHAPTER 7: "ACTIVE/RESERVE DUTY AFTER RETIREMENT"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 August 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated this chapter with hyperlinks and formatted to comply with current administrative instructions.	Update

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CHAPTER 7

ACTIVE/RESERVE DUTY AFTER RETIREMENT

0701 ENTITLEMENT TO RECOMPUTATION OF RETIRED PAY

070101. General

A member of the Armed Forces who has become entitled to retired or retainer pay, and later serves on active duty (other than for training) is entitled to have retired or retainer pay recomputed upon his release from active duty to take into account any additional service. A retiree or member eligible for retired pay who serves in an active status in the Selected Reserves may be entitled to recomputation of their Reserve retired pay, if certain criteria described in paragraph 070102 or 070103 are met.

070102. Active Reserve Service After Regular Retirement or Eligibility for Regular Retirement

A member who is entitled to regular retired pay or retainer pay based on years of active service (without regard to whether the member actually retired or received retired or retainer pay for regular service), and who serves in an active status as a member of a Reserve Component may apply for Reserve (non-regular) retired pay if the member:

A. Has attained the Reserve retired pay eligibility age of 60 years or such other reduced eligibility age as provided for in Title 10, United States Code, section 12731(f) (***10 U.S.C. 12731(f)***);

B. Has performed at least 20 years of service qualifying for a Reserve (non-regular) retirement; and

C. After October 28, 2009, has completed two or more years of satisfactory service, as determined by the Secretary concerned, in an active status (excluding any period of active service). A member who was eligible for regular retired or retainer pay on or before October 27, 2009, whose service was determined to be satisfactory by the Secretary concerned, is not subject to the 2-year service requirement. See paragraph 070104 for exceptions to the 2-year requirement.

070103. Active Reserve Service After Reserve Retirement

A. A member of the Retired Reserve serving in an active status in the Selected Reserves on October 28, 2009, or who thereafter serves in an active status in the Selected Reserves is entitled to recomputation of Reserve retired pay if the member serves in such status for not less than 2 years.

B. A commissioned officer of the Retired Reserve who is recalled to an active status under the provisions of this paragraph and completes not less than 2-years of service in such active status is entitled to an adjustment in the retired grade, subject to service requirements.

070104. Exception to 2-Year Active Status Service

The Secretary concerned may reduce the minimum 2-year service requirement specified in subparagraph 070102.C and paragraph 070103 in the case of an officer of the National Guard who:

A. Completes at least 1-year of service in a position of adjutant general or assistant adjutant general; and

B. Fails to complete the minimum years of service solely because the appointment of the person to such position was terminated or vacated as provided by:

1. The laws of the State of whose National Guard he or she is a member; or

2. The laws of the Commonwealth of Puerto Rico, or the District of Columbia, Guam, or the Virgin Islands, of whose National Guard he or she is a member.

0702 RECOMPUTATION FOR ACTIVE DUTY SERVICE OR ACTIVE STATUS AFTER RETIREMENT

070201. Basic Recomputation Formula

A retired member who subsequently serves on active duty is generally entitled, after completion of that active duty, to retired pay recomputed by multiplying a revised retired or retainer pay base by a revised retired pay multiplier.

070202. Revised Retired or Retainer Pay Base

The retired or retainer pay base for a recomputation of retired pay differs depending on the date the member first became a member of the uniformed services and whether the recomputation is for subsequent service in the Selected Reserve or subsequent active duty in a Regular Component.

A. Service in an Active Status in the Selected Reserves. A member who after retirement or eligibility for retired or retainer pay serves in an active status in the Selected Reserves, subject to paragraph 070102 or 070103 of this chapter, is entitled to recomputed retired pay using the following retired pay base:

1. Before September 8, 1980. If the member first became a member of the uniformed service before September 8, 1980, then the retired pay base is the monthly basic pay determined at the rates applicable on the date the member completes the qualifying active Reserve service.

2. After September 7, 1980. If the member first became a member of the uniformed service after September 7, 1980, then the retired pay base used is the average of the member's high-36 months (whether or not consecutive) out of all the months before the member became entitled to retired pay by reason of election of retired pay under the provisions of this paragraph.

B. Service on Active Duty. A member entitled to retired or retainer pay, who subsequently serves on active duty, other than for training, is entitled to recomputed retired or retainer pay using the following retired pay base:

1. Before September 8, 1980. For a member who first became a member of the uniformed service before September 8, 1980, the revised retired or retainer pay base is the monthly basic pay of the grade determined as follows. If the member served:

a. Less than two continuous years on subsequent active duty, then the member's revised retired or retainer pay base is the rate of basic pay under which the member's previous retired or retainer pay was computed upon entrance to subsequent active duty; increased by any applicable cost of living adjustments (COLA) issued during that period of active duty.

b. Two or more continuous years on subsequent active duty, then the member's revised retired or retainer pay base is the appropriate rate of basic pay of the grade and years of service to which eligible if retired (or transferred to the Fleet Reserve or Fleet Marine Corps Reserve) upon release from this period of active duty. The revised retired or retainer pay base is computed using the pay tables in effect immediately prior to the tables under which the member was paid during the period of that active duty, increased by any applicable COLA adjustments issued during this period of active duty. In the rare case when a member serves for two or more continuous years of subsequent active duty under the same pay table and that table is in effect at the time of reversion to retired status, use the appropriate basic pay from that table.

2. After September 7, 1980. For a member who first became a member of the uniformed service after September 7, 1980, the revised retired or retainer pay base is the high-36 month average of all service, including subsequent active duty, as though retiring or transferring to the Fleet Reserve or the Fleet Marine Corps Reserve for the first time.

3. Optional Pay Base. A retired member entitled to recomputation of retired pay (for other than disability) after subsequent active duty, may elect to substitute the retired pay base in use upon entry to such active duty which is increased by any applicable COLA issued during the period of the subsequent active duty.

070203. Revised Retired Pay Multiplier

A. The years of service for determining the revised retired or retainer pay multiplier are those already credited in computing the original retired or retainer pay, plus all years of active service after having become entitled to retired or retainer pay.

1. Increase the years of service as follows:

	YR	MO	DAY
Date released from active duty	2004	05	28
Date recalled to active duty	2001	09	09
Additional time on active duty	02	08	19 + 1

(1 day added for inclusive dates)

Service credited upon retirement	22	06	03
Plus additional active duty	02	08	20
Service credited for recomputation	25	02	23

2. After computing, convert to years and fraction of years by crediting each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

B. A member described in paragraph 070201 will have the years of service computed in accordance with Title 10, Chapter 1223, pertaining to Reserve (non-regular) retirement.

C. The percentage to apply to the years of service for determining the revised or retainer pay multiplier is generally 2 1/2 percent for each year of service. However, a member who accepted the post July 31, 1986, reduced retirement (REDUX) and Career Status Bonus remain subject to a 1 percent reduction in the final multiplier for each year less than 30 years of service. This reduction to the final multiplier will be decreased as a result of the additional active service credited.

070204. Special Considerations for Recomputations

The following subparagraphs address special considerations for recomputation of retired pay for members who first became a member of the uniformed services before September 8, 1980 (Final Pay Members).

A. A retiree advanced in grade on the retired list while serving on active duty after retirement may decline advancement to the higher grade upon release from active duty if advancement results in a reduction in retired pay entitlement. The retiree is entitled to recomputation using either:

1. The higher grade based on the basic pay rates applicable at the time of retirement increased by the applicable COLA adjustment in that pay (see Chapter 8); or,

2. The grade held before advancement based on the basic pay rates replaced by those in effect upon release from active duty if active duty after retirement was for a continuous period of at least 2 years.

B. It is not mandatory that a retiree be advanced on the retired list. Once advanced, the retiree has retired pay rights determined under the section governing such advancement.

C. A retired officer recalled to active duty (other than for training) in the grade held on the retired list, under any law that authorized advancement on the retired list based on a special commendation for the performance of duty in actual combat, may have retired pay recomputed upon release from active duty based on that grade; and,

1. As prescribed in Table 7-1, rule 1; and

2. On the basis of the rates in effect upon release from active duty if the retiree received these rates for a continuous period of at least 3 years; or

3. On the basis of the rates replaced by those in effect upon release from active duty if the retiree did not receive the current rates for a continuous period of at least 3 years.

D. A retiree recalled to active duty after retirement and promoted in grade while on active duty may elect, upon release from that active duty, to have retired pay recomputed based on either:

1. The higher grade to which promoted in which the retiree served satisfactorily, if the member met service time-in grade requirements; or

2. The lower grade held at initial retirement.

E. A retiree recalled to active duty after retirement and demoted in grade while on active duty may elect, upon release from that active duty, to have retired pay recomputed based on either:

1. The grade to which demoted; or

2. The retired pay to which entitled in the grade held at initial retirement; increased by applicable COLA adjustments.

070205. Special Considerations for Disability Retirees

A. A member who reverts to retired pay after active duty with a new or aggravated physical disability rated at 30 percent or more may elect to receive:

1. The retired pay to which they became entitled when previously retired, increased by any applicable subsequent COLA adjustments, or

2. Retired pay recomputed using a revised pay base and revised retired pay multiplier. The revised pay base for a member under high-36 rules is described in

subparagraph 070202.A. The revised pay base for a member under final pay rules is the highest monthly basic pay received while on active duty after retirement or after the date when placed on the temporary disability retired list (TDRL). The revised retired pay multiplier is as the member elects either 2 1/2 percent for each year of service creditable for a disability retirement or the highest percentage of disability, not to exceed 75 percent, attained while on active duty after retirement or after the date when placed on the TDRL.

B. A member who was retired for physical disability or whose name is on the temporary disability retired list who reverts to the retired list after subsequent active duty, but who did not incur a new or aggravate any existing physical disability while on the subsequent active duty, may elect to receive either:

1. Retired pay to which they became entitled when previously retired, increased by any applicable COLA adjustment, or

2. Retired pay as computed for a non-disability reversion under the provisions of paragraphs 070202 and 070203.

C. A member who retired or became eligible to retire due to a physical disability, either on the permanent disability retired list (PDRL) or TDRL, on or before January 7, 2011, may not have a retired pay multiplier in excess of 75 percent. A member who first becomes eligible to retire or retires for a physical disability on or after January 8, 2011, shall not have their multiplier reduced if it is in excess of 75 percent.

D. A member placed on the TDRL may not have a retired pay multiplier less than 50 percent.

0703 COST OF LIVING ADJUSTMENTS (COLA)

070301. Application of COLA Increases

Apply COLA increases to recomputed retired pay in the same manner as for initial retirement. The first COLA after reversion to retired pay following a period of active duty may be a partial COLA depending upon the reversion date. When the recomputed retired pay is based on the original retired pay or the original retired pay base, apply all COLA increases from the date of initial retirement. See Figure 7-1 for application of COLA increases to recompute retired pay. Chapter 8 contains the annual COLA rates.

070302. Compare Basic Pay Rates to “Tower Amendment” Provisions

See the provisions in Chapter 3, section 0303, regarding the “Tower Amendment” to determine if basic pay rates authorized under that provision afford greater retired pay entitlement than those computed under this chapter.

0704 HEROISM PAY

070401. Extraordinary Heroism

An enlisted member who has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active service in the armed forces and who is entitled to recomputation of retired pay based on subsequent active duty shall have the recomputation of retired pay increased by 10 percent.

070402. Extraordinary Heroism and the Retired Pay Multiplier

The addition of heroism pay may not be allowed to increase the recomputed retired pay multiplier above 75 percent. For details on heroism pay see Chapter 1, section 0107.

0705 RETIRED PAY AND ACTIVE SERVICE

A retired member is not entitled to receive retired pay while serving on active duty or in an active Reserve status. See Chapter 12, Waiver of Retired Pay**.**

Figure 7-1. Recomputation After Recall to Active Duty

Examples of Retired Pay Recomputation After Recall to Active Duty

1. Final basic Pay Method

E-7 retired 8/1/2006 with exactly 27 years of service

Retired Pay Entitlement $4113.60 (E-7 over 26 1/2006 pay rates)
X 67.5% (27 years X 2.5%) =
$2776.00 (Initial retired pay)

Recalled to active duty 6/1/2008 and released 5/31/2010

Pay Recomputations:

10 USC 1402(a) E-7 29 years (Note 1)
$4521.00 (E-7 over 28 1/2009 pay rates (Note 2))
X 72.5% (29 years X 2.5%)
$3277.00 (Recomputed retired pay)

10 USC 1402(e) E-7 29 years (Note 3)
$4113.60 (E-7 over 28 1/2006 pay rates)
X 72.5% (29 years X 2.5%)=
$2982.00

COLA (Partial)	12/2006 2.8%	$3065.00	(2.8% X $2982.00=$3065.50)
COLA	12/2007 2.3%	$3135.00	(2.3% X $3065.00=$3135.50)
COLA	12/2008 5.8%	$3316.00	(5.8% X $3135.00=$3316.83)
COLA	12/2009 0.0%	$3316.00	(No COLA increase. Recomputed retired pay for 2009 remains the same as 2008.)

Saved Pay (Note 4)
$2776.00 (Initial Retired Pay)

COLA (Partial)	12/2006 2.8%	$2853.00	(2.8% X $2776.00=$2853.73)
COLA	12/2007 2.3%	$2918.00	(2.3% X $2853.00=$2918.62)
COLA	12/2008 5.8%	$3087.00	(5.8% X $2918.00=$3087.24)
COLA	12/2009 0.0%	$3087.00	(No COLA increase. Recomputed retired pay for 2009 remains the same as 2008.)

Notes:
1. The 1402(a) recomputation utilizes a more current active duty pay table and the new total years of service.
2. Use the active duty pay rates in effect on date of release only if the member received pay from that rate table for at least 2 years. If recalled for over 2 years, but did not receive pay from the same table for 2 years, then utilize the immediately preceding rates of active duty pay. If recall is less than 2 years, utilize the pay table in effect upon original retirement.
3. The 1402(e) recomputation utilizes the pay table in effect at retirement, but uses the new service totals, and updated by applicable COLA's.
4. Saved Pay is the member's original retired pay entitlement, as updated by COLA.
Pay the highest of the 3 options.

Figure 7-1. Recomputation After Recall to Active Duty (Continued)

2. High (36) Average Method

E-7 retired 10/1/2006 with exactly 22 years of service

Retired Pay Entitlement $3408.08 (high-36 average base)
X 55% (22 years X 2.5%) =
$1874.00 (Initial retired pay)

Recalled to active duty 6/1/2008 and released 5/31/2010

Pay Recomputations:

10 USC 1402a(a) E-7 with 24 years
$3963.75 (new high-36 with recall service)
X 60% (24 years X 2.5%) =
$2378.00

10USC 1402a(e) E-7 with 24 years
$3408.08 (original high-36 pay base)
X 60% (24 years X 2.5%)
$2044.00

COLA (Partial)	12/2006	0.0%	$2044.00	
COLA	12/2007	2.3%	$2091.00	(2.3% X $2044.00=$2091.01)
COLA	12/2008	5.8%	$2212.00	(5.8% X $2091.00=$2212.28)
COLA	12/2009	0.0%	$2212.00	

Figure 7-1. Recomputation After Recall to Active Duty (Continued)

3. High-36 Average with REDUX/CSB Method

E-7 retired 10/1/2006 with exactly 20 years of service

Pay Entitlement $3351.03 (high average base)
X 40% (20 years X 2.5% less 10%) (note: reduced 1% for each year less than 30) =
$1340.00

Recalled to active duty 6/1/2008 and released 5/31/2010

Pay Recomputations:

10 USC 1402a(a) E-7 with 22 years
$3816.61 (recomputed high-36 average base using the 24 months of subsequent service)
X 47% (22 years X 2.5% less 8%) (note:1% for each year less than 30) =
$1793.00

10 USC 1402a(e) E-7 with 22 years
$3351.03 (original high-36 pay base)
X 47% (22 years X 2.5% less 8%) (note:1% for each year less than 30) =
$1574.00

COLA (Partial)	12/2006	0.0%	$1574.00
COLA	12/2007	1.3%	$1594.00 (1.3% X $1574.00)
COLA	12/2008	4.8%	$1670.00 (4.8% X $1594.00)
COLA	12/2009	0.0%	$1670.00

Table 7-1. Computation of Retired Pay Following Active/Reserve Duty after Retirement or Eligibility for Retired Pay

COMPUTATION OF RETIRED PAY FOLLOWING ACTIVE/RESERVE DUTY AFTER RETIREMENT OR ELIGIBLITY FOR RETIRED PAY.						
	A	**B**	**C**	**D**	**E**	**F**
RULE	**If**	**and**	**take**	**multiply by**	**add**	**subtract (notes 4 & 5)**
1	a member previously retired for other than disability, reverts to retired status without a disability retirement (note 1)	the member first became a member before Sep 8, 1980	monthly basic pay (note 2) of the grade in which member would be eligible: (1) to retire if retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve (FR) or Fleet Marine Corps Reserve (FMCR) if transferring to either upon that release from active duty	2 1/2 percent of the sum of: (1) the years of service that may be credited to the retiree in computing retired pay or retainer pay; and (2) years of active service after becoming entitled to retired pay or retainer pay (note 3)		excess over 75 percent of pay upon which the computation is based only if the member originally retired before Jan 1, 2007, with more than 30 years of service and did not serve at least 2 years on the recall to active duty.
2		the member first became a member after Sep 7, 1980	retired pay base or retainer pay base to which member would be entitled to use if: (1) retiring upon release from that active duty; or (2) transferring to the FR or FMCR upon that release from active duty	the retired pay multiplier or the retainer pay multiplier for a high-36 retiree (with reduction described under paragraph 080315 for post-Aug 1, 1986 members who elected the Career Status Bonus with REDUX retirement) for the sum of: (1) the years of service that may be credited to the retiree in computing retired pay; and (2) years of active service after becoming entitled to retired or retainer pay		excess over 75 percent of retired or retainer pay base upon which computation is based only if the member originally retired before Jan 1, 2007, with more than 30 years of service and did not serve at least 2 years on the recall to active duty.

Table 7-1. Computation of Retired Pay Following Active/Reserve Duty after Retirement or Eligibility for Retired Pay (Continued)

COMPUTATION OF RETIRED PAY FOLLOWING ACTIVE/RESERVE DUTY AFTER RETIREMENT OR ELIGIBLITY FOR RETIRED PAY.						
	A	B	C	D	E	F
RULE	If	and	take	multiply by	add	subtract (notes 4 & 5)
3	a member reverts with a new or aggravated disability rating that qualifies for disability retirement (note 6)	member first became a member before Sep 8, 1980	highest monthly basic pay that member received while on active duty after retirement or after date when member's name was placed on Temporary Disability Retired List (TDRL)	as a member elects: (1) 2½ percent of years of service credited under ***10 U.S.C. 1208*** (note 3) or (2) the highest disability percentage, not to exceed 75 percent, attained while on active duty after retirement or after the date member's name was placed on TDRL	amount necessary to increase product of columns C and D to 50% of pay upon which computat-ion is based, if member is on TDRL	
4		member first became a member after Sep 7, 1980	the retired pay base	as member elects (1) 2½ percent of years of service credited under ***10 U.S.C. 1208*** (note 3); or (2) the highest disability percentage, not to exceed 75 percent, attained while on active duty after retirement or after the date when member's name was placed TDRL		
5	a member previously retired for disability, reverts to retired status without incurring any additional or aggravating disability that would qualify for disability retirement (note 6)		Either the highest monthly pay they received on active duty or the retired pay base as appropriate under rule 3 or 4	2½ percent of years of service credited under ***10 U.S.C. 1208*** (note 3)		

Table 7-1. Computation of Retired Pay Following Active/Reserve Duty after Retirement or Eligibility for Retired Pay (Continued)

COMPUTATION OF RETIRED PAY FOLLOWING ACTIVE/RESERVE DUTY AFTER RETIREMENT OR ELIGIBILITY FOR RETIRED PAY						
	A	**B**	**C**	**D**	**E**	**F**
RULE	**If**	**and**	**take**	**multiply by**	**add**	**subtract (notes 4 & 5)**
6	a member entitled to or receiving regular retired pay based on years of service that has attained Reserve Retired pay eligibility and age and has performed at least 20 years of service qualifying for a Reserve retirement	who serves in an active status as a member of a Reserve Component completed after October 28, 2009, 2 or more years of satisfactory service. (Note 7 & 8).	Either the basic pay for the highest grade held while serving in the active status or the retired pay base computed through the new retirement date	2 1/2 percent times the years of service credited for percentage purposes (note 9)		
7	a member of Retired Reserve serves in active status in Selected Reserves on or active October 28, 2009	serves for not less than 2 years in such active status	Either the basic pay for the highest grade held while serving in the active status or the retired pay base computed through the date of release from duty	2 1/2 percent times the years of service credited for percentage purposes (note 9)		

Table 7-1. Computation of Retired Pay Following Active/Reserve Duty after Retirement or Eligibility for Retired Pay (Continued)

NOTES:

1. Alternatively, members eligible under rules 1 or 2 may elect to substitute the rate of basic or monthly retired pay base (high-36 average) under which the original retired pay was computed at the time of entering on this period of active duty (increased by any applicable adjustments in the COLA) for the amount in column C of the table.

2. For a member who has been entitled, for a continuous period of at least 2 years, to basic pay under the rates of basic pay in effect upon release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least 2 years upon that release from active duty, but who is not covered by the preceding sentence**,** compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member**,** compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when member entered on that active duty.

3. Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year. Disregard any remaining fractional part of a month.

4. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1. Any future adjustments to such pay must be made on the rounded figure. The rounded amount becomes the member's entitlement and any future adjustments shall be based on this rounded entitlement.

5. The reduction only applies to a member who retired before January 1, 2007, with more than 30 years of creditable service who is recalled to active duty and serves on active duty for a continuous period of less than 2 years that ends after January 1, 2007.

6. Alternatively, members eligible under rules 3, 4 or 5 may elect to substitute the retired pay to which entitled when originally retired increased by any applicable adjustments in the COLA.

7. A member who was eligible for regular retired or retainer pay on or before October 27, 2009, whose service was determined to be satisfactory, is not subject to the 2-year requirement.

8. The 2-year service requirement may be reduced by the Secretary concerned if an officer of the National Guard completes at least 1 year of service in a position of adjutant general or assistant adjutant general and fails to complete the minimum years of service solely because the appointment to such position is terminated or vacated under applicable State or territorial law.

9. Total number of retirement points divided by 360. Carry the resultant figure to three decimal places, then round to two decimal places. EXAMPLE: 4735 retirement points divided by 360 = 13.152 or 13.15 years of service for percentage purposes (for the section 12731 retiree only) to be multiplied by 2 1/2 percent.

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VOLUME 7B, CHAPTER 8: "BASIC PAY RATES, LEGISLATIVE AND COST-OF-LIVING ADJUSTMENTS TO RETIRED PAY"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 September 2012 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
080409.A	Added cost of living adjustment rates for retired pay effective December 1, 2012.	Add
080409.B	Added monthly basic pay for members of the uniformed services increase effective January 1, 2013.	Add
Table 8-1	Updated Table 8-1, Full Cost-of-Living Adjustment Percentage Table.	Update
Bibliography	Updated Bibliography	Update

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CHAPTER 8

BASIC PAY RATES, LEGISLATIVE AND COST-OF-LIVING ADJUSTMENTS TO RETIRED PAY

0801 PURPOSE

080101. Accuracy of Retired Pay

Information in this chapter enables the reader to determine the accuracy of a member's current retired pay through a history of basic pay rates, retired pay increases, and the application of special provisions in determining retired pay since October 1949. Retired pay for members who have entered a Uniformed Service after September 7, 1980 is computed using a retired or retainer pay base. See Chapter 3 for gross pay computation. This chapter explains the effect of legislative and Cost-of-Living Adjustments (COLA) on retired pay that has been computed using a retired or retainer pay base.

080102. Use of Active Duty Pay Tables

Before June 1, 1958, compiling tables to show the actual rates of retired pay was relatively simple since all members (except the pre-October 1, 1949 "saved pay" accounts) received a direct percentage of the active-duty basic pay rates in effect October 1, 1949 through May 31, 1958. With the enactment of Public Law 85-422, and later active duty and retired pay adjustments, it became increasingly more difficult to prepare and maintain tables reflecting the pay of members on the retired rolls and, eventually, preparing such tables was no longer feasible. The applicable active-duty pay tables now serve as the basis for determining the rate of retired pay.

080103. Service After September 7, 1980

Members who have entered a Uniformed Service after September 7, 1980:

A. The amount of retired pay is individualized. Members who retire with the same grade and years of service for percentage and basic pay purposes may or may not receive the same amount of retired pay.

B. The member's current retired pay can be verified from the retired or retainer pay base, years of service for percentage purposes or percentage of disability, retired pay increases, and the application of any special provisions in retired pay identified in this chapter.

080104. Definitions

A. Pay Table Code. The designation by number (or other means) used by the Defense Finance and Accounting Service (DFAS) to identify active-duty pay rates in effect during the different time periods.

B. Cost-of-Living Adjustment. Percentage change increases are applied to retired pay based on laws using the Consumer Price Index (CPI), Urban Wage Earners and Clerical Workers–U.S. City Average (CPI-W), as published by the Bureau of Labor Statistics, to determine the amount of the increase. Full cost-of-living adjustment percentages appear in Table 8-1.

1. Full Cost-of-Living Adjustment. Members on the retired rolls receive the full cost-of-living adjustment if their retired pay is computed using the basic pay rates which were effective before the previous cost-of-living adjustment.

2. Partial Cost-of-Living Adjustment. Members whose retired pay is computed using the basic pay rates that become effective at the same time or after the previous cost-of-living adjustment receive a partial cost-of-living adjustment. This increase is effective from the later of the date of the full cost-of-living adjustment or date of retirement.

C. One Percent Add-On. This is an additional 1 percent added to all full cost-of-living adjustments in retired pay from November 1, 1969 through March 31, 1976. The 1 percent did not apply to partial cost-of-living adjustments. The add-on was provided to make up for the 3-month time lag between the rise in the CPI and the actual increase in retired pay. ***Public Law 94-440*** eliminated the 1 percent add-on.

D. Legislative Increase. This is any adjustment in retired pay authorized by legislation that identifies a percentage increase rather than being based on the CPI.

E. Recomputation. This is the provision for recomputing retired pay using a pay table other than that used in the first computation of retired pay.

F. Uniform Retirement Date Act (URDA). This statute: (1) provides, under certain retirement laws, that members cannot be retired before the first day of the month after the date of first eligibility, and (2) determines the pay table used in computing retired pay. This provision is especially significant when the retirement date coincides with the effective date of an active-duty basic pay rate increase, because of the additional requirement to compute pay on the rates in effect as of the date retirement would have occurred except for this restriction.

G. Otherwise Qualified. This term refers to members, retired under a particular law, who are eligible for retirement under another law that may provide greater benefits. It pertains primarily to disability retirees when members have enough service to be retired for nondisability.

H. Years of Service for Basic Pay. Computation of service years creditable in determining the basic pay rate upon which retired pay is to be based may vary depending upon retirement law (see Volume 7A, Chapter 1).

I. Years of Service for Percentage Multiplier. This refers to service years creditable in determining the percentage multiplier factor (2-1/2 percent times years of service of basic pay) in retired pay computation. Computation of years of service may vary depending upon

retirement law. For Reserve retirements under ***Title 10, United States Code (10 U.S.C.), Chapter 1223***, Reserve service points are converted to years of service (i.e., total points divided by 360 equals years of service). See Volume 7B, Chapter 1.

J. Burchinal Decision. This Comptroller General decision (***53 Comp. Gen. 698 (1974)***) held that retired pay is computed only under the current pay rates or the pay rates in effect immediately before the current rate pursuant to ***10 U.S.C. 1401a(e)***. Public Law 90-207, effective October 1, 1967, added subsection (e) under ***10 U.S.C. 1401a*** as a method to prevent pay inversion. On October 7, 1975, Public Law 94-106 added subsection (f) under ***10 U.S.C. 1401a*** which superseded ***10 U.S.C. 1401a(e)***.

K. Pay Inversion. A condition that exists during the periods when the cost-of-living adjustment in retired pay exceeds the percentage increases applied to active-duty basic pay rates.

L. Retired Pay Base. This is an average of the highest monthly basic pay rates applicable to a member determined by the length of time member was a member of a Uniformed Service (less than or at least 36 months) and/or the type of retirement (e.g., disability or voluntary). The retired pay base or retainer pay base applies to members who entered a Uniformed Service after September 7, 1980. It replaced the monthly basic pay rate formerly used to compute retired or retainer pay. See Volume 7B, Chapter 3 for Pre-September 8, 1980 Member.

0802 MAJOR CHANGES IN THE USE OF BASIC PAY RATES AND CONDITIONS APPLICABLE TO COMPUTATION OF RETIRED PAY

080201. Career Compensation Act of 1949

The Career Compensation Act stipulated that basic pay rates would be based both on pay grade and total years of service. The Act also established new methods for computing disability retirements.

080202. The Effect of Active-Duty Pay Rate Increases on Retired Pay

Before June 1, 1958, the pay of all members on the retired rolls (except “saved pay” accounts under the Career Compensation Act) represented a direct percentage of a basic pay rate of a member on active duty, and whenever the active-duty rates increased, the retired pay increased accordingly. Public Law 85-422, effective June 1, 1958, prohibited the recomputation of retired pay based on changes in the active-duty basic pay rates after retirement. Essentially, the date of retirement was an added factor in computing retired pay since the retired member’s pay was fixed to the basic pay rate in effect on the date of retirement (with exceptions permitting members to use another basic pay rate under certain conditions and circumstances, which are outlined in later paragraphs).

080203. Retired Pay Based on the CPI

Retirees receiving saved pay under laws in effect on September 30, 1949 received legislative increases in 1952 and 1955. The pay for retirees receiving pay computed under the Career Compensation Act was recomputed on the 1952 and 1955 basic pay rates. Effective October 1, 1963, ***10 U.S.C. 1401a***, as added by Public Law 88-132, stipulated that future adjustments to retired pay would be based on the CPI. Each January, the Secretary of Defense was to review the CPI for the previous calendar year and, if it had increased 3 percent or more, then would affect a percentage increase in retired pay as of April 1, using the percentages of increase in the CPI.

080204. Change in Determining the Retired Pay COLA

Public Law 89-132, effective September 1, 1965, changed the provisions for determining the retired pay cost-of-living adjustment. Instead of the yearly determination, the Secretary of Defense would determine the retired pay increase once the CPI had increased at least 3 percent over the previous CPI base and remained at that rate for 3 consecutive months. The adjustment in retired pay was the highest percent of increase reached during the 3-month period. The cost-of-living adjustment was effective the first day of the third month beginning after the 3-month period.

080205. Effects of Public Law 90-207 on Retired Pay Computation

Public Law 90-207, effective October 1, 1967, added subsections (c) through (e) under ***10 U.S.C. 1401a***. Subsections (c) and (d) stipulated that retired pay, when computed from the current basic pay rates, would increase at the later of the next cost-of-living adjustment or retirement date by a partial adjustment. The partial adjustment represented the percent by which the new base index exceeded the index in effect on the day before the basic pay increase. Subsection (e), a saved-pay provision, permitted computation of retired pay on the basic pay rates in effect immediately preceding those in effect on retirement date if they were more favorable because of a cost-of-living adjustment. ***Title 10, U.S.C., section 1401a(e)*** was repealed by ***Public Law 98-94***, effective September 24, 1983. See paragraph 080213. Section 8(a) of Public Law 90-207 provided that, effective January 1, 1968, whenever the General Schedule of Compensation for Federal classified employees increased, an adjustment in the monthly basic pay authorized members of the Uniformed Services immediately would become effective.

080206. One percent Increase to COLA

Public Law 91-179, effective October 31, 1969, stipulated that 1 percent would be added to the percentage increase each time there was a general cost-of-living adjustment to retired pay. Partial cost-of-living adjustment increases did not include the 1 percent.

080207. New Change in Determining Retired Pay COLA

Public Law 94-440 again changed the provisions for determining the cost-of-living adjustments to retired pay. Beginning with March 1977, cost-of-living adjustments occurred twice each year; effective March 1 and September 1. The March adjustment was determined by the

percentage change in the CPI between June and December of the previous year. The September adjustment was determined by the percentage change in the CPI between the previous December and June. In accordance with ***Public Law 94-361***, these adjustments were the actual percentage change (nearest 1/10th of 1 percent) without the additional 1 percent. Beginning October 1976, partial cost-of-living adjustment changes were made for members whose retired pay was computed using the basic pay rates which became effective in months other than January or July. The partial cost-of-living adjustment was the percentage (closest 1/10th of 1 percent) of change in the CPI between the month before establishment of the new basic pay rates and the following June or December (which was used as the new base CPI).

080208. Pay Inversion

With Public Law 85-422, effective June 1, 1958, which prohibited recomputation of retired pay each time active-duty pay was increased, it was assumed that members of the same pay grade and years of service who retired under later active-duty pay increases would receive a greater retired pay. Beginning in 1971, however, there were instances where the cumulative cost-of-living adjustment applied to retired pay was greater than the increases in the active-duty pay rates which was popularly known as "pay inversion". Pay inversion created some retention problems because, through early retirement, members could increase their retired pay rather than remaining on active duty. Under ***53 Comp. Gen. 698 (1974)***, known as the "Burchinal Decision," members were restricted to the greater amount of pay, based on two computations of retired pay, computed on the active-duty pay rates in effect:

A. At the time of retirement using the pay grade and years of service for both basic pay and percentage multiplier at the time of retirement, or

B. Immediately before the active-duty basic pay rates in effect on the date of retirement, plus the cost-of-living adjustment in retired pay applicable to those basic pay rates. For this computation, the same pay grade and years of service for both basic pay and multiplier at the time of retirement were used even though the computation used the earlier basic pay rates.

080209. Tower Amendment

Public Law 94-106, October 7, 1975, added subparagraph (f) to ***10 U.S.C. 1401a***. The new provision stipulated another method to partially offset the effect of "pay inversion." This method involved computing pay based "on any previous basic pay rates, on and after January 1, 1971, plus cost-of-living adjustment, if the member was eligible for retirement at the time those rates were in effect." The computation was restricted to the pay grade and years of service at that earlier time (for retirements on October 5, 1994 or later, the computation may not be based on a grade higher than that held at the time of retirement). The statute applies to all members retired on or after January 1, 1971. There were no retroactive pay adjustments, however, for the period before October 7, 1975. A member recalled to active duty after retirement is not entitled to recomputation of retired pay under the Tower Amendment upon release from that active duty. Pay recomputation upon that release is restricted to the methods prescribed in ***10 U.S.C. 1402*** that are covered in Volume 7B, Chapter 7. The Tower Amendment did not repeal or modify those provisions.

080210. Basic Pay Average

Public Law 96-342, as codified at ***10 U.S.C. 1407***, established a retired pay base for use in computing retired or retainer pay. ***Title 10, U.S.C., section 1407*** applies to members who have entered a Uniformed Service after September 7, 1980. The percentage of cost-of-living increases is determined by the most recent basic pay rate used in the computation of the retired or retainer pay base.

080211. Revised Frequency for COLA

On August 13, 1981, ***Public Law 97-35*** revised the frequency for cost-of-living adjustments from semiannual to annual for retired pay, retainer pay, survivor annuities, and dual compensation amounts. This legislation became effective with the amendment to ***5 U.S.C. 8340(b)***, also enacted by ***Public Law 97-35***. The annual cost-of-living adjustment, effective March 1 of each year, was based on the accumulative percentage change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest 1/10th of 1 percent.

080212. Revised COLA Mechanism

Public Law 97-253 revised the cost-of-living adjustment mechanism under Federal retirement systems during fiscal year (FY) 1983. The revision affected the eligibility, percentage, and effective dates of such adjustments and was repealed by ***Public Law 98-369***.

A. Members who had entitlement to a first adjustment in initial amounts of retired or retainer pay under ***10 U.S.C. 1401***, as computed on the active-duty base pay scale, became entitled to a first adjustment in retired or retainer pay equal to the percentage increase in CPI occurring between September and December 1982, which is referred to as a first (partial) adjustment.

B. Any member under age 62 on or before March 1, 1983, who was entitled to an adjustment under ***10 U.S.C. 1401a(b)***, received an adjustment based on an assumed increase in the price index. The assumed increase in the price index was 6.6 percent for FY 1983. Retired or retained pay increased by one-half the assumed increase plus the amount by which the actual percentage increase in the price index increased over the assumed increase from December through December of the preceding time period.

C. Any member who was age 62 or more on March 1, 1983, and entitled to an adjustment under ***10 U.S.C. 1401a(b)*** in retired or retainer pay on that date, became entitled to that increase without limitation.

D. Any member who was retired by reason of physical disability under ***10 U.S.C., Chapter 61***, and entitled to an adjustment of retired pay under ***10 U.S.C. 1401a(b)*** on March 1, 1983, received that adjustment without limitation.

E. The effective date for cost-of-living adjustments for FY 1983 was changed from March 1 to April 1.

080213. Department of Defense (DoD) Authorization Act, FY 1984

Public Law 98-94 (1993), also known as the DoD Authorization Act, FY 1984, affected the computation of retired and retainer pay.

A. ***Public Law 98-94, section 921***, repealed the 1-year look-back provision (***10 U.S.C. 1401a(e)***). Members who first become eligible to retire or transfer after September 24, 1983, would not use the 1-year look-back provision in computing their retired pay. Section 921, however, had a savings provision that permitted any member who was eligible to retire on September 24, 1983 to use the 1-year look-back as though that provision had not been repealed, provided that the member retired on or before September 24, 1986. If such member retired after September 24, 1986, then the retired or retainer pay could not be less than what it would have been if the member actually retired on September 23, 1986. NOTE: Section 921 did not affect the Tower Amendment (***10 U.S.C. 1401a(f)***). Under this statute, any member who used the Tower Amendment to compute his or her retired pay, as though he or she had retired on a date when he or she otherwise would have been entitled to use the 1-year look-back provision, could apply the 1-year look-back provision to ensure that their retired pay was not less than what it would have been had they actually retired on the earlier date.

B. ***Public Law 98-94, section 922***, amended all statutes that previously had authorized the rounding of monthly retired or retainer pay. All members who retire on or after October 1, 1983 had their retired or retainer pay rounded. In the initial computation of gross retired pay, any amount that was not a multiple of $1 was rounded down to the next lower multiple of $1. All further reductions, deductions, withholdings, and allotments were made from the rounded entitlement. Future adjustments to such pay were made on the rounded figure. For members retired on September 30, 1983, no rounding was made until there was an adjustment under ***10 U.S.C. 1401a***; then, and with each subsequent adjustment, the amount as adjusted, if not a multiple of $1, is rounded to the next lower multiple of $1. This became the member's entitlement and any future adjustments were based on this rounded figure.

080214. Modification of COLAs Applicable to Military Retired and Retainer Pay

Public Law 98-270 amended ***5 U.S.C. 8340(a) and (b)*** to modify cost-of-living adjustments that also applied to military retired and retainer pay under ***10 U.S.C. 1401a(b)***. The effective date for cost-of-living adjustments was changed from March 1 to December 1. The cost-of-living adjustment equaled the percentage change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year. The price index for a base quarter was defined as the arithmetical mean of such index for the 3 months of the base quarter. The partial cost-of-living adjustment equaled the percentage increase of the average CPI for July, August, and September over the CPI for the preceding December.

080215. The Military Retirement Reform Act of 1986

Public Law 99-348:

A. Reduced the retired pay multiplier for any member who first became a member of a Uniformed Service after July 31, 1986, and who retired before age 62 with less than 30 years of creditable service (excluding retirements under ***10 U.S.C., Chapter 61***, and ***1223***. The multiplier was reduced by:

1. One percentage point for each full year that the member's years of creditable service were less than 30; and

2. One-twelfth of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) was less than a full year.

B. Stipulated cost-of-living increases for any member who first became a member of a Uniformed Service on or after August 1, 1986, when the increase in the CPI exceeded 1 percent. The cost-of-living increase was 1 percentage point less than the increase in CPI.

C. Restored the reduction in retired pay multiplier under subparagraph 080315.A at age 62 and provided a one-time restoral at age 62 for the reduction in cost-of-living increase under subparagraph 080315.B.

080216. FY 1987 – 1989 No COLA Reduction

Public Law 99-576 guaranteed that military retired pay cost-of-living adjustments were unaffected by ***Public Law 99-177*** during fiscal years 1987 through 1989.

080217. Chief Warrant Officer Grade

The grade Chief Warrant Officer, W-5, was established, effective February 1, 1992, for the four Military Services.

080218. Added Longevity Step

Effective January 1, 1993, a longevity step for "over 24," but less than 26 years, was added for pay grades E-7, E-8, E-9, W-4, W-5, and O-6.

080219. Delay of COLA Adjustment

Public Law 103-66 delayed the payment of the December 1, 1993 military retirement cost-of-living adjustment until March 1, 1994. Disability retirements and survivor annuities were unaffected.

080220. Prohibited Increase in COLA Adjustment

The FY 1995 DoD Authorization Act, ***Public Law 103-337***, and the FY 1995 DoD Appropriations Act, ***Public Law 103-334***, prohibited the payment of increased retired pay associated with the cost-of-living adjustment for December 1994 for months before March 1, 1995, excluding disability retirements under ***10 U.S.C., Chapter 61,*** and survivor annuities.

080221. Various Pay-Out Periods for FY 1996 COLA Adjustments

In FY 1996, the cost-of-living adjustment became effective December 1, 1995. Certain adjustments, however, were not payable for periods before March 1996: increases in retired or retainer pay for members and former members retired on the basis of longevity, age, or non-Regular service (***10 U.S.C., Chapter 1223***). Adjustments, which became payable beginning December 1, 1995, included the increases in survivor annuities and survivor benefit program costs, retired pay based on disability, and the exclusion amounts for dual compensation.

080222. Clarification of Initial Computation of Retiree COLAs

The FY 1997 DoD Authorization Act, ***Public Law 104-201***, clarified the method of computing the first cost-of-living adjustment of retired pay for members who entered a Uniformed Service after September 7, 1980, but before August 1, 1986.

080223. Adjustment of Basic Pay Rates

Effective April 1, 2007, ***Public Law 109-364*** adjusts basic pay rates within each pay grade.

080224. The Retired Pay of General or Flag Officers Who Retired After September 30, 2006

Under ***Public Law 109-364***, the retired pay of general or flag officers who are retired after September 30, 2006 is to be based on rates of basic pay provided by law, rather than the rate as reduced by ***37 U.S.C. 203(a)(2)***.

080225. Change in 75 percent Maximum

Public Law 109-364 removed the 75 percent maximum for the retired pay multiplier under ***10 U.S.C. 1409*** for members who retire after December 31, 2006 with more than 30 years of service.

0803 PROVISIONS OF PAY CHANGES, EXCEPTIONS, AND SPECIAL COMPUTATIONS PRIOR TO DECEMBER 1, 2005

080301. The Career Compensation Act

The Career Compensation Act of 1949 stipulated the:

A. Establishment of new basic pay rates, using a combination of pay grade and total years of service pay.

B. Disability retirement based on a percentage of disability, using the Department of Veterans Affairs Schedule of Ratings for establishing such percentages with pay computed based on years of service or percentage of disability, as the member elected.

C. A revised method for recomputing pay for members who served on active duty after retirement.

D. Automatic recomputation for members retired for nondisability reasons before October 1, 1949, on the October 1, 1949 basic pay rates, if greater than rates in effect before October 1, 1949.

E. An option for members retired for disability before October 1, 1949, upon physical evaluation and assignment of a percentage of disability, to elect not later than October 1, 1954, to:

1. Remain at the rates in effect before October 1, 1949 (saved pay);

2. Have pay computed on the October 1, 1949 rates, using either disability percentages assigned or years of active service; or

3. Receive severance pay.

F. An option for members who were hospitalized on October 1, 1949, and retired before January 1, 1951 for the disability for which they were hospitalized, to elect pay based on the laws and pay tables in effect before October 1, 1949 (saved pay).

080302. Amendments to the Career Compensation Act

The following statutes amended provisions of the Career Compensation Act.

A. Effective May 1, 1952, Public Law 82-346 provided for an increase of 4 percent applied to retired saved pay accounts, regular retired accounts, and active-duty basic pay rates.

B. The Career Incentive Act of 1955, Public Law 84-20, effective April 1, 1955, further amended the Career Compensation Act by providing:

1. Increased basic pay rates.

2. A 6 percent increase for disability retired saved pay accounts.

3. Recomputation of retired accounts (other than saved pay) on the new basic pay rates.

4. A 6 percent increase for nondisability retirees receiving pay computed on pre-October 1, 1949 rates or recomputation on April 1, 1955 basic pay rates, whichever was greater.

5. Officers with less than 3 years of service and warrant officers and enlisted members with less than 2 years of service and retired for disability or placed on the Temporary Disability Retired List (TDRL) will have pay computed on the April 1, 1955 rates, plus 6 percent.

C. The Military Pay Act of 1958, effective June 1, 1958, the provided for:

1. Increased basic pay rates.

2. Retired pay increase of 6 percent for members receiving retired pay on May 31, 1958.

3. Pay computed on the June 1, 1958 basic pay rates, plus 6 percent for members retired for disability on or after June 1, 1958, with 2 or less years of service.

4. An additional new basic pay rate for certain pay grades with more than 20 years of service.

5. Two new enlisted pay grades, E-8 and E-9, and two new officer pay grades, O-9 and O-10.

6. Basic pay rates for new pay grades O-1E, O-2E, and O-3E, for officers in grades O-1, O-2, and O-3 with 4 or more years of active enlisted service.

7. Computation of retired pay on the April 1, 1955 basic pay rates (active-duty saved-pay rates), if greater.

8. Retired pay computed on the April 1, 1955 pay rates, but not the 6 percent increase, for members retired after June 1, 1958, and receiving active-duty saved pay.

9. The greater of pay computed on the June 1, 1958 basic pay rates, or the April 1, 1955 rates plus 6 percent, for members retired on June 1, 1958.

10. Retired pay recomputed, effective June 1, 1958, for officers retired before June 1, 1958 who served on active-duty before that date in the grade of general, admiral, lieutenant general, or vice admiral for at least 180 days. This recomputation was computed on the April 1, 1955 basic pay rates of pay grade O-8 increased by $100 for pay grade O-9 and $200 for pay grade O-10, with the result increased by 6 percent.

080303. The Uniformed Services Pay Act

The Uniformed Services Pay Act, Public Law 88-132, effective October 1, 1963, provided for:

A. Increased basic pay rates.

B. Retired pay computed on the October 1, 1963 basic pay rates plus 6 percent for members retired for disability on or after October 1, 1963, with 2 years of service or less.

C. A 5 percent increase in retired pay for members retired before September 30, 1963, except that:

1. Nondisability retirees receiving pay computed on the rate in effect before October 1, 1949 were entitled to the 5 percent increase or recomputation on the June 1, 1958 basic pay rates, using the 2-1/2 percent formula, whichever was greater.

2. Retirees receiving pay computed on the April 1, 1955 basic pay rates plus 6 percent were entitled to that pay plus 5 percent, or recomputation on the June 1, 1958 basic pay rates, whichever was greater.

3. Members retired on April 1, 1963 who were not subject to the URDA (***5 U.S.C. 8301***), and members retired between April 2, 1963 and September 30, 1963 were entitled to a 5 percent increase or recomputation on the October 1, 1963 basic pay rates, whichever was greater.

D. Amendment to ***10 U.S.C. 1401a*** to provide for adjustments to retired pay based on the CPI.

080304. Basic Pay Rates Effective September 1, 1964

Public Law 88-422, effective September 1, 1964, provided for:

A. Increased basic pay rates.

B. No increase in retired pay except that:

1. Members retired for disability on September 1, 1964 with 2 years of service or less were entitled to pay computed on the October 1, 1963 basic pay rates, plus 6 percent.

2. Members retired for disability on or after September 2, 1964 with 2 years of service or less were entitled to pay computed on the September 1, 1964 basic pay rates, plus 6 percent.

C. No entitlement to pay computed on the September 1, 1964 basic pay rates for members who retired on September 1, 1964, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (August 31, 1964 transfers). Their pay was computed on the October 1, 1963 basic pay rates.

080305. Basic Pay Rates Effective September 1, 1965

Public Law 89-132, effective September 1, 1965, along with the cost-of-living formula, provided for:

A. Increased basic pay rates.

B. A 4.4 percent cost-of-living adjustment in retired pay for all members on the rolls on August 31, 1965.

C. Pay computed on the September 1, 1964 basic pay rates, plus 4.4 percent for members retired on September 1, 1965 who were:

1. Subject to the URDA;

2. Fleet Reservists and Fleet Marine Corps Reservists (August 31, 1965 transfers); or

3. Warrant officers.

D. Pay computed on the September 1, 1964 basic pay rates, plus 6 percent and 4.4 percent for members retired for disability on September 1, 1965, with 2 years of service or less.

080306. Basic Pay Rates Effective July 1, 1966

Public Law 89-501, effective July 1, 1966, provided for:

A. Increased basic pay rates.

B. No increase for members on the retired rolls on June 30, 1966.

C. Pay computed on the July 1, 1966 basic pay rates, notwithstanding the URDA for all members who first became entitled to retired pay on or after July 1, 1966.

080307. COLA Adjustment Effective December 1, 1966

A cost-of-living adjustment, effective December 1, 1966, provided for:

A. Increased retired pay by 3.7 percent for all members on the rolls on November 30, 1966.

B. Pay computed on the July 1, 1966 basic pay rates, plus 3.7 percent from date of retirement for entitled members retired on or after December 1, 1966.

080308. Basic Pay Rates Effective October 1, 1967

Public Law 90-207, effective retroactive to October 1, 1967 provided for:

A. Increased basic pay rates.

B. No increase in retired pay for members on the rolls on September 30, 1967.

C. Pay computed on the October 1, 1967 basic pay rates, notwithstanding the URDA for all members who first became entitled to retired pay on or after October 1, 1967.

D. A 3.7 percent increase in retired pay from the date of retirement for members who retired after November 30, 1966, and whose retired pay was computed using the July 1, 1966 active-duty pay rates.

E. An adjustment of military active-duty basic pay whenever the General Schedule for Classified Employees was adjusted upward, effective January 1, 1968.

080309. COLA Adjustment Effective April 1, 1968

A cost-of-living adjustment effective April 1, 1968, provided for:

A. Increased retired pay by 3.9 percent for all retirees receiving pay computed on basic pay rates in effect before October 1, 1967.

B. Entitled members whose pay was computed on the October 1, 1967 basic pay rates to:

1. An increase of 1.3 percent of the pay they were receiving on March 31, 1968; or

2. Pay computed on the July 1, 1966 basic pay rates, increased by 7.7443 percent, from April 1, 1968, or date of retirement, if later.

080310. Basic Pay Rates Effective July 1, 1968

Executive Order 11414, effective July 1, 1968, provided for:

A. Increased basic pay rates.

B. No increase to retired members on the rolls on June 30, 1968.

C. No entitlement to pay computed on the July 1, 1968 basic pay rates for members who retired on July 1, 1968, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (June 30, 1968 transfers). Their pay was computed on the July 1, 1966 basic pay rates, plus 7.7443 percent.

080311. COLA Adjustment Effective February 1, 1969

A cost-of-living adjustment, effective February 1, 1969, provided for:

A. Increased retired pay by 4 percent for retirees receiving retired pay computed on the basic pay rates in effect before July 1, 1968.

B. Entitled members whose pay was computed on the July 1, 1968 basic pay rates to:

1. A 2.1 percent increase in the pay they were receiving on January 31, 1969; or

2. Recomputation of pay on the July 1, 1966 basic pay rates, plus 7.7443 percent and 4 percent.

080312. Basic Pay Rates Effective July 1, 1969

Executive Order 11475 provided for:

A. Increased basic pay rates.

B. No increase for retired members on the rolls on June 30, 1969.

C. No entitlement to pay computed on the July 1, 1969 basic pay rates for members who retired on July 1, 1969, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (June 30, 1969 transfers). Their pay was computed on the July 1, 1968 basic pay rates, plus 2.1 percent.

080313. COLA Adjustment Effective November 1, 1969

A cost-of-living adjustment, effective November 1, 1969, provided for:

A. Members whose retired pay was computed on the basic pay rates in effect before July 1, 1969 were entitled to an increase of 4.3 percent.

B. Members whose retired pay was computed on the July 1, 1969 basic pay rates received a 0.9 percent increase.

C. Members who retired after November 1, 1969 received a 0.9 percent increase from the date of retirement.

080314. Amended COLA Retroactive to November 1, 1969

Public Law 91-179 amended ***10 U.S.C. 1401a(b)*** to provide an additional 1 percent to all cost-of-living adjustments. The additional 1 percent was retroactive to the November 1, 1969 cost-of-living adjustment, which effectively made the increase 5.3 percent.

080315. Basic Pay Rates Effective January 1, 1970

Executive Order 11525 provided for:

A. Increased basic pay rates.

B. Pay computed on the January 1, 1970 basic pay rates for members who first became entitled to retired pay on or after April 15, 1970.

C. No entitlement to pay computed on the January 1, 1970 basic pay rates for members who first became entitled to retired pay before April 15, 1970. Their pay was computed using the July 1, 1969 basic pay rates, plus 0.9 percent.

080316. COLA Effective August 1, 1970

A cost-of-living adjustment, effective from August 1, 1970, provided for:

A. Members whose retired pay was computed on the basic pay rates in effect before January 1, 1970 were entitled to a 5.6 percent increase, effective August 1, 1970.

B. Members whose retired pay was computed on the January 1, 1970 basic pay rates were entitled to a 2.5 percent increase in retired pay, effective August 1, 1970 or date of retirement, if later.

080317. Basic Pay Rates Effective January 1, 1971

Executive Order 11577 increased active-duty basic pay rates, effective January 1, 1971, and provided for:

A. Increased basic pay rates.

B. No entitlement to pay computed on January 1, 1971 basic pay rates for members who retired on January 1, 1971, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1970 transfers). Their pay was computed on the rates effective January 1, 1970.

C. No increase for retired members whose pay was computed on basic pay rates in effect before January 1, 1971.

080318. COLA Effective June 1, 1971

A cost-of-living adjustment, effective from June 1, 1971, provided for:

A. Members whose retired pay was computed on basic pay rates in effect before January 1, 1971 were entitled to an increase of 4.5 percent.

B. Members whose retired pay was computed on the January 1, 1971 basic pay rates were entitled to a 0.6 percent increase effective June 1, 1971 or date of retirement, if later.

080319. Basic Pay Rates for Certain Pay Grades

Public Law 92-129, effective October 1, 1971, increased basic pay rates for only certain pay grades and years of service. (Note: due to an economic pay freeze, the rates were not effective until November 14, 1971.) The statute provided for:

A. Increased basic pay rates for:

1. Pay grades E-1 through E-4, regardless of years of service.

2. Pay grades E-5 through E-7 with less than 2 years of service.

3. Pay grade O-1, regardless of years of service.

4. Pay grade O-2 with less than 2 years of service.

B. Computation of retired pay of members who retired on or after October 1, 1971, in all other pay grades, on the January 1, 1971 basic pay rates, increased by 0.6 percent.

080320. Basic Pay Rates Effective January 1, 1972

Executive Order 11638 increased active-duty basic pay rates, effective January 1, 1972, and provided for:

A. Increased basic pay rates.

B. No entitlement to pay computed on the January 1, 1972 basic pay rates for members who retired on January 1, 1972, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1971 transfers). Their pay was computed on the basic pay rates effective October 1, 1971 or January 1, 1971.

C. No increase for retired members whose pay was computed on basic pay rates in effect before January 1, 1972.

080321. COLA Effective July 1, 1972

A cost-of-living adjustment, effective July 1, 1972, provided for:

A. Members whose pay was computed on basic pay rates in effect before October 1, 1971 were entitled to an increase of 4.8 percent.

B. Members whose pay was computed on the basic pay rates effective October 1, 1971 were entitled to an increase of 1.7 percent.

C. Entitlement to a 1 percent increase, effective July 1, 1972, or date of retirement, if later, for members whose retired pay was computed on the January 1, 1972 basic pay rates.

080322. Basic Pay Rates Effective January 1, 1973

Executive Order 11692 increased active-duty basic pay rates, effective January 1, 1973, and provided for:

A. Increased basic pay rates.

B. No increase for members whose retired pay was computed on basic pay rates in effect before January 1, 1973. ***Executive Order 11778*** changed the effective date of the basic pay rates from January 1, 1973 to October 1, 1972.

C. No entitlement to pay computed on the October 1, 1972 basic pay rates for members who, on October 1, 1972, were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1972 transfers). Their pay was computed on the basic pay rates effective January 1, 1972.

080323. COLA Effective July 1, 1973

A cost-of-living adjustment, effective July 1, 1973, provided for:

A. Members whose retired pay was computed on basic pay rates in effect before January 1, 1973 later changed to computation on October 1, 1972 rates, and received a 6.1 percent increase.

B. Entitlement to an increase of 2.7 percent from July 1, 1973 or date of retirement, if later, for members whose retired pay was computed on the January 1, 1973 basic pay rates. These accounts were later recomputed to provide 3.6 percent instead of 2.7 percent from July 1, 1973.

080324. Basic Pay Rates Effective October 1, 1973

Executive Order 11740, effective October 1, 1973, provided for:

A. Increased basic pay rates.

B. No entitlement to pay computed on the October 1, 1973 basic pay rates for members who retired on October 1, 1973, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1973 transfers).

C. No increase for members on retired rolls on September 30, 1973.

080325. COLA Effective January 1, 1974

A cost-of-living adjustment, effective January 1, 1974, provided for:

A. An increase of 5.5 percent for members whose retired pay was computed on the basic pay rates in effect before October 1, 1973.

B. Entitlement to a 0.8 percent increase, effective January 1, 1974, for members whose retired pay was computed on the October 1, 1973 basic pay rates, or an increase of 2.7 (later 3.6) percent and 5.5 percent on the January 1, 1973 basic pay rates.

080326. COLA Effective July 1, 1974

A cost-of-living adjustment, effective July 1, 1974, provided for:

A. Entitlement to an increase of 6.4 percent for members whose retired pay was computed on basic pay rates in effect before October 1, 1973.

B. Entitlement to a 6.3 percent increase (0.8 not applied), effective July 1, 1974 or date of retirement, for members whose retired pay was computed on the October 1, 1973 basic pay rates. NOTE: Because of an error in the Consumer Price Index, all accounts were overpaid by 0.1 percent from July 1974 through December 1974. (The Office of the Secretary of Defense waived the overpayments.) The accounts were corrected on a current basis to 6.3 percent and 6.2 percent, effective January 1975.

080327. Basic Pay Rates Effective October 1, 1974

Executive Order 11812, effective October 1, 1974, provided for:

A. Increased basic pay rates.

B. Retired pay computed on the October 1, 1973 rates, plus 6.3 percent, which was reduced to 6.2 percent, effective January 1, 1975, for members retired on or after October 1, 1974.

C. No increase for members on retired rolls on September 30, 1974.

080328. COLA Effective January 1, 1975

A cost-of-living adjustment, effective January 1, 1975, provided that members whose retired pay was computed on the basic pay rates in effect before October 1, 1974 received a 7.3 percent increase. To adjust accounts for the error in the CPI for July 1, 1974, the accounts were increased by 7.1992 percent, effective January 1, 1975.

080329. COLA Adjustment Effective August 1, 1975

A cost-of-living adjustment, effective August 1, 1975, provided for:

A. Entitlement to an increase of 5.1 percent for members whose retired pay was computed on the basic pay rates in effect before October 1, 1974.

B. Pay increased by 5 percent, or computed on the October 1, 1973 basic pay rates, plus 6.2 percent, 7.3 percent, and 5.1 percent for members whose retired pay was computed on the October 1, 1974 basic pay rates.

080330. Basic Pay Rates Effective October 1, 1975

Executive Order 11883, effective October 1, 1975, provided for:

A. Increased basic pay rates.

B. No increase for members retired before October 1, 1975.

C. No entitlement to pay computed on the October 1, 1975 basic pay rates for members who retired on October 1, 1975, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1975 transfers). Their pay was computed on the October 1, 1974 basic pay rates.

D. Pay computed on the October 1, 1974 basic pay rates, plus 5 percent for members whose retired pay was computed on the October 1, 1975 basic pay rates. In computing the first retirements, some members benefited by using the October 1, 1974 rates, plus 5 percent, and for others the October 1, 1975 rates were slightly higher.

080331. COLA Effective March 1, 1976

A cost-of-living adjustment, effective March 1, 1976, provided for:

A. An increase of 5.4 percent for members whose retired pay was computed on the basic pay rates in effect before October 1, 1975.

B. A 1.7 percent increase or recomputation on the October 1, 1974 basic pay rates, plus 5 percent and 5.4 percent for members whose retired pay was computed on the October 1, 1975 basic pay rates.

080332. Basic Pay Rates Effective October 1, 1976

Executive Order 11941, effective October 1, 1976, provided for:

A. Increased basic pay rates.

B. No entitlement to pay computed on the October 1, 1976 basic pay rates for members who retired on October 1, 1976, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1976 transfers). Their pay was computed on the October 1, 1975 basic pay rates.

C. No increase in retired pay for members on the retired rolls on September 30, 1976.

080333. COLA Effective March 1, 1977

A cost-of-living adjustment, effective March 1, 1977, provided for:

A. A 4.8 percent increase for members whose retired pay was computed on the basic pay rates in effect before October 1, 1976.

B. A 1 percent increase or pay computed on the October 1, 1975 basic pay rates, plus 1.7 percent and 4.8 percent for members whose retired pay was computed on the October 1, 1976 basic pay rates.

080334. Rates for Executive Level V Personnel

Special rates, effective March 1, 1977, for Executive Level V personnel, increased maximum rates for grades O-9 and O-10. Members entitled to retired pay computed under these new rates were also entitled to a 1 percent cost-of-living adjustment from date of retirement.

080335. COLA Effective September 1, 1977

A cost-of-living adjustment, effective September 1, 1977, provided a 4.3 percent increase for all members whose retired pay was computed on the basic pay rates in effect prior to October 1, 1976. Members whose retired pay was computed on the October 1, 1976 basic pay rates were entitled to a 5.3 percent increase. Reverse the 1 percent cost-of-living adjustment, credited March 1, 1977 must be reversed prior to applying the 5.3 percent increase. If determined to be advantageous to retired members, then ***10 U.S.C. 1401a(f)*** was applied to members and former members whose retired pay was computed on the October 1, 1976 basic pay rates.

080336. Basic Pay Rates Effective October 1, 1977

Executive Order 12010, effective October 1, 1977, provided for:

A. Increased basic pay rates.

B. No increase for members retired before October 1, 1977.

C. No entitlement to pay computed on the October 1, 1977 basic pay rates for members who retired on October 1, 1977, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1977 transfers). Their pay was computed on the October 1, 1976 basic pay rates.

080337. COLA Effective March 1, 1978

A cost-of-living adjustment, effective March 1, 1978, provided for:

A. A 2.4 percent increase for members whose retired pay was computed on the basic pay rates in effect prior to October 1, 1977.

B. A 1.1 percent increase or pay computed on the October 1, 1976 basic pay rates, plus 5.3 percent and 2.4 percent for members whose retired pay was computed on the October 1, 1977 basic pay rates.

080338. COLA Effective September 1, 1978

A cost-of-living adjustment, effective September 1, 1978, provided a 4.9 percent increase for all members whose retired pay was computed on the basic pay rates in effect prior to October 1, 1977. Members whose retired pay was computed on the October 1, 1977 basic pay rates were entitled to a 6.1 percent increase. The 1.1 percent cost-of-living adjustment, credited March 1, 1978, must be reversed prior to applying the 6.1 percent increase. If determined to be advantageous to retired members, then ***10 U.S.C. 1401a(f)*** was applied to members and former members whose retired pay was computed on the October 1, 1977 basic pay rates.

080339. Basic Pay Rates Effective October 1, 1978

Executive Order 12087, effective October 1, 1978, provided for:

A. Increased basic pay rates.

B. No increase for members retired before October 1, 1978.

C. No entitlement to pay computed on the October 1, 1978 basic pay rates for members who retired on October 1, 1978, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1978 transfers). Their pay was computed on the October 1, 1977 basic pay rates.

080340. COLA Effective March 1, 1979

A cost-of-living adjustment, effective March 1, 1979, provided for:

A. A 3.9 percent increase for members whose retired pay was computed on the basic pay rates in effect prior to October 1, 1978.

B. A 1.9 percent increase or pay computed on the October 1, 1977 basic pay rates, plus 6.1 percent and 3.9 percent for members whose retired pay was computed on the October 1, 1978 basic pay rates.

080341. COLA Effective September 1, 1979

A cost-of-living adjustment, effective September 1, 1979, provided a 6.9 percent increase for all members whose retired pay was computed on the basic pay rates in effect prior to October 1, 1978. Members whose retired pay was computed on the October 1, 1978 basic pay rates were entitled to an 8.9 percent increase. The 1.9 percent cost-of-living adjustment, credited March 1, 1979, must be reversed prior to applying the 8.9 percent increase. If it is determined to be advantageous to retired members, then ***10 U.S.C. 1401a(f)*** was applied to members and former members whose retired pay was computed on October 1, 1978 basic pay rates.

080342. Basic Pay Rates Effective October 1, 1979

Executive Order 12165, effective October 1, 1979, provided for:

A. Increased basic pay rates.

B. No increase for members retired before October 1, 1979.

C. No entitlement to pay computed on the October 1, 1979 basic pay rates for members who retired on October 1, 1979, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1979 transfers). Their pay was computed on the October 1, 1978 basic pay rates.

080343. COLA Effective March 1, 1980

A cost-of-living adjustment, effective March 1, 1980, provided for:

A. A 6.0 percent increase for members whose retired pay was computed on the basic pay rates in effect prior to October 1, 1979.

B. A 2.8 percent increase or pay computed on the October 1, 1978 basic pay rates, plus 8.9 percent and 6.0 percent for members whose retired pay was computed on the October 1, 1979 basic pay rates.

080344. COLA Adjustment Effective September 1, 1980

A cost-of-living adjustment, effective September 1, 1980, provided a 7.7 percent increase for all members whose retired pay was computed on the basic pay rates in effect before October 1, 1979. Members whose retired pay was computed on the October 1, 1979 basic pay

rates were entitled to a 10.8 percent increase. Reverse the 2.8 percent cost-of-living adjustment, credited March 1, 1980, before applying the 10.8 percent increase. If it is determined to be advantageous to retired members, then ***10 U.S.C. 1401a(f)*** was applied to members and former members whose retired pay was computed on October 1, 1979 basic pay rates.

080345. Basic Pay Rates Effective October 1, 1980

Public Law 96-342, effective October 1, 1980, provided for:

A. Increased basic pay rates.

B. No increase for members retired before October 1, 1980.

C. No entitlement to pay computed on the October 1, 1980 basic pay rates for members who retired on October 1, 1980, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1980 transfers). Their pay was computed on the October 1, 1979 basic pay rates.

080346. COLA Effective March 1, 1981

A cost-of-living adjustment, effective March 1, 1981, provided for:

A. A 4.4 percent increase for members whose retired pay was computed on the basic pay rates in effect prior to October 1, 1980.

B. A 2.7 percent increase or pay computed on the October 1, 1979 basic pay rates, plus 10.8 and 4.4 percent for members whose retired pay was computed on the October 1, 1980 basic pay rates.

080347. Basic Pay Rates Effective October 14, 1981

Executive Order 12330, effective October 14, 1981, provided for:

A. Increased basic pay rates.

B. No increase for members retired before October 1, 1981.

C. No entitlement to pay computed on the October 1, 1981 basic pay rates for members who retired on October 1, 1981, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1981 transfers). Their pay was computed on the October 1, 1980 basic pay rates.

080348. Rates for Executive Level V Personnel

Public Law 97-92, effective January 1, 1982, established new rates for Executive Level V personnel, which permitted an increase in the maximum amount payable under the October 1, 1981

basic pay rates for grades O-7, O-8, O-9, and O-10, and for the Joint Chiefs of Staff. Members were entitled to a 0.7 percent cost-of-living adjustment, effective March 1, 1982.

080349. COLA Effective March 1, 1982

A cost-of-living adjustment, effective March 1, 1982, provided for:

A. An 8.7 percent increase for members whose retired pay was computed on the basic pay rates in effect prior to October 1, 1981.

B. A 0.7 percent increase or pay computed on the October 1, 1980 basic pay rates, plus 2.7 and 8.7 percent for members whose retired pay was computed on the October 1, 1981 basic pay rates. If it is determined to be advantageous to retired members, then ***10 U.S.C. 1401a(f)*** was applied to members and former members whose retired pay was computed on the October 1, 1981 basic pay rates.

080350. Basic Pay Rates Effective October 1, 1982

Executive Order 12387, effective October 1, 1982, provided for:

A. Increased basic pay rates.

B. No increase for members retired before October 1, 1982.

C. No entitlement to pay computed on the October 1, 1982 basic pay rates for members who retired on October 1, 1982, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1982 transfers). Their pay was computed on the October 1, 1981 basic pay rates.

080351. Rates for Executive Level V Personnel Effective December 18, 1982

Effective December 18, 1982, ***Public Law 97-377*** established new rates for Executive Level V personnel, which permitted an increase in the maximum amount payable under October 1982 basic pay rates for grades O-8, O-9, and O-10, and for the Joint Chiefs of Staff.

080352. COLA Effective April 1, 1983

A cost-of-living adjustment, effective April 1, 1983, provided for:

A. A 3.3 percent or 3.9 percent adjustment for members whose pay was computed on basic pay rates in effect before October 1, 1982. Members who are age 62 or more on March 1, 1983, or who retired by reason of physical disability under ***10 U.S.C., Chapter 61***, were entitled to a 3.9 percent increase. Members under age 62 on March 1, 1983 were entitled to a 3.3 percent increase.

B. No entitlement to a partial cost-of-living adjustment on April 1, 1983 for members whose pay was computed on the basic pay rates effective October 1, 1982. (Note: the CPI declined from 292.8 in September 1982 to 290.0 in December 1982.)

080353. Basic Pay Rates Effective January 1, 1984

Executive Order 12456, effective January 1, 1984, provided for:

A. Increased basic pay rates.

B. No increase for members retired before January 1, 1984.

C. No entitlement to pay computed on the January 1, 1984 basic pay rates for members who retired on January 1, 1984, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1983 transfers). Their pay was computed on the October 1, 1982 basic pay rates.

080354. COLA Effective December 1, 1984

A cost-of-living adjustment, effective December 1, 1984, provided for:

A. A 3.5 percent adjustment for members whose pay was computed on basic pay rates in effect before January 1, 1984.

B. A partial cost-of-living adjustment of 2.8 percent for members whose pay was computed on the basic pay rates effective January 1, 1984.

080355. Basic Pay Rates Effective January 1, 1985

Executive Order 12496, effective January 1, 1985, provided for:

A. Increased basic pay rates.

B. No increase for members retired before January 1, 1985.

C. No entitlement to pay computed on the January 1, 1985 basic pay rates for members who retired on January 1, 1985, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1984 transfers). Their pay was computed on the January 1, 1984 basic pay rates.

080356. Basic Pay Rates Effective October 1, 1985

Executive Order 12540, effective October 1, 1985, provided for:

A. Increased basic pay rates.

B. No increase for members retired before October 1, 1985.

C. No entitlement to pay computed on the October 1, 1985 basic pay rates for members who retired on October 1, 1985, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (September 30, 1985 transfers). Their pay was computed on the January 1, 1985 basic pay rates.

080357. COLA Effective December 1, 1985

The cost-of-living adjustment, effective December 1, 1985, of 3.1 percent (2.4 percent partial cost-of-living adjustment) was suspended under ***Public Law 99-177***.

080358. COLA and Basic Pay Rates FY 1987

A. A cost-of-living adjustment, effective December 1, 1986, provided for:

1. A 1.3 percent adjustment for members whose pay was computed on basic pay rates in effect before October 1, 1985.

2. A 1.3 percent adjustment for members whose pay was computed on the basic pay rates effective October 1, 1985.

B. Basic pay rates effective January 1, 1987, ***Executive Order 12578***, provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1987.

3. No entitlement to pay computed on the January 1, 1987 basic pay rates for members who retired on January 1, 1987, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1986 transfers). Their pay was computed on the October 1, 1985 basic pay rates.

080359. Executive Level V Rate Increase

Executive Level V rates increased to $72,500, effective March 1, 1987. The increase in the salaries of senior government officials recommended in the January 5, 1987 Presidential Budget message to the Congress became effective on February 4, 1987. The new, maximum basic pay amounts for grades O-8, O-9, and O-10, and for the Joint Chiefs of Staff, under ***2 U.S.C. 359***, are effective March 1, 1987.

080360. COLA and Basic Pay Rates FY 1988

A. A cost-of-living adjustment, effective December 1, 1987, provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed on active-duty pay rates in effect before January 1, 1987, received a 4.2 percent adjustment.

b. Members who first entered service before August 1, 1986, and who became entitled to retired pay computed on the January 1, 1987 active-duty pay rate, received a 3.7 percent partial cost-of-living adjustment.

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1987, received a 3.2 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay on or after January 1, 1987, received a pro-rata initial adjustment as follows:

Retired Between	Percent Increase
January 1, 1987 – March 31, 1987	3.7
April 1, 1987 – June 30, 1987	2.5
July 1, 1987 – September 30, 1987	1.2
October 1, 1987 – December 31, 1987	-0-

B. Basic pay rates effective January 1, 1988, ***Executive Order 12622***, provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1988.

3. No entitlement to pay computed on the January 1, 1988 basic pay rates (exception: certain grades O-8, O-9, and O-10 members were computed on rates effective March 1, 1987) for members who retired on January 1, 1988, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1987 transfers).

080361. COLA and Basic Pay Rates FY 1989

A. A cost-of-living adjustment, effective December 1, 1988, provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed on active-duty pay rates in effect before January 1, 1988, received a 4.0 percent adjustment.

b. Members who first entered service before August 1, 1986, and who became entitled to retired pay computed on the January 1, 1988 active-duty pay rate, received a 3.2 percent adjustment.

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1988, received a 3.0 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay on or after January 1, 1988, received a pro-rata initial adjustment as follows:

Retired Between	Percent Increase
January 1, 1988 – March 31, 1988	2.4
April 1, 1988 – June 30, 1988	2.1
July 1, 1988 – September 30, 1988	1.1
October 1, 1988 – December 31, 1988	-0-

B. Basic pay rates effective January 1, 1989, ***Executive Order 12663***, provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1989.

3. No entitlement to pay computed on the January 1, 1989 basic pay rates for members who retired on January 1, 1989, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1988 transfers). Their pay was computed on the January 1, 1988 basic pay rates.

080362. COLA and Basic Pay Rates FY 1990

A. A cost-of-living adjustment, effective December 1, 1989, provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed on active-duty pay rates in effect before January 1, 1989, received a 4.7 percent adjustment.

b. Members who first entered service before August 1, 1986, and who became entitled to retired pay computed on January 1, 1989 active-duty pay rate, received a 3.6 percent adjustment.

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1989, received a 3.7 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay on or after January 1, 1989, received a pro-rata initial adjustment as follows:

Retired Between	Percent Increase
January 1, 1989 – March 31, 1989	2.9
April 1, 1989 – June 30, 1989	2.1
July 1, 1989 – September 30, 1989	0.5
October 1, 1989 – December 31, 1989	-0-

B. Basic pay rates effective January 1, 1990, ***Executive Order 12698***, provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1990.

3. No entitlement to pay computed on the January 1, 1990 basic pay rates for members who retired on January 1, 1990, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1989 transfers).

080363. COLA and Basic Pay Rates FY 1991

A. A cost-of-living adjustment, effective December 1, 1990, provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed on active-duty pay rates in effect before January 1, 1990, received a 5.4 percent adjustment.

b. Members who first entered service before August 1, 1986, and who became entitled to retired pay computed on the January 1, 1990 active-duty pay rate, received a 4.4 percent adjustment.

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1990, received a 4.4 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay on or after January 1, 1990, received a pro-rata initial adjustment as follows:

Retired Between	Percent Increase
January 1, 1990 – March 31, 1990	3.7
April 1, 1990 – June 30, 1990	2.2
July 1, 1990 – September 30, 1990	1.5
October 1, 1990 – December 31, 1990	-0-

B Basic pay rates effective January 1, 1991, ***Executive Order 12736***, provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1991.

3. No entitlement to pay computed on the January 1, 1991 basic pay rates for members who retired on January 1, 1991, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1990 transfers).

080364. COLA and Basic Pay Rates FY 1992

A. A cost-of-living adjustment, effective December 1, 1991 provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed on active-duty pay rates in effect before January 1, 1991, received a 3.7 percent adjustment.

b. Members who first entered service before August 1, 1986, and who became entitled to retired pay computed on the January 1, 1991 active-duty pay rate, received a 2 percent adjustment.

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1991, received a 2.7 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay on or after January 1, 1991, received a pro-rata initial adjustment as follows:

Retired Between	Percent Increase
January 1, 1991 – March 31, 1991	1.2
April 1, 1991 – June 30, 1991	0.9
July 1, 1991 – September 30, 1991	0.5
October 1, 1991 – December 31, 1991	-0-

B. Basic pay rates effective January 1, 1992, ***Executive Order 12786***, provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1992.

3. No entitlement to pay computed on the January 1, 1992 basic pay rates for members who retired on January 1, 1992, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1991 transfers).

C. Effective February 1, 1992, pay rates were added for the new pay grade for Chief Warrant Officer, W-5.

080365. COLA and Basic Pay Rates FY 1993

A. A cost-of-living adjustment, effective December 1, 1992, provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed on active-duty pay rates in effect before January 1, 1992, received a 3 percent adjustment.

b. Members who first entered service before August 1, 1986, and who became entitled to retired pay computed on the January 1, 1992 active-duty pay rate, received a 2.3 percent adjustment.

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1992, received a 2 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay on or after January 1, 1992, received a pro-rata initial adjustment as follows:

Retired Between	Percent Increase
January 1, 1992 – March 31, 1992	1.5
April 1, 1992 – June 30, 1992	1.2
July 1, 1992 – September 30, 1992	0.5
October 1, 1992 – December 31, 1992	-0-

B. Basic pay rates effective January 1, 1993, ***Executive Order 12826***, provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1993.

3. No entitlement to pay computed on the January 1, 1993 basic pay rates for members who retired on January 1, 1993, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1992 transfers).

080366. COLA and Basic Pay Rates FY 1994

A. A cost-of-living adjustment, effective December 1, 1993, provides the following increases. (NOTE: ***Public Law 103-66*** prohibits the payment for months before March 1994 of any increase in retired pay associated with the cost-of-living adjustment except for those members retired for disability under ***10 U.S.C., Chapter 61***).

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed on active-duty pay rates in effect before January 1, 1993, received a 2.6 percent adjustment.

b. Members who first entered service before August 1, 1986, and who became entitled to retired pay computed on the January 1, 1993 active-duty pay rate, received a 1.9 percent adjustment.

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1993, received a 1.6 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay on or after January 1, 1993, received a pro-rata initial adjustment as follows:

Retired Between	Percent Increase
January 1, 1993 – March 31, 1993	1.2
April 1, 1993 – June 30, 1993	0.7
July 1, 1993 – September 30, 1993	0.2
October 1, 1993 – December 31, 1993	-0-

B. Basic pay rates effective January 1, 1994, ***Executive Order 12886*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1994.

3. No entitlement to pay computed on the January 1, 1994 basic pay rates for members who retired on January 1, 1994, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1993 transfers).

080367. COLA and Basic Pay Rates FY 1995

A. A cost-of-living adjustment, effective December 1, 1994, provides the following increases. (NOTE: ***Title 10, U.S.C., section 1401a(b)(2)(B)(ii)***, as amended by ***Public Law 103-337*** and ***Public Law 103-335***), prohibited payment for months before March 1995 of any increased retired pay associated with cost-of-living adjustments, except for those members or former members retired for disability. The delay did not pertain to Survivor Benefit Plan (SBP) base amounts and associated annuities and premiums, or to the exclusion amounts for dual compensation.)

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed on active-duty pay rates in effect before January 1, 1994, received a 2.8 percent adjustment.

b. Members who first entered service before August 1, 1986, and who became entitled to retired pay computed on the January 1, 1994 active-duty basic pay rate, received a 2.2 percent adjustment.

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1994, received a 1.8 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay on or after January 1, 1994, received a pro-rata initial adjustment as follows:

Retired Between	Percent Increase
January 1, 1994 – March 31, 1994	1.4
April 1, 1994 – June 30, 1994	1.2
July 1, 1994 – September 30, 1994	0.7
October 1, 1994 – December 31, 1994	-0-

B. Basic pay rates effective January 1, 1995, ***Executive Order 12944*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1995.

3. No entitlement to pay computed on the January 1, 1995 basic pay rates for members who retired on January 1, 1995, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1994 transfers).

080368. COLA and Basic Pay Rates FY 1996

A. A cost-of-living adjustment, effective December 1, 1995, provides the following increases: increases in survivor annuities (including SBP base amounts and associated annuities and premiums); retired pay based on disability; and exclusion amounts for dual compensation. Under ***10 U.S.C. 1401a(b)(2)*** and ***Public Law 104-106***, the payment of increased retired pay associated with the FY 1996 cost-of-living adjustment was prohibited for all other members for periods before March 1, 1996.

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed on active-duty basic pay rates in effect before January 1, 1995, received a 2.6 percent adjustment.

b. Members who first entered service before August 1, 1986, and who became entitled to retired pay computed on the January 1, 1995 active-duty pay rate, received a 2.0 percent adjustment.

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1995, received a 1.6 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay on or after January 1, 1995, received a pro-rata initial adjustment as follows:

Retired Between	Percent Increase
January 1, 1995 – March 31, 1995	1.3
April 1, 1995 – June 30, 1995	0.8
July 1, 1995 – September 30, 1995	0.2
October 1, 1995 – December 31, 1995	-0-

B. Basic pay rates effective January 1, 1996, ***Executive Order 12990*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1996.

3. No entitlement to pay computed on the January 1, 1996 basic pay rates for members who retired on January 1, 1996, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1995 transfers).

080369. COLA and Basic Pay Rates FY 1997

A. A cost-of-living adjustment, effective December 1, 1996, provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed under active-duty pay rates in effect before January 1, 1996, received a 2.9 percent adjustment.

b. Members who first entered service before September 8, 1980, and who become entitled to an initial amount of retired pay computed on the January 1, 1996 active-duty pay rate, received a 2.5 percent adjustment.

c. Members who first entered service after September 7, 1980, but before August 1, 1986, and who became entitled to an initial amount of retired pay on or after January 1, 1996, received a pro-rata initial adjustment as follows:

Retired Pay Effective Date	Percent Increase
January 1, 1996 – March 31, 1996	2.5
April 1, 1996 – June 30, 1996	1.5
July 1, 1996 – September 30, 1996	0.5
October 1, 1996 – December 31, 1996	-0-

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who become entitled to retired pay before January 1, 1996, received a 1.9 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to an initial amount of retired pay on or after January 1, 1996, received a pro-rata initial adjustment as follows:

Retired Pay Effective Date	Percent Increase
January 1, 1996 – March 31, 1996	1.7
April 1, 1996 – June 30, 1996	1.0
July 1, 1996 – September 30, 1996	0.2
October 1, 1996 – December 31, 1996	-0-

B. Basic pay rates effective January 1, 1997, ***Executive Order 13033*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1997.

3. No entitlement to pay computed on the January 1, 1997 basic pay rates for members who retired on January 1, 1997, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1996 transfers).

080370. COLA and Basic Pay Rates FY 1998

A. A cost-of-living adjustment, effective December 1, 1997, provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed under active-duty pay rates in effect before January 1, 1997, received a 2.1 percent adjustment.

b. Members who first entered service before September 8, 1980, and who became entitled to an initial amount of retired pay computed on the January 1, 1997 active-duty basic pay rate, received a 1.3 percent adjustment.

c. Members who first entered service after September 7, 1980, but before August 1, 1986, and who became entitled to an initial amount of retired pay on or after January 1, 1997, are entitled to a pro-rata initial adjustment as follows:

Retired Pay Effective Date	Percent Increase
January 1, 1997 – March 31, 1997	1.3
April 1, 1997 – June 30, 1997	0.8
July 1, 1997 – September 30, 1997	0.4
October 1, 1997 – December 31, 1997	-0-

2. Post-Aug 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1997, received a 1.1 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to an initial amount of retired pay on or after January 1, 1997, received a pro-rata initial adjustment as follows:

Retired Pay Effective Date	Percent Increase
January 1, 1997 – March 31, 1997	0.6
April 1, 1997 – June 30, 1997	0.3
July 1, 1997 – September 30, 1997	0.1
October 1, 1997 – December 31, 1997	-0-

B. Basic pay rates effective January 1, 1998, ***Executive Order 13071***, effective January 1, 1998, provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1998.

3. No entitlement to pay computed on January 1, 1998 basic pay rates for members who retired on January 1, 1998, and who were subject to the URDA warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1997 transfers).

080371. COLA and Basic Pay Rates FY 1999

A. A cost-of-living adjustment, effective December 1, 1998, provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retried pay has been computed under active-duty pay rates in effect before January 1, 1998, received a 1.3 percent adjustment.

b. Members who first entered service before September 8, 1980, and who became entitled to an initial amount of retired pay computed on the January 1, 1998 active-duty pay rate, received a 1.0 percent adjustment.

c. Members who first entered service after September 7, 1980, but before August 1, 1986, and who became entitled to an initial amount of retired pay on or after January 1, 1998, received a pro-rata initial adjustment as follows:

Retired Pay Effective Date	Percent Increase
January 1, 1998 – March 31, 1998	1.0
April 1, 1998 – June 30, 1998	0.9
July 1, 1998 – September 30, 1998	0.4
October 1, 1998 – December 31, 1998	-0-

2. Post-August 1986 members:

a. Members who first entered service on or after August 1, 1986, and who became entitled to retired pay before January 1, 1998, received a 0.3 percent adjustment.

b. Members who first entered service on or after August 1, 1986, and who became entitled to an initial amount of retired pay on or after January 1, 1998, are entitled to a pro-rata initial adjustment as follows:

Retired Pay Effective Date	Percent Increase
January 1, 1998 – March 31, 1998	0.3
April 1, 1998 – June 30, 1998	0.4
July 1, 1998 – September 30, 1998	0.1
October 1, 1998 – December 31, 1998	-0-

B. Basic pay rates effective January 1, 1999, ***Executive Order 13106*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 1999.

3. No entitlement to pay computed on the January 1, 1999 basic pay rates for members who retired on January 1, 1999, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1998 transfers).

080372. COLA and Basic Pay Rates FY 2000

A. A cost-of-living adjustment, effective December 1, 1999, provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed under active-duty pay rates in effect before January 1, 1999, received a 2.4 percent adjustment.

b. Members who first entered service before September 8, 1980, and who became entitled to an initial amount of retired pay computed on the January 1, 1999 active-duty basic pay rate, received a 2 percent adjustment.

c. Members who first entered service after September 7, 1980, but before August 1, 1986, and who became entitled to an initial amount of retired pay on or after January 1, 1999, are entitled to a pro-rata adjustment as follows:

Retired Pay Effective Date	Percent Increase
January 1, 1999 – March 31, 1999	2.0
April 1, 1999 – June 30, 1999	1.7
July 1, 1999 – September 30, 1999	0.7
October 1, 1999 – December 31, 1999	-0-

2. Officers in grades 0-7 through 0-10. Recomputation of retired pay for certain members retired during the period April 30 through December 31, 1999.

a. ***Section 601(d) of Public Law 106-65*** revised the limits imposed on the rates of basic pay for members of the Uniformed Services. Pay rates for grades 0-7 and above will be limited, effective January 1, 2000, to the pay rate for Level III of the Executive Schedule.

b. ***Section 601(e) of Public Law 106-65*** provides that retired pay be recomputed, effective January 1, 2000, for certain members who retired during the period of April 30, 1999 through December 31, 1999. As a result, the retired pay of members in grade 0-9 with over 26 years of service and 0-10s with over 16 years of service will be recomputed. The new rates will be for months beginning on or after January 1, 2000, and will be computed as if the Level III of the Executive Schedule limit had applied at the time of a qualified member's retirement. No increased amount is payable for any period before January 1, 2000 as a result of this provision. Retired pay rates for affected members should be recomputed for their entitlement for January 2000 as though the following rates of basic pay had been applicable at the time of retirement:

0-9	Over 26 years of service:	$9,528.90
0-10	Over 16 years of service:	$9,528.90
0-10	Over 18 years of service:	$9,528.90
0-10	Over 20 years of service:	$10,167.00
0-10	Over 22 years of service:	$10,167.00
0-10	Over 24 years of service:	$10,167.00
0-10	Over 26 years of service:	$10,491.60

B. Basic pay rates effective January 1, 2000, ***Executive Order 13144*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2000.

3. No entitlement to pay computed on the January 1, 2000 basic pay rates for members who retired on January 1, 2000, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 1999 transfers).

080373. COLA and Basic Pay Rates FY 2001

A. A cost-of-living adjustment, effective December 1, 2000, provided for:

1. Pre-August 1986 members:

a. Members who first entered service before August 1, 1986, and whose retired pay has been computed under active-duty pay rates in effect before January 1, 2000, received a 3.5 percent adjustment.

b. Members who first entered service before September 8, 1980, and who became entitled to an initial amount of retired pay computed on the January 1, 2000 active duty basic pay rate, received a 2.8 percent adjustment. This includes any member whose retired pay is computed on a pay cell of the July 1, 2000 pay table that was unchanged from the rate of January 1, 2000.

c. Members who first entered service before September 8, 1980, and who became entitled to an initial amount of retired pay computed on the July 1, 2000 active-duty basic pay rate, received a 0.7 percent adjustment. This includes any member whose retired pay is computed on a pay cell of the July 1, 2000 pay table that was changed from the rate of January 1, 2000.

d. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retired Pay Effective Date	**Percent Increase**
Before January 1, 2000	3.5
January 1, 2000 – March 31, 2000	2.8
April 1, 2000 – June 30, 2000	1.8
July 1, 2000 – September 30, 2000	0.7
October 1, 2000 – December 31, 2000	-0-

B. Basic pay rates effective January 1, 2001, ***Executive Order 13182*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2001.

3. No entitlement to pay computed on the January 1, 2001 basic pay rates for members who retired on January 1, 2001, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2000 transfers).

080374. COLA and Basic Pay Rates FY 2002

A. A cost-of-living adjustment, effective December 1, 2001, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980 is set out according to the effective date of the active-duty basic pay rate used to compute their retired pay as follows *****:

Retired pay based on:

Rates of Pay Effective	**Percent Increase**	**10 U.S.C. Authority**
Before January 1, 2001	2.6 percent	***1401a(b)(2)***
January 1, 2001**	2.0 percent	***1401a(c)***
July 1, 2001***	0.0 percent	***1401a(c)***

***** The effective date of a pay cell (i.e., a pay rate specified for a given grade and years of service) of the July 1, 2001 pay table is considered to be January 1, 2001 if the pay rate for that cell is unchanged from the January rate.
****** Includes those whose retired pay is computed on a pay cell of the July 1, 2001 pay table unchanged from the rate for that pay cell in the January 1, 2001 pay table.
******* Includes those whose retired pay is computed on a pay cell of the July 1, 2001 pay table changed from the rate for that pay cell in the January 1, 2001 pay table.

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	**Percent Increase**	**10 U.S.C. Authority**
Before January 1, 2001	2.6 percent	***1401a(b)(2)***
January 1, 2001 – March 31, 2001	2.0 percent	***1401a(d)***
April 1, 2001 – June 30, 2001	1.1 percent	***1401a(d)***
July 1, 2001 – September 30, 2001	0.0 percent	***1401a(d)***
October 1, 2001 – December 31, 2001	0.0 percent	***1401a(d)***

NOTE: Because of an error in the Consumer Price Index, all accounts were underpaid by .01 percent, effective December 1999. All accounts affected were corrected, recomputed, and paid by December 2001.

B. Basic pay rates effective January 1, 2002, ***Executive Order 13249*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2002.

3. No entitlement to pay computed on the January 1, 2002 basic pay rates for members who retired on January 1, 2002, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2001 transfers).

080375. COLA and Basic Pay Rates FY 2003

A. A cost-of-living adjustment, effective December 1, 2002, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980 is specified according to the effective date of the active-duty basic pay rate used to compute their retired pay as follows:

Retired pay based on:

Rates of Pay Effective	**Percent Increase**	**10 U.S.C. Authority**
Before January 1, 2002	1.4 percent	***1401a(b)(2)***
January 1, 2002	1.4 percent	***1401a(c)***

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	**Percent Increase**	**10 U.S.C. Authority**
Before January 1, 2002	1.4 percent	***1401a(b)(2)***
January 1, 2002 – March 31, 2002	1.4 percent	***1401a(d)***
April 1, 2002 – June 30, 2002	1.4 percent	***1401a(d)***
July 1, 2002 – September 30, 2002	0.5 percent	***1401a(d)***
October 1, 2002 – December 31, 2002	0.0 percent	***1401a(d)***

B. Basic pay rates effective January 1, 2003, ***Public Law 107-314*** and ***Executive Order 13282*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2003.

3. No entitlement to pay computed on the January 1, 2003 basic pay rates for members who retired on January 1, 2003, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2002 transfers).

080376. COLA and Basic Pay Rates FY 2004

A. A cost-of-living adjustment, effective December 1, 2003, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980, is specified according to the effective date of the active-duty basic pay rate used to compute their retired pay as follows:

Retired pay based on:

Rates of Pay Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2003	2.1 percent	***1401a(b)(2)***
January 1, 2003	1.7 percent	***1401a(c)***

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2003	2.1 percent	***1401a(b)(2)***
January 1, 2003 – March 31, 2003	1.7 percent	***1401a(d)***
April 1, 2003 – June 30, 2003	0.7 percent	***1401a(d)***
July 1, 2003 – September 30, 2003	0.4 percent	***1401a(d)***
October 1, 2003 – December 31, 2003	0.0 percent	***1401a(d)***

B. Basic pay rates effective January 1, 2004, ***Public Law 108-136*** and ***Executive Order 13322*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2004.

3. No entitlement to pay computed on the January 1, 2004 basic pay rates for members who retired on January 1, 2004, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2003 transfers).

4. Added provision to ***10 U.S.C 1406*** that provided that an individual who served as a commander of a uniformed or combatant command shall have retired pay computed using the rates of basic pay authorized for the Chairman/Vice Chairman of the Joint Chiefs of Staff and the Chiefs of Service.

080377. COLA and Basic Pay Rates FY 2005

A. A cost-of-living adjustment, effective December 1, 2004, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980 is specified according to the effective date of the active-duty basic pay rate used to compute their retired pay as follows:

Retired pay based on:

Rates of Pay Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2004	2.7 percent	*1401a(b)(2)*
January 1, 2004	2.7 percent	*1401a(c)*

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2004	2.7 percent	*1401a(b)(2)*
January 1, 2004 – March 31, 2004	2.7 percent	*1401a(d)*
April 1, 2004 – June 30, 2004	1.8 percent	*1401a(d)*
July 1, 2004 – September 30, 2004	0.3 percent	*1401a(d)*
October 1, 2004 – December 31, 2004	0.0 percent	*1401a(d)*

B. Basic pay rates effective January 1, 2005, *Public Law 108-375* and *Executive Order 13368* provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2005.

3. No entitlement to pay computed on the January 1, 2005 basic pay rates for members who retired on January 1, 2005, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2004 transfers).

0804 PROVISIONS OF PAY CHANGES, EXCEPTIONS, AND SPECIAL COMPUTATIONS STARTING DECEMBER 2005

080401. COLA and Basic Pay Rates FY 2006

A. A cost-of-living adjustment, effective December 1, 2005, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980 is specified according to the effective date of the active-duty basic pay rate used to compute their retired pay as follows:

Retired pay based on:

Rates of Pay Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2005	4.1 percent	*1401a(b)(2)*
January 1, 2005	3.4 percent	*1401a(d)*

2. Retired pay COLA for those who first became a member of a Uniformed Service on or after September 8, 1980, retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2005	4.1 percent	*1401a(b)(2)*
January 1, 2005 – March 31, 2005	3.4 percent	*1401a(d)*
April 1, 2005 – June 30, 2005	2.8 percent	*1401a(d)*
July 1, 2005 – September 30, 2005	1.4 percent	*1401a(d)*
October 1, 2005 – December 31, 2005	0.0 percent	*1401a(d)*

3. The retired pay COLA for those who first became a member of the Uniformed Service on or after August 1, 1986, and who elected to receive a bonus under the provisions of *37 U.S.C 322*, is specified according to their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2005	3.1 percent	*1401a(e)*
January 1, 2005 – March 31, 2005	2.6 percent	*1401a(e)*
April 1, 2005 – June 30, 2005	2.3 percent	*1401a(e)*
July 1, 2005 – September 30, 2005	1.1 percent	*1401a(e)*
October 1, 2005 – December 31, 2005	0.0 percent	*1401a(e)*

B. Basic pay rates effective January 1, 2006, *Public Law 109-163* and *Executive Order 13393*, effective January 1, 2006, provided for:

1. Increase basic pay rates.

2. No increase for members retired before January 1, 2006.

3. No entitlement to pay computed on the January 1, 2006 basic pay rates for members who retired on January 1, 2006, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2005 transfers).

080402. COLA and Basic Pay Rates FY 2007

A. A cost-of-living adjustment, effective December 1, 2006, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980, is specified according to the effective date of the active-duty basic pay rate used to compute their retired pay as follows:

Retired pay based on:

Rates of Pay Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2006	3.3 percent	*1401a(b)(2)*
January 1, 2006	2.8 percent	*1401a(c)*

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2006	0.3 percent	*1401a(b)(2)*
January 1, 2006 – March 31, 2006	2.8 percent	*1401a(d)*
April 1, 2006 – June 30, 2006	2.4 percent	*1401a(d)*
July 1, 2006 – September 30, 2006	0.6 percent	*1401a(d)*
October 1, 2006 – December 31, 2006	0.0 percent	*1401a(d)*

3. The retired pay COLA for those who first became a member of the Uniformed Service on or after August 1, 1986, and who elected to receive a career status bonus under the provisions of *37 U.S.C 354*, is specified according to their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2006	2.3 percent	*1401a(e)*
January 1, 2006 – March 31, 2006	2.0 percent	*1401a(e)*
April 1, 2006 – June 30, 2006	1.9 percent	*1401a(e)*
July 1, 2006 – September 30, 2006	0.3 percent	*1401a(e)*
October 1, 2006 – December 31, 2006	0.0 percent	*1401a(e)*

B. Basic pay rates effective January 1, 2007, *Public Law 109-364* and *Executive Order 13420* provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2007.

3. Increased targeted pay rates effective April 1, 2007.

4. No entitlement to pay computed on the January 1, 2007 basic pay rates for members who retired on January 1, 2007, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2006 transfers).

5. Cumulative years of service pay rates expanded to over 40 years of service.

C. Change in Retirement Computation. ***Public Law 109-364*** provides:

1. That the retired pay base for officers in pay grades O-7 through O-10 who retired after September 30, 2006 shall have their retired pay computed using the rate of basic pay for such period provided by law rather than the rate capped at Level II of the Executive Schedule.

2. In the case of a member who retires after December 31, 2006 with more than 30 years of creditable service, the 75 percent cap is removed.

3. Additional longevity pay increases for senior grades above 28 years of service resulting in increased retired pay for future senior members retiring with over 30 years of creditable service.

080403. COLA and Basic Pay Rates FY 2008

A. A cost-of-living adjustment, effective December 1, 2007, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980 is specified according to the effective date of the active-duty basic pay rate used to compute their retired pay as follows:

Retired pay based on:

Rates of Pay Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2007	2.3 percent	***1401a(b)(2)***
January 1 – April 1, 2007	2.3 percent	***1401a(c)***

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2007	2.3 percent	***1401a(b)(2)***
January 1, 2007 – March 31, 2007	2.3 percent	***1401a(d)***
April 1, 2007 – June 30, 2007	2.3 percent	***1401a(d)***
July 1, 2007 – September 30, 2007	0.2 percent	***1401a(d)***
October 1, 2007 – December 31, 2007	0.0 percent	***1401a(d)***

3. The retired pay COLA for those who first became a member of the Uniformed Service on or after August 1, 1986, and who elected to receive a career status bonus under the provisions of ***37 U.S.C 354*** is specified according to their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2007	1.3 percent	1401a(e)
January 1, 2007 – March 31, 2007	1.3 percent	1401a(e)
April 1, 2007 – June 30, 2007	1.3 percent	1401a(e)
July 1, 2007 – September 30, 2007	0.0 percent	1401a(e)
October 1, 2007 – December 31, 2007	0.0 percent	1401a(e)

B. Basic pay rates effective January 1, 2008, *Public Law 110-181* and *Executive Order 13454* provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2008.

3. No entitlement to pay computed on the January 1, 2008 basic pay rates for members who retired on January 1, 2008, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2007 transfers).

080404. COLA and Basic Pay Rates FY 2009

A. A cost-of-living adjustment, effective December 1, 2008, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980 is specified according to the effective date of their retirement as follows:

Retired pay based on:

Rates of Pay Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2008	5.8 percent	1401a(b)(2)
January 1 – December, 2008	5.0 percent	1401a(c)

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2008	5.8 percent	1401a(b)(2)
January 1, 2008 – March 31, 2008	5.0 percent	1401a(d)
April 1, 2008 – June 30, 2008	3.8 percent	1401a(d)
July 1, 2008 – September 30, 2008	1.2 percent	1401a(d)
October 1, 2008 – December 31, 2008	0.0 percent	1401a(d)

3. The retired pay COLA for those who first became a member of the Uniformed Service on or after August 1, 1986, and who elected to receive a career status bonus under the provisions of *37 U.S.C 354*, is specified according to their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2008	4.8 percent	*1401a(e)*
January 1, 2008 – March 31, 2008	4.2 percent	*1401a(e)*
April 1, 2008 – June 30, 2008	3.3 percent	*1401a(e)*
July 1, 2008 – September 30, 2008	1.0 percent	*1401a(e)*
October 1, 2008 – December 31, 2008	0.0 percent	*1401a(e)*

B. Basic pay rates effective January 1, 2009, *Public Law 110-417* and *Executive Order 13483* provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2009.

3. No entitlement to pay computed on the January 1, 2009 basic pay rates for members who retired on January 1, 2009, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2008 transfers).

080405. COLA and Basic Pay Rates FY 2010

A. A cost-of-living adjustment, effective December 1, 2009, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980 is specified according to the effective date of their retirement as follows:

Retired pay based on:

Rates of Pay Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2009	0.0 percent	*1401a(b)(2)*
January 1 – December, 2009	0.0 percent	*1401a(c)* & *1401a(f)*

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2009	0.0 percent	*1401a(b)(2)*
January 1, 2009 – March 31, 2009	0.0 percent	*1401a(d)* & *1401a(f)*
April 1, 2009 – June 30, 2009	0.0 percent	*1401a(d)* & *1401a(f)*
July 1, 2009 – September 30, 2009	0.0 percent	*1401a(d)* & *1401a(f)*
October 1, 2009 – December 31, 2009	0.0 percent	*1401a(d)* & *1401a(f)*

3. The retired pay COLA for those who first became a member of the Uniformed Service on or after August 1, 1986, and who elected to receive a career status bonus under the provisions of *37 U.S.C 354*, is specified according to their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2009	0.0 percent	*1401a(e)*
January 1 – March 31, 2009	0.0 percent	*1401a(e)* & *1401a(f)*
April 1 – June 30, 2009	0.0 percent	*1401a(e)* & *1401a(f)*
July 1 – September 30, 2009	0.0 percent	*1401a(e)* & *1401a(f)*
October 1– December 31, 2009	0.0 percent	*1401a(e)* & *1401a(f)*

B. Basic pay rates effective January 1, 2010, *Public Law 111-84* and *Executive Order 13525* provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2010.

3. No entitlement to pay computed on the January 1, 2010 basic pay rates for members who retired on January 1, 2010, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2009 transfers).

080406. COLA and Basic Pay Rates FY 2011

A. A cost-of-living adjustment, effective December 1, 2010, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980 is specified according to the effective date of their retirement as follows:

Retired pay based on:

Rates of Pay Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2010	0.0 percent	*1401a(b)(2)*
January 1 – December 31, 2010	0.0 percent	*1401a(c)* & *1401a(f)*

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2010	0.0 percent	*1401a(b)(2)*
January 1 – March 31, 2010	0.0 percent	*1401a(d)* & *1401a(f)*
April 1 – June 30, 2010	0.0 percent	*1401a(d)* & *1401a(f)*
July 1 – September 30, 2010	0.0 percent	*1401a(d)* & *1401a(f)*
October 1 – December 31, 2010	0.0 percent	*1401a(d)* & *1401a(f)*

3. The retired pay COLA for those who first became a member of the Uniformed Service on or after August 1, 1986, and also elected to receive a career status bonus under the provisions of *37 U.S.C 354*, is specified according to the date of their retirement, as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2010	0.0 percent	*1401a(e)*
January 1 – March 31, 2010	0.0 percent	*1401a(e)* & *1401a(f)*
April 1 – June 30, 2010	0.0 percent	*1401a(e)* & *1401a(f)*
July 1 – September 30, 2010	0.0 percent	*1401a(e)* & *1401a(f)*
October 1 – December 31, 2010	0.0 percent	*1401a(e)* & *1401a(f)*

B. Basic pay rates effective January 1, 2011, *Executive Order 13561* provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2011.

3. No entitlement to pay computed on the January 1, 2011 basic pay rates for members who retired on January 1, 2011, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2010 transfers).

080407. Removal of the 75 Percent Cap Subject to Provision

A member who retired or became entitled to retired pay due to physical disability on or before January 7, 2011, may not have a retired pay multiplier in excess of 75 percent. Under Public Law 111-383, a member with more than 30 years of creditable service who first becomes entitled to retired pay due to physical disability, on or after January 8, 2011, shall not have their multiplier reduced if it is in excess of 75 percent.

080408. COLA and Basic Pay Rates FY 2012

A. A cost-of-living adjustment, effective December 1, 2011, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980 is specified according to the effective date of their retirement as follows:

Retired pay based on:

Rates of Pay Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2011	3.6 percent	*1401a(b)(2)*
January 1 – December 31, 2011	3.6 percent	*1401a(c)*

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2011	3.6 percent	*1401a(b)(2)*
January 1 – March 31, 2011	3.6 percent	*1401a(d)*
April 1 – June 30, 2011	2.4 percent	*1401a(d)*
July 1 – September 30, 2011	0.4 percent	*1401a(d)*
October 1 – December 31, 2011	0.0 percent	*1401a(d)*

3. The retired pay COLA for those who first became a member of the Uniformed Service on or after August 1, 1986, and also elected to receive a career status bonus under the provisions of *37 U.S.C 354*, is specified according to the date of their retirement, as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2011	2.6 percent	*1401a(e)*
January 1 – March 31, 2011	2.6 percent	*1401a(e)*
April 1 – June 30, 2011	1.9 percent	*1401a(e)*
July 1 – September 30, 2011	0.1 percent	*1401a(e)*
October 1 – December 31, 2011	0.0 percent	*1401a(e)*

B. Basic pay rates effective January 1, 2012, *Executive Order 13594* provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2012.

3. No entitlement to pay computed on the January 1, 2012 basic pay rates for members who retired on January 1, 2012, and who were subject to the URDA, warrant officers, Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2011 transfers).

NOTE: Members retiring in 2012 may be entitled to more retired pay using the 2011 pay rates increased by a partial COLA instead of using the increased pay rates with more service credit. Under *10 U.S.C. 1401a(f)(1)*, inversions to retired pay entitlements are prevented by allowing computation of retired pay based on retirement at an earlier date. In such computations, the grade and service credit must be those applicable on the earlier date being used. Also the retiree must meet the retirement eligibility requirements as of the earlier date.

*080409. COLA and Basic Pay Rates FY 2013

A. A cost-of-living adjustment, effective December 1, 2012, provided for:

1. Retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980 is specified according to the effective date of their retirement as follows:

Retired pay based on:

Rates of Pay Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2012	1.7 percent	***1401a(b)(2)***
January 1 – December 31, 2012	1.7 percent	***1401a(c)***

2. Those who first became a member of a Uniformed Service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2012	1.7 percent	***1401a(b)(2)***
January 1 – March 31, 2012	1.7 percent	***1401a(d)***
April 1 – June 30, 2012	1.0 percent	***1401a(d)***
July 1 – September 30, 2012	0.2 percent	***1401a(d)***
October 1 – December 31, 2012	0.0 percent	***1401a(d)***

3. The retired pay COLA for those who first became a member of the Uniformed Service on or after August 1, 1986, and also elected to receive a career status bonus under the provisions of ***37 U.S.C 354***, is specified according to the date of their retirement, as follows:

Retirement Effective:	Percent Increase	10 U.S.C. Authority
Before January 1, 2012	0.7 percent	***1401a(e)***
January 1 – March 31, 2012	0.7 percent	***1401a(e)***
April 1 – June 30, 2012	0.5 percent	***1401a(e)***
July 1 – September 30, 2012	0.0 percent	***1401a(e)***
October 1 – December 31, 2012	0.0 percent	***1401a(e)***

B. Basic pay rates effective January 1, 2013, ***Executive Order 13635*** provided for:

1. Increased basic pay rates.

2. No increase for members retired before January 1, 2013.

3. No entitlement to pay computed on the January 1, 2013 basic pay rates for members who retired on January 1, 2013, and who were:

a. Subject to the URDA

b. Warrant officers, or

c. Fleet Reservists, and Fleet Marine Corps Reservists (December 31, 2012 transfers).

For additional information about the UDRA, see Chapter 1, section 0104 of this volume.

*Table 8-1. Full Cost-of-Living Adjustment Percentage Table

No.	Date of COLA	Percent
1	Sep 1, 1965	4.4
2	Dec 1, 1966	3.7
3	Apr 1, 1968	3.9
4	Feb 1, 1969	4.0
5	Nov 1, 1969	4.3
6	Aug 1, 1970	5.6
7	Jun 1, 1971	4.5
8	Jul 1, 1972	4.8
9	Jul 1, 1973	6.1
10	Jan 1, 1974	5.5
11	Jul 1, 1974	6.3
12	Jan 1, 1975	7.3
13	Aug 1, 1975	5.1
14	Mar 1, 1976	5.4
15	Mar 1, 1977	4.8
16	Sep 1, 1977	4.3
17	Mar 1, 1978	2.4
18	Sep 1, 1978	4.9
19	Mar 1, 1979	3.9
20	Sep 1, 1979	6.9
21	Mar 1, 1980	6.0
22	Sep 1, 1980	7.7
23	Mar 1, 1981	4.4
24	Mar 1, 1982	8.7
25	Apr 1, 1983 (note 1)	3.3
		3.9
26	Dec 1, 1984	3.5
27	Dec 1, 1986	1.3
28	Dec 1, 1987	4.2 Pre-Aug 86 Member 3.2 Post-Aug 86 Member
29	Dec 1, 1988	4.0 Pre-Aug 86 Member 3.0 Post-Aug 86 Member
30	Dec 1, 1989	4.7 Pre-Aug 86 Member 3.7 Post-Aug 86 Member
31	Dec 1, 1990	5.4 Pre-Aug 86 Member 4.4 Post-Aug 86 Member
32	Dec 1, 1991	3.7 Pre-Aug 86 Member 2.7 Post-Aug 86 Member

Table 8-1. Full Cost-of-Living Adjustment Percentage Table (Continued)

No.	Date of COLA	Percent
33	Dec 1, 1992	3.0 Pre-Aug 86 Member 2.0 Post-Aug 86 Member
34	Dec 1, 1993 (note 2)	2.6 Pre-Aug 86 Member 1.6 Post-Aug 86 Member
35	Dec 1, 1994 (note 2)	2.8 Pre-Aug 86 Member 1.8 Post-Aug 86 Member
36	Dec 1, 1995 (note 2)	2.6 Pre-Aug 86 Member 1.6 Post-Aug 86 Member
37	Dec 1, 1996	2.9 Pre-Aug 86 Member 1.9 Post-Aug 86 Member
38	Dec 1, 1997	2.1 Pre-Aug 86 Member 1.1 Post-Aug 86 Member
39	Dec 1, 1998	1.3 Pre-Aug 86 Member 0.3 Post-Aug 86 Member
40	Dec 1, 1999 (note 3)	2.4 Pre-Aug 86 Member 2.4 Post-Aug 86 Member w/o CSB 1.4 Post-Aug 86 Member w/CSB
41	Dec 1, 2000 (note 3)	3.5 Pre-Aug 86 Member 3.5 Post-Aug 86 Member w/o CSB 2.5 Post-Aug 86 Member w/CSB
42	Dec 1, 2001 (note 3)	2.6 Pre-Aug 86 Member 2.6 Post-Aug 86 Member w/o CSB 1.6 Post-Aug 86 Member w/CSB
43	Dec 1, 2002 (note 3)	1.4 Pre-Aug 86 Member 1.4 Post-Aug 86 Member w/o CSB 0.4 Post-Aug 86 Member w/CSB
44	Dec 1, 2003 (note 3)	2.1 Pre-Aug 86 Member 2.1 Post-Aug 86 Member w/o CSB 1.1 Post-Aug 86 Member w/CSB
45	Dec 1, 2004 (note 3)	2.7 Pre-Aug 86 Member 2.7 Post-Aug 86 Member w/o CSB 1.7 Post-Aug 86 Member w/CSB
46	Dec 1, 2005 (note 3)	4.1 Pre-Aug 86 Member 4.1 Post-Aug 86 Member w/o CSB 3.1 Post-Aug 86 Member w/CSB

Table 8-1. Full Cost-of-Living Adjustment Percentage Table (Continued)

No.	Date of COLA	Percent
47	Dec 1, 2006 (note 3)	3.3 Pre-Aug 86 Member 3.3 Post-Aug 86 Member w/o CSB 2.3 Post-Aug 86 Member w/CSB
48	Dec 1, 2007 (note 3)	2.3 Pre-Aug 86 Member 2.3 Post-Aug 86 Member w/o CSB 1.3 Post-Aug 86 Member w/CSB
49	Dec 1, 2008 (note 3)	5.8 Pre-Aug 86 Member 5.8 Post-Aug 86 Member w/o CSB 4.8 Post-Aug 86 Member w/CSB
50	Dec 1, 2009 (note 3)	0.0 Pre-Aug 86 Member 0.0 Post-Aug 86 Member w/o CSB 0.0 Post-Aug 86 Member w/CSB
51	Dec 1, 2010 (note 3)	0.0 Pre-Aug 86 Member 0.0 Post-Aug 86 Member w/o CSB 0.0 Post-Aug 86 Member w/CSB
52	Dec. 1, 2011 (note 3)	3.6 Pre-Aug 86 Member 3.6 Post-Aug 86 Member w/o CSB 2.6 Post-Aug 86 Member w/CSB
***53**	Dec. 1, 2012 (note 3)	1.7 Pre-Aug 86 Member 1.7 Post-Aug 86 Member w/o CSB 0.7 Post-Aug 86 Member w/CSB

NOTES:

1. See paragraph 080352.
2. See associated cost-of-living adjustment paragraph in section 0804 to determine whether member's cost-of-living adjustment is delayed.
3. Separate retired pay cost of living adjustment applicable for those who first became members of a Uniformed Service on or after August 1, 1986, who elected to receive a Career Status Bonus (CSB) under the DoD FMR Volume 7A, Chapter 66.

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CHAPTER 8 – BASIC PAY RATES, LEGISLATIVE AND COST-OF-LIVING ADJUSTMENTS TO RETIRED PAY

0801 – PURPOSE

080101 - 080103	Public Law 96-342, September 8, 1980
080104.F	5 U.S.C. 8301
080104.J	53 Comp Gen 698
080104.L	Public Law 96-342, September 8, 1980

0802 – MAJOR CHANGES IN THE USE OF BASIC PAY RATES AND CONDITIONS APPLICABLE TO COMPUTATION OF RETIRED PAY

080209	Public Law 103-337, section 633, October 5, 1994
080210	Public Law 96-342, September 8, 1980
080217	Public Law 102-190, section 1111, And 1132, December 5, 1991
080218	Public Law 102-484, section 4402, October 23, 1992
080223	37 U.S.C. 1009
080224	10 U.S.C. 1407a
080225	10 U.S.C. 1409

0803 – PROVISIONS OF PAY CHANGES, EXCEPTIONS, AND SPECIAL COMPUTATIONS PRIOR TO DECEMBER 1, 2005

080301.F	Public Law 81-351, October 12, 1949, as amended by Public Law 81-511, May 10, 1950
080322.B	EO 11778, April 4, 1974
080323.B	EO 11778, April 4, 1974
080359	OASD/FM&P Memo, February 11, 1987 OASD/FM&P Memo, March 6, 1987
080364.C	Public Law 102-190, section 1111, 1132, December 5, 1991
080372	OSD(FMP)(Comp) Memo, December 10, 1999
080372.B	Executive Order 13144,

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	December 21, 1999
080373.A	OSD(FMP)(MPP) Comp Memo, November 9, 2000
080373.B	Executive Order No. 13182, December 23, 2000
080374.A	OSD (FMP)(MPP) Comp Memo, December 20, 2001
080374.B	Executive Order 13249
080375.A	OSD (FMP)(MPP) Comp Memo, March 24, 2003
080376.A	OSD (FMP)(MPP) Comp Memo, December 8, 2003
080377.A	OSD (FMP)(MPP) Comp Memo, December 2, 2004

0804 – PROVISIONS OF PAY CHANGES, EXCEPTIONS, AND SPECIAL COMPUTATIONS STARTING DECEMBER 2005

080401	USD P&R Memo, November 28, 2005
080402	USD P&R Memo, November 8, 2006
080402.C	37 U.S.C. 1009
080403.A	USD P&R Memo, November 9, 2007
080403.B	37 U.S.C. 1009
080404.A	USD P&R Memo, October 29, 2008
080404.B	37 U.S.C. 1009
080405	37 U.S.C. 1009 October 28, 2009 USD P&R Memo, November 17, 2009
080406.A	USD P&R Memo, November 12, 2010
080406.B	Executive Order 13561, December 22, 2010
080407	Public Law 111-383, section 631, January 7, 2011
080408.A	USD P&R Memo, November 22, 2011
080408.B	Executive Order 13594, December 19, 2011

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*	080409.A	USD P&R Memo, November 08, 2012
	080409.B	Executive Order 13635, December 27, 2012
	Table 8-1	USD P&R Memo, November 08, 2012

VOLUME 7B, CHAPTER 9: "ADVANCEMENTS ON RETIRED LIST"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 November 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter has been updated with hyperlinks and formatted to comply with current administrative instruction.	Update

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CHAPTER 9

ADVANCEMENTS ON RETIRED LIST

0901 PURPOSE

This chapter provides an overview of the requirements for advancements on the retired list of retired members, Fleet Reservists, and Fleet Marine Corps Reservists, who are retired and whose active service, inactive service (Navy or Marine Corps members only), and service on the retired list or in the Fleet Reserve or Fleet Marine Corps Reserve totals 30 years; and members who are found not physically qualified for retention in the Fleet Reserve or Fleet Marine Corps Reserve.

0902 GENERAL

090201. Retired From Active Service

Chapter 1, Section 0103, covers members retired from active service in:

A. A higher grade because of serving on active duty in special positions.

B. The highest grade or rating held while serving on active duty.

C. The grade to which members would have been promoted had it not been for the physical disability for which retired and which was found to exist as a result of physical examination for promotion.

090202. Grade at Placement on the Retired List

Chapter 1, Section 0105, provides guidance for members retired from active service in a higher grade at the time of initial placement on the retired list.

0903 ADVANCEMENTS

090301. Air Force

A member of the Air Force who retires with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which the member served satisfactorily (or in the case of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Air Force. This applies to:

A. Warrant officers of the Air Force;

B. Enlisted members of the Air Force; and

C. Reserve enlisted members of the Air Force who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time duty).

090302. Army

A member of the Army who retires with less than 30 years of service is entitled, when his active service plus service on the retired list totals 30 years, to be advanced on the retired list to the highest grade served on active duty satisfactorily, as determined by the Secretary of the Army. For current active duty members the Army Grade Determination Review Board (AGDRB) will convene prior to members' retirement and make a determination of the highest grade served on active duty satisfactorily, unless a reduction in grade was the result of misconduct, inefficiency, or for cause. Members who retired prior to July 12, 2002, without a grade determination review by the AGDRB, must apply to the AGDRB to initiate the grade determination process. Advancements will not occur until the member reaches his or her 30 year mark, in accordance with ***Army Regulation 15-80***. If an application is submitted after the member's 30 year mark, then the effective date of advancement and pay is retroactive to the date of the member's application to the Board. This applies to:

A. Warrant officers of the Army;

B. Enlisted members of the Regular Army; and

C. Reserve enlisted members of the Army, who at the time of retirement, were serving on active duty (or, in the case of members of the National Guard, on full-time duty).

090303. Navy and Marine Corps

A. A member of the naval service who retires with less than 30 years of active service, or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, is entitled when his active service plus his service on the retired list or his service in the Fleet Reserve or the Fleet Marine Corps Reserve totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Navy. This applies to:

1. Warrant officers of the naval service;

2. Enlisted members of the Regular Navy and Regular Marine Corps; and

3. Reserve enlisted members of the Navy and Marine Corps who, at the time of retirement or transfer to Fleet Reserve or Fleet Marine Corps Reserve, are serving on active duty.

B. When a member of the Fleet Reserve or Fleet Marine Corps Reserve has completed 30 years of service, or when he or she is found not physically qualified for retention in

the Fleet Reserve or Fleet Marine Corps Reserve as a result of the required quadrennial physical examination, the member is transferred to the retired list.

0904 EFFECTS ON PAY

090401. Reduction In Pay Due To Advancement

There is no absolute requirement that a member of the Armed Forces be advanced on the retired list. If advancement and recomputation results in a reduction of retired pay for the member and is based solely on administrative determination, then, prior to the advancement, the member should be consulted by the military service and advised that the member's retired pay would be reduced if advanced.

A. Enlisted Member. If an enlisted member is, in fact, advanced on the retired list, then retired pay must be recomputed, even though a reduction of retired pay would result.

B. Warrant Officer. Warrant officers advanced on the retired list are entitled to use only years of active service in determining the percentage multiplier used in computing retired pay for the advanced grade.

090402. Computation of Retired Pay

Retired pay may be computed at the higher grade in which a member had served satisfactorily without regard to whether the higher grade was temporary or permanent, even though the Military Service in which the member held the higher grade is not the Military Service from which he or she retired. Where required by statute, the Secretary of the Military Department (or designee) in which the member performed services at the higher grade shall provide an administrative approval confirming the member's satisfactory performance at the higher grade.

090403. Extraordinary Heroism

An enlisted member who, when retired or transferred, was awarded a 10 percent increase in retired pay because of extraordinary heroism performed in the line of duty is not eligible to continue receiving the additional 10 percent upon advancement to officer rank.

090404. Recomputation of Retired Pay

A member of the Armed Forces advanced on the retired list is entitled to retired pay recomputed by:

A. Using the rate of monthly basic pay for the grade on the initial date of retirement or transfer or using the high 36 months retired pay base if the member entered a Uniformed Service after September 7, 1980;

B. Multiplying 2-1/2 percent times the total number of years of active service using whole months actually served, in excess of whole years, as 1/12 of a year;

C. Reducing the percentage determined under subparagraph 090404.B, in the case of a member who first became a member of a uniformed service after July 31, 1986, has elected to receive a bonus under ***Title 37, United States Code, section 354***, has less than 30 years of creditable service, and is under the age of 62 at the time of retirement by:

1. One percentage point for each full year that the member's years of creditable service are less than 30;

2. One-twelfth of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) are less than a full year; and

D. Applying all applicable cost-of-living adjustments from the date of initial retirement or transfer.

0905 RESTORATION OF FORMER GRADE

Each retired warrant officer, enlisted member of the Regular Army or Air Force, or enlisted member retired from the Fleet Reserve or Fleet Marine Corps Reserve who has been advanced on the retired list to a higher commissioned grade, within 3 months after advancement, may apply to the Secretary of the Military Department concerned (or designee) for restoration to the former warrant officer or enlisted grade. If the Secretary of the Military Department concerned (or designee) approves the request, then the member may be restored to the former warrant officer or enlisted grade. A member so restored thereafter is considered for all purposes to be a warrant officer or an enlisted member, as applicable.

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CHAPTER 9 – ADVANCEMENTS ON RETIRED LIST

0901 – PURPOSE

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0902 – GENERAL

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0904 – EFFECTS ON PAY

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090402	Comp Gen B-164281, March 23, 1970
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090404.C and D	10 U.S.C. 1409 10 U.S.C. 1401a(f),

0904 – RESTORATION OF FORMER GRADE

	10 U.S.C. 3965, 6151(d),

VOLUME 7B, CHAPTER 10: "CORRECTION OF RECORDS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 January 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated format to comply with current administrative instructions.	Update

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CHAPTER 10

CORRECTION OF RECORDS

1001 AUTHORITY

100101. Military Record Considered for Correction or Removal

The Secretary of a Military Department, under procedures established by that Secretary and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that Military Department, may correct any military record of that department when the Secretary concerned considers it necessary to correct an error or remove an injustice.

100102. Final and Conclusive

Corrections of military records are final and conclusive on all officers of the United States except when such corrections were obtained through fraud.

100103. Reaffirmation of Existing Facts

A proper correction and a right to the payment of money as a result of a proper correction must be a result of a change of facts as set out in the original record, or an addition or deletion of a fact. A reaffirmation of existing facts already in the original record does not constitute a proper correction of that record. A recital of existing facts does not avoid the operation of a statute of limitations. The statute of limitations on a proper correction of the record begins to run from the date of the correction. Example: A member of the Naval service is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve. If his or her record is corrected to show additional service credits, then the 6-year (10 years before July 1975) limitation period starts from the date of the record correction rather than from the date of the transfer. Upon correction, the member is entitled to retainer pay from the date of transfer in accordance with his or her grade and number of years of creditable service, as corrected.

100104. Corrections

Corrections may be made when:

A. The member, the member's heir, or legal representative filed a request within 3 years after member has discovered the error or injustice, whichever is later; or

B. The Board excuses a failure to file within 3 years when it is in the interest of justice.

1002 PAY COMPUTATION

100201. Amounts

Payments based on a correction of military records must be made in the amounts determined to be due by applying pertinent laws and regulations to all the material facts shown in the corrected record. Generally, the payments resulting from the correction of military records are based on the:

A. Pay entitlement the member had before the correction,

B. Actual payments made for these entitlements, or

C. New pay entitlements that accrue as a result of the correction. For specific computation, see the chapters concerning the entitlement to and computation of retired or retainer pay, and participation in and payment of survivor annuities under the Retired Serviceman's Family Protection Plan (RSFPP) and/or the Survivor Benefit Plan (SBP).

100202. Settlement

The settlement of retired pay, retainer pay, or survivor annuities due as a result of the correction of a military record must be reduced, as applicable, by:

A. Any previous settlements of active duty pay and allowances involving the same periods,

B. Prior payments of readjustment pay or disability severance pay,

C. Prior payments of disability compensation, pensions, or Dependency and Indemnity Compensation made by the Department of Veterans Affairs,

D. Federal income tax,

E. Cost of participation in the RSFPP and/or SBP, or

F. Dual compensation statutes, if a retired Regular officer was employed by the United States Government prior to October 1, 1999.

G. Prior payments of the mother's benefit received from Social Security and the amount of the spouse's Social Security entitlement, if any, resulting from the retiree's active military service.

100203. Deductions from Pay and Allowance

Earnings received from civilian employment, self employment, or any income protection plan for such employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. To the extent authorized by law and regulation, amounts

found due shall be reduced by the amount of any existing indebtedness to the government arising from military service.

100204. Demand for Payment

When payment cannot be made to the member because of member's death, payment may be made to member's legal representative. In the absence of a demand for payment by the legal representative, payments are made:

A. To the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment,

B. In the order of precedence in Chapter 30 or if there is no such law covering order of payment, or

C. As otherwise prescribed by the law applicable to that kind of payment.

100205. Claimants Acceptance

A claimant's acceptance of settlement fully satisfies the claim concerned. Settlement of this claim does not preclude payment of a separate and distinct claim and acceptance of settlement does not preclude recomputation and adjustment when there is a mutual mistake. Payments are not authorized for any claim compensated by private law before October 25, 1951.

1003 TAX ADJUSTMENT

See section 2411 of this Regulation.

1004 APPROPRIATION CHARGES

The payments that become due and payable as a result of the correction are charged to the applicable current retired pay appropriation for all amounts due on and after the date of approval by the Secretary concerned. Amounts due for periods before the date of approval by the Secretary of the Military Department concerned (or designee) are charged to the Claims, Department of Defense appropriation.

1005 RESTRICTIONS

No payment resulting from a correction of records may be made for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

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1001 – CORRECTION OF RECORDS

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1005 – RESTRICTIONS 10 U.S.C. 1552(e)

VOLUME 7B, CHAPTER 11: "REMOVAL FROM THE TEMPORARY DISABILITY RETIRED LIST"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 November 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Format and hyperlinks are updated to comply with current administrative instructions.	Revision
All	Revised and reorganized Temporary Disability Retirement List (TDRL) for clarity.	Revision
1101	Added a section entitled "GENERAL" to the chapter per current administrative instructions and renumbered chapter accordingly.	Addition
110202	This paragraph was added to provide information on members eligible to be placed on the TDRL.	Addition
110203	Enhanced the information provided on actions required while on the TDRL.	Revision

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CHAPTER 11

REMOVAL FROM THE TEMPORARY DISABILITY RETIRED LIST

*1101 GENERAL

This chapter provides information and guidance for the Secretary concerned and members who are on the Temporary Disability Retired List (TDRL) or become eligible for placement on the TDRL because of physical disability in accordance with Title 10 United States Code (10 U.S.C.), Chapter 61. A Service member may be placed on the TDRL when the member meets the requirements for permanent disability retirement, except that the member's disability is not determined to be stable. A disability must be determined to be stable when the preponderance of medical evidence indicates the severity of the condition will probably not change within the next five years. The TDRL must be managed to meet the requirements under Chapter 61 of 10 U.S.C. for periodic physical examination, suspension of retired pay, and prompt removal from the TDRL.

1102 TEMPORARY DISABILITY RETIRED LIST (TDRL)

110201. Placement on the TDRL

If the Secretary concerned determines that a member is unfit to perform the duties of his or her office, grade, rank, or rating because of physical disability that would qualify for disability retirement, except that the member's disability is not determined to be stable, then the member may be placed on the TDRL. Retired pay is computed in Chapter 3.

*110202. Members Eligible To Be Placed On The TDRL

The following members are eligible upon determination by the Secretary concerned for placement on the TDRL:

A. A member of a regular component of the Armed Forces entitled to basic pay;

B. Any other member of the Armed Forces entitled to basic pay who has been called or ordered to active duty (other than for training under Title 10, United States Code, section 10148(a) (***10 U.S.C. 10148(a)***) for a period of more than 30 days; or

C. Any other member of the Armed Forces who is on active duty but is not entitled to basic pay by reason of ***37 U.S.C. 502(b)*** due to authorized absence to participate in an educational program, or for an emergency purpose, as determined by the Secretary concerned.

*110203. Requirements While on the TDRL

A member may be placed on the TDRL upon a determination by the Secretary concerned that the member meets the requirements for permanent disability retirement, except that the

member's disability is not determined to be stable. The following requirements under ***10 U.S.C. 1210*** must be met by the member and or the Secretary of the Military Department concerned (or designee), as applicable, in maintaining the TDRL.

A. A member on the TDRL shall be given a physical examination at least once every 18 months to determine whether there has been a change in the disability, for which the member was temporarily retired.

B. The maximum period a member may be carried on the TDRL is 5 years after the date the member's name was placed on the TDRL.

C. The Secretary of the Military Department concerned (or designee) may make a final determination as to the member's disability after a periodic physical examination and shall make a final determination no later than the expiration of the 5-year period from the date the member's name was placed on the TDRL. If, at the time of that determination, the physical disability for which the member's name was carried on the TDRL still exists, then it shall be considered to be of a permanent nature and stable.

1103 TERMINATION DATE OF TEMPORARY DISABILITY RETIRED PAY

110301. Final Determination By the Secretary of the Military Department Concerned

The Secretary concerned shall make a final determination that a member on the TDRL is either fit for duty or unfit for duty. A qualified member found fit for duty may be returned to active duty, appointed, reappointed, enlisted or reenlisted in a reserve component, transferred to the inactive reserve, transferred to the Fleet Reserve or the Fleet Marine Corps Reserve. If the member declines these options and is otherwise eligible, then the member may be retired or discharged without disability. A qualified member found unfit for duty shall be either separated with disability severance or transferred to the Permanent Disability Retired List (PDRL).

110302. Termination of Disability Retired Pay

Unless immediately transferred to the PDRL, the disability retired pay of a member terminates on the earlier of the following:

A. The date of recall to active duty;

B. The date of resumption of status in Fleet Reserve and Fleet Marine Corps Reserve;

C. The date of appointment, reappointment, enlistment, or reenlistment in the reserve forces, including the inactive reserve;

D. The date of discharge, if a qualified member declines any offer in subparagraphs A through C;

E. The date a member's disability is determined to be less than 30 percent, if the member will be separated for physical disability;

F. Any date specified by the Secretary concerned in the event the member fails to report for a periodic physical examination; or

G. Upon expiration of the 5-year period after the date when the member's name was placed on the TDRL, if not sooner removed.

110303. Notification to Department of Veterans Affairs (VA)

If a total or partial VA waiver of retired pay is in effect on the date of the retiree's discharge from the TDRL, then the Defense Finance and Accounting Service (DFAS), Cleveland Site must notify the appropriate VA office of the effective date of discharge. The notification, if applicable, should include the amount of disability severance pay entitlement; whether the disability resulting in that pay was incurred in the line of duty in a combat zone or from performance of duty in combat-related operations. When available, DFAS will also provide the VA with the Department of Defense (DoD) assigned disability codes for which severance pay was paid.

1104 FOUND FIT FOR DUTY

110401. Found Fit for Duty

If, as a result of the physical examination or determination by the Secretary of the Military Department concerned (or designee) (as referenced in section 1102), it is determined that the member is physically fit to perform the duties of the office, grade, rank, or rating, then the member shall be removed from the TDRL. See Table 11-1.

110402. Available Options for Member Found Fit for Duty

Any member removed from the TDRL may, with his or her consent, be recalled to active duty, appointed, reappointed, enlisted, reenlisted, resume status in the Fleet Reserve or Fleet Marine Corps Reserve, or be placed on the non-disability retired list, if eligible. A member found fit for duty who does not consent to recall, appointment, reappointment, enlistment, reenlistment, resumption of status or placement on a retired list, must be discharged without disability as soon as practicable.

1105 FOUND UNFIT FOR DUTY

110501. Found Unfit for Duty

If it is established by the physical examination or determination by the Secretary of the Military Department concerned that the member is physically unfit to perform the duties of the office, grade, rank, or rating, and that the disability is of a permanent nature, then the member shall be removed from the TDRL (referenced in section 1102). Except for members approved for

permanent limited duty, a member who is found to be unfit will be retired, if eligible for retirement; or, if not eligible for retirement, then separated. Disability Severance pay is described in Volume 7A, Chapter 35. See Table 11-1.

110502. Physical Disability of at Least 30 Percent

If the member's physical disability is determined to be at least 30 percent under the standard schedule of rating disabilities in use by the VA at the time of the determination, then the member shall be retired by reason of permanent physical disability.

110503. Physical Disability Less Than 30 Percent

A. If the member's physical disability is determined to be less than 30 percent under the standard schedule of rating disabilities in use by the VA at the time of the determination and the member has at least 20 years of service, then the member shall be retired by reason of permanent physical disability.

B. If the member's physical disability is determined to be less than 30 percent under the standard schedule of rating disabilities in use by the VA at the time of the determination and the member has less than 20 years of service, then the member may be separated by reason of permanent physical disability with disability severance pay.

1106 DISABILITY SEVERANCE PAY

110601. Disability Severance Pay

A member removed from the TDRL under subparagraph 110503.B, may be separated with severance pay as described in Volume 7A, Chapter 35, section 3504.

110602. Service Requirement for Disability Severance Pay

There is no minimum amount of service time required to be eligible for disability severance pay. 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 shall be:

A. Six years in the case of a member separated from the Armed Forces for a disability incurred in the line of duty in a combat zone (as designated by the Secretary of Defense) or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense.

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

110603. Tax Requirement

To determine the taxability of the disability severance pay, see Volume 7A, Chapter 35, section 3504.

110604. Severance Pay and VA Disability Compensation

The amount of disability severance pay received under ***10 U.S.C. 1212*** may be subject to recoupment by the VA. The member should contact the applicable VA office for more information. Effective January 28, 2008 and later, no deduction is made in the case of disability severance pay received by a member for a disability incurred in the line of duty in a combat zone or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense. No deduction is made from any death compensation to which the former member's dependents become entitled after the member's death.

Table 11-1. Removal From Temporary Disability Retired List (TDRL)

REMOVAL FROM TEMPORARY DISABILITY RETIRED LIST (TDRL)			
	A	**B**	**C**
RULE	**If the member's disability**	**then member may be**	**and is entitled to**
1	is less than 30 percent and member has less than 20 years of service as determined by ***10 U.S.C. 1208***	discharged under ***10 U.S.C. 1203*** or ***1206***	disability severance pay computed under 10 U.S.C. 1212 and Chapter 35, Volume 7A.
2	is less than 30 percent and member has at least 20 years of service	removed from the TDRL and retired under ***10 U.S.C. 1201*** and ***1204***	retired pay computed under ***10 U.S.C. 1401*** and Chapter 3. TDRL entitlement terminates on date of removal and transfer to PDRL (note 1).
3	is 30 percent or more		
4	no longer exists and member is found fit for duty and is a member of the Army or Air Force (note 2)	with his or her consent recalled to active duty, appointed, reappointed, enlisted or reenlisted	Termination of disability-retired pay, computed under 10 U.S.C 1401 and Chapter 35, Volume 7A, on the date of appointment, reappointment, enlistment, reenlistment or resumption of duties or status (note 1).
5	no longer exists and member is found fit for duty and is a member of the Navy, Marine Corps, or Coast Guard (note 2)	with his or her consent recalled to active duty, appointed, reappointed, enlisted, reenlisted, or resume status in the Fleet Reserve or Fleet Marine Corps Reserve	
6	no longer exists and member is found fit for duty (note 2)	discharged without severance pay if member does not consent to be recalled, appointed, reappointed, enlisted, or reenlisted	no retired pay after effective date of separation under 10 U.S.C. 1203 or 1206 (note 2).

NOTES:
1. The date the member completes 5 years on TDRL supersedes this effective date.
2. If member is fit, then there is no disability percent. See 10 U.S.C. 1210(f).

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110202	10 U.S.C. 1201(c)
110203.A	10 U.S.C. 1210(a)
110203.B and C	10 U.S.C. 1210(b)
1103 – Termination Date of Temporary Disability Retired Pay	
110301	DoDI 1332.38, Encl 3, Part 7
110302	10 U.S.C. 1210(c) and (d)
110302.A	10 U.S.C. 1211(d)(1)
110302.B	10 U.S.C. 1211(d)(2)
110302.C	10 U.S.C. 1211(d)(3)
110302.D	10 U.S.C. 1211(c)
110302.E	10 U.S.C. 1210(e)
110302.F	10 U.S.C. 1210(a)
110302.G	10 U.S.C. 1210(h)
1104 – Found Fit for Duty	
110401	10 U.S.C. 1210(f)
110402	10 U.S.C. 1211(c)
1105 – Found Unfit for Duty	
110501	10 U.S.C. 1210(c), (d) and (e)
110502	10 U.S.C. 1210(c)
110503.A	10 U.S.C. 1210(d)
110503.B	10 U.S.C. 1210(e)
1106 – Disability Severance Pay	
110601	DoDI 1332.38, Encl 3, Part 7, Paragraph E3.P7.2.1
110602	10 U.S.C. 1212(c)
110603	10 U.S.C. 1212(d)

VOLUME 7B, CHAPTER 12: "WAIVER OF RETIRED PAY"

SUMMARY OF MAJOR CHANGES

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

The previous version dated April 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter is being updated with hyperlinks and formatted to comply with current administrative instruction.	Update
Table of Contents	Expanded the Table of Contents to include paragraphs.	Add
All	Deleted all references to Retired Serviceman's Family Protection Plan (RSFPP). Effective September 21, 1972, RSFPP was superseded by Survivors Benefit Plan. Public Law 106-65, signed into law October 5, 1999, extended the paid-up provision to active RSFPP participants. The law stated, effective October 1, 2008 no reduction may be made in the retired pay of a RSFPP participant for any month after the later of the 360th month of retired pay reduction and the month during which the participant attains 70 years of age. RSFPP is no longer utilized by any participants. DoDFMR Volume 7B, Chapters 33 through 36 are located in the archive files and provides historical information on RSFPP	Delete
120305	Updated and rephrased fragmented verbiage to be complete sentences for clarity.	Update
120302.A.1.b.(1)	Deleted previous version subparagraph 120302.A.1.b.(1). There are no living veterans who served in the active military service between April 5, 1917 and November 12, 1918.	Delete
120302.A.1.b.(2)	Merged previous version subparagraph into parent subparagraph 120302.A.1.b.	Update
Bibliography	Added corresponding United States Codes amended by listed public laws.	Add

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CHAPTER 12

WAIVER OF RETIRED PAY

1201 WAIVER CONDITIONS AND BENEFITS

120101. General

A. Retired pay is a statutory right and, as such, cannot be waived except as authorized by law. These two laws authorize a member to waive entitlement to retired pay:

1. ***Title 38, United States Code (U.S.C.), section 5305*** permits a member to receive compensation or pension from the Department of Veterans Affairs (VA).

2. ***Title 5, U.S.C., sections 8332(c)*** and ***8411*** and ***Title 5, Code of Federal Regulations, section 831.301*** permit a member to include creditable military service in computing a civil service retirement annuity.

B. A member may not waive his or her right to retired pay. Even if retired pay is not being sent to a member on a monthly basis (for example, the member's whereabouts are unknown), the retired pay continues to accrue. Since, for income tax purposes, such retired pay is deemed to have been constructively received by the member once it is made available and can be drawn upon, it is subject to the withholding and reporting requirements of ordinary wages.

C. A member who waives his or her retired pay in order to receive VA compensation may benefit for these reasons:

1. VA benefits are nontaxable income for Federal, state, and local income taxation. See Chapter 24 for computation of taxable pay and Chapter 25 for Federal income tax withholding.

2. VA benefits may exceed the retired pay entitlement.

1202 DEPARTMENT OF VETERANS AFFAIRS BENEFITS

120201. Dual Benefits

A retiree receiving retired pay who is also eligible to receive disability compensation/pension from the VA is generally barred from receiving concurrent payments of both retired pay and the VA benefit, unless the member elects to waive that portion of retired pay that is equal to the amount of the VA benefit awarded or is qualified to receive both under the Concurrent Retirement and Disability Pay (CRDP) program. For information regarding the CRDP program, see ***Title 10 U.S.C. 1414***.

120202. Improved VA Pension

A retiree receiving retired pay who also is eligible to receive an improved VA pension from the VA is not required to waive any retired pay, effective October 1, 1980. See Appendix G, article III, paragraph 3-1. However, in order to obtain payment from VA, the member may be required to waive retired or retainer pay in the amount payable by the VA.

120203. Initial Award of VA Disability Compensation

See Appendix G, article I, paragraph 1-2.

A. The time frame for processing the initial waiver of military retired pay in favor of an initial award of VA disability compensation is in accordance with agreements in the VA-Department of Defense (DoD) Memorandum of Understanding in Appendix G, article II, paragraphs 2-1 and 2-2.

B. Responsibility for recouping overpayments in accordance with the VA-DoD Memorandum of Understanding is in Appendix G, article II, paragraphs 2-1 and 2-2.

C. Before repeal of the reduction in military retired pay for military retirees who where employed in civil service positions on October 1, 1999, when a regular retired officer was employed by the Federal Government or instrumentality thereof during the period of a retroactive initial award of VA benefits, all amounts classified as retired pay were subject to reduction under the dual compensation formula. Disability compensation payable by the VA is not retired pay. Payments equal to the VA compensation entitlement, and received after the effective date of the waiver, are classified as disability compensation and have never been subject to reduction under the Dual Compensation Act. If a member executes a retroactive waiver of retired pay for a period prior to October 1, 1999, then the Defense Finance and Accounting Service (DFAS)-Cleveland Site must recompute any dual compensation reduction as of the retroactive effective date of the waiver. The member must authorize the VA in writing to pay any additional compensation due after deducting any retired pay overpayment. VA will forward new pay data to the DFAS-Cleveland site in accordance with VA-DoD Memorandum of Understanding in Appendix G, article II, paragraphs 2-1.A.

120204. Change in VA Disability Compensation Awards

A. For increased or reduced awards, or a statutory increase, see Appendix G, article II, paragraphs 2-1 and 2-2.

B. If a retiree is receiving Federal Employee Compensation Act benefits and is also receiving VA benefits, the member will continue to receive both benefits unless the benefits are payable for same injury.

120205. Withdrawal of Waiver

A retiree who has waived retired pay in favor of VA benefits may withdraw the waiver and elect to receive retired pay at any time. The notification of the withdrawal of the previous waiver of retired pay must be submitted to the VA on VA Form 21-526, "Veteran's Application for Compensation and/or Pension." The retiree will sign his/her signature on VA Form 21-526, Section VII, Item 21e, under the statement, "Sign here if you want to receive military retired pay instead of VA compensation." This renouncement of VA benefits does not preclude the retiree from filing a new waiver of retired pay at a later date, enabling the retiree to receive VA benefits again. The effective date or reinstatement of retired pay is determined by the VA procedures outlined in subparagraphs 120205.A and B.

A. When the VA is the initial recipient of the request or withdrawal, the VA will notify the DFAS retired pay activity of the effective date of termination of VA benefits. The effective date is the first of the month after the month of the request for withdrawal or termination of VA benefits, whichever is later. See Appendix G.

B. When the DFAS retired pay activity is the first recipient of the request for withdrawal, it will send the request to the appropriate VA office by a cover letter indicating the monthly gross retired pay. Upon receipt, the VA follows the procedure in subparagraph 120205.A.

120206. Withdrawal When the Retiree is Ruled Incompetent

See Appendix G, article III, paragraph 3-2. Once the withdrawal is processed the effective date for restoration of retired pay will be the first of the month following the month of the restoration request or termination of VA benefits, whichever is later.

120207. Survivor Benefit Plan (SBP)

Any retiree participating in SBP who waives retired pay in favor of VA benefits may:

A. Authorize the VA to withhold the cost of the SBP from the benefits awarded and remit that amount to the cognizant retired pay activity (see Chapter 45 and 54); or

B. Be subject to involuntary collection action by DFAS. Such collection action is subject to the provisions of ***31 U.S.C. 3701(a)(1)*** and ***31 U.S.C. 3716***.

1203 CIVIL SERVICE RETIREMENT & FEDERAL EMPLOYMENT RETIREMENT SYSTEM

120301. General

A retiree receiving retired pay, pursuant to any provision of law authorizing such payments, who applies for a retirement annuity under the laws administered by the Office of Personnel Management (OPM), or the Foreign Service, may elect to waive the retired pay in order

to credit military service for computing civil service annuity. To avoid a delay in adjudicating a civil service retirement claim, the member should execute a waiver and send it to DFAS at least 60 days before the anticipated starting date of the annuity.

120302. Creditable Service

If a member waives retired pay, then all periods of military service before the date of separation on which entitlement to military retired pay is based are creditable.

A. A member will receive credit for military service without waiver of retired pay, if the member was awarded retired pay:

1. On account of a service connected disability:

a. Incurred in combat with an enemy of the United States; or

b. Caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by ***38 U.S.C. 1101***. The term "period of war" includes, in the case of any veteran, any period of continuous service performed after December 31, 1946 and before July 26, 1947, if such period began before January 1, 1947.

2. For non-regular (reserve) service under ***10 U.S.C., Chapter 1223***.

B. A member who was awarded retired pay on account of military service other than service described in subparagraph 120302.A will be required to waive retired pay in order to receive credit for military service for Civil Service Retirement.

120303. Initial Waiver

A retiree may request waiver of retired pay so that military service may be used in establishing eligibility for and/or computation of civil service retirement annuity. The request for waiver of retired pay must be submitted over the retiree's signature and should contain the effective date of the waiver of retired pay. Certain civil service annuities, starting on or after October 1, 1982, commence the first day of the month after separation from civil service or pay ceases and the service and age requirements for title to annuity are met. Individuals retiring during the first 3 days of a month are excluded; their annuities begin the following day. Also excluded are survivor annuities, disability annuities, or discontinued service annuities based on involuntary separation, death, or last day of pay. The member should also authorize the OPM to withhold amounts necessary from the civil service retirement annuity to repay amounts of retired pay paid beyond the effective date of waiver. The retired pay activity notifies the OPM of the date retired pay is waived. The OPM, in turn, advises the retired pay activity of the actual date a member's retirement annuity started, enabling the retired pay activity to make any final settlement that might be due the retired member.

120304. Dual Waivers

A. Federal law prohibits the credit of military service for civil service retirement annuity purposes if the retiree is receiving retired pay, except retired pay awarded in accordance with subparagraph 120302.A.

B. A retiree who is in receipt of retired pay may elect to waive the retired pay and have the military service added to civilian service for civil service annuity computation purposes subject to deposit requirements established by civil service law.

C. Individuals whose civilian retirement is not based on disability need not renounce VA benefits to receive credit for military service if they waive their military retired pay for civil service annuity computation purposes.

*120305. Withdrawal of Waiver

The waiver of military retired pay to receive an increased civil service retirement annuity may be withdrawn and military retired pay reinstated under these conditions:

A. The waiver of military retired pay may be withdrawn when the member becomes a reemployed annuitant and the civil service annuity is terminated.

B. Civil service retirement retiree's who become eligible for Social Security benefits based on the member's wages and/or self-employment income, must exclude their military service performed after 1956 from the computation of civil service annuity. The waiver may be withdrawn, and retired pay must be reinstated, but only if the military service was not used to establish eligibility for a civil service retirement annuity.

C. A member may revoke a waiver of military retired pay at any time providing this will not produce dual retirement benefits based on the same period of service.

120306. Relationship of Civil Service Survivor Annuity to Military SBP

When a retiree, who is participating in the survivor annuity program, elects to waive retired pay in favor of civil service retirement, the retiree is required to pay the SBP cost during the period the waiver is in effect unless the OPM notifies DFAS that the member elected to provide spouse coverage under the civil service annuity program.

120307. Addresses

The correspondence addresses for the OPM and the Foreign Service are:

Office of Personnel Management
Retirement and Insurance Group
1900 E. Street, NW
Washington, D.C. 20415

Foreign Service
Department of State
2401 E. Street NW
SA-1 H620
Washington, D.C. 20522

1204 WAIVER OF PAY FOR RESERVE DUTY AFTER RETIREMENT

120401. Definitions

A. Retired member, as used in this section refers to a member of the Army, Navy, Air Force, Marine Corps or Coast Guard who because of earlier military service is entitled to pension, retired or retainer pay, or disability compensation.

B. Active duty, as used in this section, does not include extended active duty (more than 30 days) where strength accountability passes from the Reserve Components to the active military establishment.

120402. Reserve Training Category

Each Armed Forces Reserve Component is divided into three categories: Ready (active status); Standby (inactive status); and Retired (retired status).

A. Ready Reserve

1. A member of the Ready Reserve may, without consent, be ordered to active duty by the Secretary of the Military Department concerned (or designee) during a period of war or national emergency, or when otherwise authorized by law.

2. Retired personnel having Ready Reserve status may participate in active duty for training or inactive duty training required by virtue of their assignment in a Reserve Component. Each period of training must be a duration of at least 2 hours with a maximum of two training periods in 1 calendar day. Compensation for each regular period of instruction or period of appropriate duty is at the rate of 1/30 of the member's authorized monthly pay and allowance, including that performed on a Sunday or holiday. Where the duty performed is for a continuous period of less than 1 month, compensation for each day of the

period is at the rate of 1/30 of the monthly pay and allowances. The 31st day may not be excluded from computation. A member may perform inactive duty training without pay.

a. Active Duty for Training. This duty may include full-time training, annual training tours, or attendance at a school designated as a Military Service school by the Secretary of the Military Department concerned.

b. Inactive Duty Training. This training may include assemblies, additional flying training periods, and other additional duties as authorized by the Secretary of the Military Department concerned.

B. Standby Reserve. A member of the Standby Reserve may be called to active duty only in time of war or national emergency declared by the Congress or when otherwise authorized by law. This member does not participate in the duty referred to in subparagraph 120402.A.2.a or b.

C. Retired Reserve. A member of the Retired Reserve who is entitled to retired pay may not be placed in the Ready Reserve unless the Secretary of the Military Department concerned (or designee) makes a special finding that the member's services in the Ready Reserve are indispensable. The Secretary or designee may not delegate authority in this instance.

120403. Entitlement

A reservist entitled to retired pay who performed Reserve training for compensation may elect to receive for that duty:

A. The retired pay to which entitled because of earlier military service; or

B. The pay and allowances authorized for the duty being performed, if the member specifically waives retired pay.

120404. Effect on Pay

A retired member who elects to receive compensation for periods of active duty for training or inactive duty training must waive 1 day of retired pay for each calendar day on which the Reserve training is performed. Performance of more than one drill in 1 calendar day requires the withholding of only 1 day of retired pay for that calendar day.

A. Waiver of Pay. The member must prepare in advance a waiver of retired pay for the entire or remainder of the fiscal year in which the training is to be performed. The waiver form should show, by month, the number of training periods for inactive duty and the inclusive dates of each anticipated active duty tour. Timely preparation of the waiver will prevent a possible overpayment of pay.

B. Supplemental Certificate of Waiver. The certificate is required when a member performs active or inactive duty not covered by the first declaration. This certification shows, by month, the additional days of duty performed and is added to the first declaration.

C. Certificate of Recoupment. The certificate recovers previously waived benefits that exceed active or inactive duty training performed. This request for recoupment must be signed by the unit commander and may not be submitted earlier than the last day of the fiscal year involved. The schedule for both the active and inactive duty for training may be shown on the same waiver form or certificate.

D. Adjustment of Pay. Pay is adjusted on an individual basis. Procedures for liquidating an outstanding debt or for collecting cash for SBP coverage are the same as for all other retired members.

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	22 U.S.C., Chapter 14
	25 Comp Gen 631
	28 Comp Gen 367
	43 Comp Gen 551
	46 Comp Gen 404
120302	5 U.S.C. 8332 (CSRS)
	5 U.S.C. 8411 (FERS)
	10 U.S.C., Chapter 1223
	38 U.S.C. 1101
120303	Public Law 97-253, Section 303
	Sep 8, 1982
	5 U.S.C. 8334 and note
	5 U.S.C. 8342 and note
	5 U.S.C. 8348
	Public Law 97-377, Section 768
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	10 U.S.C. 1210(c) and (d)
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120304	5 U.S.C. 8332(c)
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120305.A.	49 Comp Gen 581
120305.B.	5 U.S.C. 8332(j)
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120305.C.	41 Comp. Gen. 460

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120402	10 U.S.C. 10141(a).(b)
	32 C.F.R. 64.4
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120402.A.2	10 U.S.C. 12301
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	37 U.S.C. 206, 1002, 1004
120402.B	10 U.S.C. 12301
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VOLUME 7B, CHAPTER 13: "SUSPENSION OF PAY"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 September 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and reformatted to comply with current administrative instructions.	Update
130203	Reformatted and reordered to comply with Directive Type Memorandum issued May 29, 1997.	Update
1303	Added reference to 31 Code of Federal Regulations 211.1 whereby retired pay may be suspended if certain situations exist where regulations prohibit making payments.	Add

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CHAPTER 13

SUSPENSION OF PAY

1301 GENERAL

The pay account of a retiree may be placed in a suspended (nonpayment) status for a definite or indefinite period of time. The pay may be suspended to comply with statutory or regulatory requirements or Defense Finance and Accounting Service (DFAS) retired pay procedures. Such suspension may not necessarily affect continued or future entitlement when the requirements or procedures that were the basis for the suspension no longer apply. When a retired member is missing and there is no information concerning his or her whereabouts, the member's retired pay must be suspended from the date that he or she last was known to be alive.

1302 STATUTORY REQUIREMENTS

130201. Failure to Comply With Statutes

As specified herein, applicable statutes may prohibit the retiree's receipt of concurrent payments, payments after a specific period of time, or payments if a member fails to comply with statutory requirements.

130202. Retired Pay Suspended

A retiree's pay is suspended (see Table 13-1) if he or she:

A. Is recalled to active duty;

B. Requests waiver of retired pay because of:

1. An award of Department of Veterans Affairs (VA) disability compensation or pension payments, or

2. Military service being used for purposes of qualifying for a United States civil service retirement annuity;

C. Completes 5 years on the Temporary Disability Retired List (TDRL), subject to placement on the Permanent Disability Retired List (PDRL);

D. Fails to report for a required physical examination while on the TDRL or while a member of the Fleet Reserve/Fleet Marine Corps Reserve;

E. Is employed by a foreign government (to include local government units within a foreign country, as well as the national government itself) without applicable congressional or secretarial approvals; or

F. Is found to be mentally incapable of managing his or her personal affairs, and no guardian, trustee, or other legal representative has been appointed. See Chapter 16 for further information.

*130203. Retired Pay Suspended by Secretary of the Military Department Concerned.

A. The Secretary of the Military Department concerned may order a retiree's pay suspended after determining that:

1. A felony warrant has been issued against the absent member by the United States:

a. Under the authority of ***Title 18, United States Code (U.S.C.), section 1073***, "Flight to avoid prosecution or giving testimony," and the Department of Justice has sought extradition; or

b. For violation of the International Parental Kidnapping Act, ***18 U.S.C. 1204***, or for a crime stated in ***5 U.S.C. 8312***; and

2. The member is outside the United States and has willfully remained outside the United States to avoid criminal prosecution for 30 or more consecutive days subsequent to the date of issue of the felony warrant.

B. Upon receipt of an order issued by the Secretary of the Military Department concerned (or designee) that a retiree's pay be suspended:

1. The DFAS-Cleveland Site shall immediately suspend retired pay. Payment of any amounts subject to involuntary withholding or paid as insurance premiums by previously established allotments shall not be suspended, but shall continue to be paid from the member's pay unless otherwise directed by the Secretary of the Military Department concerned (or designee).

2. Suspension continues until DFAS-Cleveland Site receives orders from the Secretary of the Military Department concerned (or designee) to resume monthly payments and to pay the balance of suspended payments. No interest may be paid on any suspended amounts.

*1303 REGULATORY REQUIREMENTS

Retired pay may be suspended if certain situations exist where regulations prohibit making payments. For example, retired pay is suspended if the retiree requests that their check be mailed to addresses outside the United States listed in ***31 Code of Federal Regulations (CFR) 211.1***. Retiree requests for international Electronic Fund Transfer (EFT) receive specialized processing. DFAS-Cleveland Site will send an inquiry to the Federal Reserve Bank to ascertain if the EFT is permitted to the foreign country. The retiree will be advised if the EFT is not permitted.

1304 ADMINISTRATIVE REQUIREMENTS

130401. Failure to Provide Timely Administrative Actions and Declines Further Payments

In accordance with the requirements of the Department of Defense Financial Management Regulation and DFAS-Cleveland Site, Office of Retired Pay procedures, the head of the retired pay activity may suspend retired pay if the retiree fails to take necessary administrative actions on time, or if the retiree declines further payments.

130402. Failure to Provide Proof of Existence and Address

Retired pay may be suspended if the retiree:

A. Fails to furnish the required proof of existence. See Chapter 15 for further information;

B. Fails to notify DFAS-Cleveland Site, Office of Retired Pay, of an address change and the retiree's current address is unknown; or

C. Refuses to accept further payments.

1305 EFFECT OF SUSPENSION ON TAXABLE INCOME, FEDERAL INCOME TAX WITHHELD, AND OTHER ACTIONS

130501. Taxable Income and Federal Income Tax Withheld

The suspension of a retiree's pay account for any reason cited in sections 1302 through 1304 may result in the suspension of any other reporting of taxable income and income taxes withheld. The reporting of taxable income and taxes withheld, if applicable, resumes upon removal of the suspension of pay. See Chapter 24 regarding taxable income, tax withheld, and issuance of Internal Revenue Service Form 1099R, "Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc."

130502. Allotment Deductions

Voluntary allotments of retired pay or retainer pay for military retirees are limited to discretionary and nondiscretionary allotments. General provisions governing allotments of retired pay and administrative procedures are located in Chapter 19.

130503. Survivor Annuity Deductions

Generally, the retiree's cost for participation in the Retired Serviceman's Protection Plan (RSFPP) and/or the Survivor Benefit Plan (SBP), while the retired pay is suspended, would be deducted from the accumulated retired pay upon reinstatement of retired pay. For special rules regarding SBP, refer to Chapter 45, Table 45-4.

Table 13-1. Suspension of Pay Statutory Requirements

SUSPENSION OF PAY — STATUTORY REQUIREMENTS			
RULE	**A**	**B**	**C**
	If a member of the	**has pay suspended for**	**then authority is**
1	Army	recall to active duty	***10 U.S.C. 688***.
2	Air Force		
3	Navy or Marine Corps		***10 U.S.C. 688*** or ***10 U.S.C. 6485***.
4	Armed Forces	waiver of retired pay in favor of VA compensation or pension	***38 U.S.C. 5305***.
5		waiver of retired pay in favor of civil service annuity	***5 U.S.C. 8332***.
6		completion of 5 years on TDRL	***10 U.S.C. 1210(h)***.
7		failure to report for periodic physical for TDRL or while a member of the Fleet Reserve/Fleet Marine Corps Reserve	***10 U.S.C. 1210(a)***.
8		employment by a foreign government without congressional or secretarial approvals	Article 1, section 9, clause 8, United States Constitution, ***37 U.S.C. 908***.
9		being mentally incapable of managing own affairs	***37 U.S.C., Chapter 11***.
10		flight to avoid prosecution or giving testimony	***18 U.S.C. 1073***.
11		international parental kidnapping	***18 U.S.C. 1204***.
12		conviction of certain offenses as stated in ***5 U.S.C. 8312***	***5 U.S.C. 8312***.
13		being absent from the US to avoid prosecution	***Public Law 104-201***, section 633, September 23, 1996.

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130202.B.1	38 U.S.C. 5305
130202.B.2	5 U.S.C. 8332
130202.C	10 U.S.C. 1210(h)
130202.D	10 U.S.C. 1210(a)
130202.E	10 U.S.C. 908 Article 1, Section 9, Clause 8, United States Constitution Comp Gen Decision B-251084, October 12, 1993
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130203.A	18 U.S.C. 1073
130203.B	5 U.S.C. 8312 18 U.S.C. 1204

1303 - REGULATORY REQUIREMENTS

31 C.F.R. 211

VOLUME 7B, CHAPTER 14: "PAYMENT RESTRICTIONS"

SUMMARY OF MAJOR CHANGES

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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 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and reformatted to comply with current administrative instructions.	Update
1401	Reformatted section to comply with administrative instructions.	Update
140201	Updated paragraph with reference to Title 31 Code of Federal Regulations, section 211.1, whereby it has been determined that the mailing of checks is prohibited to the countries listed in this reference because postal, transportation, and banking facilities in general, or local conditions, are such that there is not a reasonable assurance that a retiree or annuitant in listed countries actually will receive checks drawn against funds of the United States, or negotiate checks for full value.	Update
1403	Added reference to Volume 7A, Appendix C, for implementing the Department of Defense policy on Electronic Fund Transfer.	Add
1404	Previous Section 1403 renumbered to 1404 along with paragraphs.	Update

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CHAPTER 14

PAYMENT RESTRICTIONS

*1401 GENERAL

Amounts of retired pay and retainer pay due a retired member of the uniformed services shall be paid on the first day of each month beginning after the month in which the right to such pay accrues.

140101. Payment Date

When the payment date falls on a Saturday, Sunday, or legal holiday, the Director of Defense Finance and Accounting Service (DFAS) may authorize the payment of retired pay and retainer pay on the preceding workday but not more than three days before last day of the pay period.

*140102. Payrolls Paid On October 1

For payrolls otherwise payable on October 1, the Department of Defense (DoD) Comptroller shall determine if the payroll may be dated in September.

1402 CHECKS

*140201. Mailing of Checks to Foreign Countries

The Secretary of the Treasury has determined that the mailing of checks is prohibited to the countries listed in ***Title 31 Code of Federal Regulations, section (CFR) 211.1*** because postal, transportation, and banking facilities in general, or local conditions, are such that there is not a reasonable assurance that a retiree or annuitant in listed countries will actually receive checks drawn against funds of the United States, or negotiate checks for full value. Powers of attorney for receipt or collection of checks, or for the proceeds of checks included within the determination of the Secretary of the Treasury, are not recognized.

140202. Claims

Claims for the release of checks withheld from delivery, or for proceeds thereof, are filed with the DFAS site that originally authorized issuance.

140203. Philippine Islands

Checks drawn on the Treasury of the United States for delivery to Philippine citizens located in the Republic of the Philippines are inscribed with the phrase: "Payable only in pesos through authorized agent banks of the Central Bank of Philippines and Postal Offices." Proof of U.S. citizenship claimed by a retiree living in the Philippines, must be verified by the disbursing office responsible for delivering checks to the Philippines.

*1403 ELECTRONIC FUND TRANSFER (EFT)

The prescribed method of payment within the DoD is EFT. See Volume 7A, Appendix C, for implementing DoD policy on EFT procedures for retirees and annuitants.

*1404 LOSS OF ENTITLEMENT TO RETIRED PAY

*140401. Conditions

Each of the following may result in a loss of entitlement to retired pay. See appropriate corresponding chapter for additional information.

A. Expiration of five years on the Temporary Disability Retired List. See Chapter 11.

B. Loss of United States Citizenship. See Chapter 6.

C. Employment by Foreign Government. See Chapter 5.

D. Conflict of Interest. See Chapter 5.

E. National Security Violations. Within the scope of ***5 U.S.C. 8311-8322***.

NOTE: The Hiss Act, codified as ***5 U.S.C. 8311-8322*** as amended, prohibited the payment of retired pay to military personnel who were convicted of any criminal offense enumerated in the statute. The Act did not prohibit the payment of retired pay if both the criminal offense and the award of retired pay occurred before September 1, 1954. Retired pay awarded on or after September 1, 1954, however, could not be paid regardless of the date on which the offense or conviction occurred. If the individual involved received a presidential pardon or later was cleared by decision of a higher court, then the right to retired pay was restored. Public Law 87-299 amended the Hiss Act and limited provisions to cases involving national security. Members convicted by courts-martial or Federal civil courts of offenses for felonies or equivalent of felonies but not involving national security, were no longer subject to the provisions of the Hiss Act.

F. Denial Upon Certain Punitive Discharges or Dismissals. The non-Regular service retired pay entitlement of a member is denied when his or her court-martial sentence includes death or separation by dishonorable discharge, bad conduct discharge, or dismissal effective with court-martial sentences adjudged after February 10, 1996.

*140402. Recall to Active Duty

A retiree who receives orders, issued by proper authority, for recall to active duty for an indefinite or definite period is not entitled to retired pay for the period of active duty. Members on active duty for training are covered in Chapter 12, section 1204.

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140401.F	Public Law 104-106, section 632, Feb 10, 1996 10 U.S.C. 12740

VOLUME 7B, CHAPTER 15: "PROOF OF EXISTENCE"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 April 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter is being formatted to comply with current administrative instructions. Added hyperlinks and updated statutes.	Update
1501	Expanded general information provided for the Report of Existence (ROE) requirement.	Update
150201	Updated information provided for electronic input of the ROE memorandum via myPay.	Update
150301	Expanded information provided of checks mailed to mentally incompetent retirees.	Update

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CHAPTER 15

PROOF OF EXISTENCE

*1501 GENERAL

For the protection of the Government, certain safeguards are required for retired military paychecks mailed through the international postal system or payable to legal representatives of mentally incompetent members. The Report of Existence (ROE) requirement protects against continued payments to deceased retirees. Payments of military retired pay, Combat Related Special Compensation, and/or Concurrent Retired and Disability Pay may not be negotiated after the death of the retiree.

1502 COMPETENT RETIREE

*150201. Semi-Annual Submission of ROE

When retired military paychecks are delivered to the retired member through the international postal system to foreign countries, the retiree must furnish a ROE semiannually. The retiree does this by completing a form provided by the Defense Finance and Accounting Service - Cleveland Site. The retiree must sign the letter or complete the ROE by electronic input. The electronic input requires access by entering the login id and password or personal identification number (PIN) via myPay, formerly Employee/Member Self Service, at the following website: ***https://mypay.dfas.mil/mypay.aspx***. If the retiree does not have a myPay account, then the retiree can find instructions at the website to create one. The signed and dated ROE should be mailed to the following address:

Defense Finance and Accounting Service
U. S. Military Annuitant Pay
P. O. Box 7131
London, KY 40742-7131

150202. Check Mailed to United States Financial Institution

The ROE is not required when the retiree's military paycheck is mailed to a financial institution in the United States. The endorsement by the financial institution constitutes a certificate of the existence of the retiree.

150203. ROE Not Required

A. A competent retiree residing in the United States whose retired military paycheck is mailed to an address other than a financial institution is not required to submit an ROE.

B. Retired military paychecks mailed to an APO, FPO, or a finance officer or disbursing officer at an overseas address, do not require submission of an ROE.

150204. Restriction

Retired military paychecks are not addressed to a United States Consulate, Embassy, or Military Attaché unless the retiree is employed by that particular agency.

1503 MENTALLY INCOMPETENT RETIREE

*150301. Checks to Mentally Incompetent Retirees

Forwarding checks directly to retirees who are found mentally incompetent to manage their own affairs is prohibited. In the case of a mentally incompetent retiree, checks may be drawn payable to a legal guardian, trustee, or other legal representative after receipt of proper documentation verifying the authority of the guardian, trustee, or other legal representative to receive such payments. See Chapter 16 for appointment or designation of legal representatives.

150302. Legal Representative Requirement

The legal representative must sign and return the semiannual report of his or her ward's continued existence to the address listed in paragraph 150201 to continue to receive the member's retired military pay check. The retired military paycheck may be mailed to the legal representative or to a financial institution established by the legal representative for the retiree (ward).

150303. Veterans Affairs Hospital Authority

In the absence of the appointment of a guardian, trustee, or other legal representative for an incompetent retiree, payment may be made to the Administrator of the Veterans Affairs hospital to provide the retiree with health and comfort items. See Chapter 16.

1504 MAILING OF RETIRED MILITARY PAYCHECKS

Retired military paychecks are mailed at the end of each month, provided a signed ROE, when required, has been received that certifies the retiree's continued existence. Failure to return the required ROE will result in suspension of retired pay.

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1504 – MAILING OF RETIRED MILITARY PAYCHECKS

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June 23, 1931,
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March 9, 1951
February 3, 1964

VOLUME 7B, CHAPTER 16: "PHYSICAL OR MENTAL INCAPACITATION"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter was updated with hyperlinks and formatted to comply with current administrative instructions.	Revision
All	Revised and rearranged the chapter for clarity.	Revision
160101	Added a paragraph entitled "Overview" to the chapter per current administrative instructions and renumbered chapter accordingly.	Addition
160301.B	Added paragraph referencing appointment of trustee information for retirees whose physical incapacity may affect their mental capabilities.	Addition

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CHAPTER 16

PHYSICAL OR MENTAL INCAPACITATION

1601 GENERAL

*160101. Overview

This chapter provides information and guidance on the duties and responsibilities performed on behalf of a retiree determined by a competency board to be mentally and/or physically incapable of managing his or her affairs. This chapter applies to members of a Uniformed Service who are on a retired list of that Service and members of the Fleet Reserve or Fleet Marine Corps Reserve. Federal law provides legal authority for the payment of amounts due incompetent retirees of the Uniformed Services to designated persons for their use and benefit, and for the use and benefit of their dependents where no committee, guardian, or legal representative has been appointed by a state court.

160102. Definitions

A. Physically or Mentally Incapacitated Retiree. A physically or mentally incapacitated retiree is an individual who is impaired by physical disability, mental illness, mental deficiency, advanced age, chronic use of drugs or alcohol, or other causes that prevent sufficient understanding or capacity to manage his or her own affairs competently.

B. Committee. A committee is a person, assembly, or board of persons to whom (or which) the consideration or management of any matter is committed or referred by some court as a person or persons having guardianship of the person and property of an insane person.

C. Conservator. A conservator is a guardian, protector, or preserver; a maintainer.

D. Court of Competent Jurisdiction. A court of competent jurisdiction has the power and authority of law at the time of acting to do the particular act; one that has jurisdiction both of the person and of the subject matter; one provided for in the United States (U.S.) Constitution; or created by the legislature and has jurisdiction of the subject matter and of the person.

E. Guardian. A guardian is a person who legally has the care of the person or property (or both) of another person who is incompetent to act for himself or herself.

F. Trustee. A trustee, as used in the legal sense, is:

1. A person who takes and holds the legal title to the trust property for the benefit of another,

2. One to whom another's property is legally committed in trust, or

3. A person holding the legal title to property under an expressed or implied agreement to apply it and the income arising from it, to the use and for the benefit of another person.

Note: As referenced in this chapter, a trustee is a person appointed by the Defense Finance and Accounting Service, Cleveland Site (DFAS-CL) to receive payment of retired or retainer pay on behalf of a retiree determined to be mentally incapable of managing his or her affairs.

1602 MENTAL INCAPACITY

160201. Legally Appointed Representative

A. Legally Appointed Representative. In any case in which a legal committee, guardian, or other representative has been appointed by a court of competent jurisdiction for the retiree, DFAS normally accepts such appointment and no trustee will be appointed by DFAS. For more information regarding court appointments see section 1603.

B. No Legally Appointed Representative. Amounts due a retiree for retired or retainer pay who, according to a board of medical officers or physicians, is mentally incapable of managing his or her own affairs, may be paid for that retiree's use or benefit to any person designated by the Director, DFAS-CL under paragraph 160204 without the appointment in judicial proceedings of a committee, guardian, or other legal representative.

160202. Authorized Mental Health Determination

Federal agencies authorized to make determinations of the mental competency of a retired service member hospitalized in a facility under its jurisdiction are the:

A. Department of the Army,

B. Department of the Navy,

C. Department of the Air Force,

D. Department of Health and Human Services, and

E. Department of Veterans Affairs (VA).

160203. Competency Board Determination

Upon receipt of information that a retiree may be mentally incapacitated, a board of no fewer than three medical officers or physicians (including one specially trained in the treatment of mental disorders) is convened to determine whether the retiree is competent. The board also is convened when requested to do so by proper authority.

A. The convening authority ensures that three members of the board certify the board's findings.

B. The convening authority of the appropriate Military Service must send one copy of the board's findings, as applicable, to:

Defense Finance and Accounting Service
Retired Pay Department
P.O. Box 998021, Room 1579,
Cleveland, OH 44199-8021

160204. Appointment of Trustee

A. Appointed Trustee Authority. The authority of the Secretaries of the Military Departments to appoint trustees under Title 37, United States Code, section 602 (***37 U.S.C. 602***) has been delegated to the Director, DFAS-CL.

B. Persons Eligible for Appointment as Designated Trustee

1. If a retiree is found mentally incapacitated and has no court appointed legal committee, guardian, or other representative, then a trustee may be appointed to act on the retiree's behalf. The Director, DFAS-CL, may designate one of the following persons as trustee for all incompetent military retirees if the trustee is 21 years of age or over:

a. Lawful spouse (not subject to the age requirement);

b. Legitimate son or daughter or legally adopted son or daughter;

c. Parents;

d. Head of an institution, if the retiree is a patient; or

e. Any other person or persons if in the best interest of the retiree.

2. While next of kin or other relatives of the retiree ordinarily are preferred for designation as trustee, any other person, willing and suitable to act as such, may be designated as a temporary or permanent trustee unless a committee, guardian, or other legal representative is appointed by a court of competent jurisdiction. If more than one qualified person applies to be named as trustee for a mentally incompetent retiree, then the Director, DFAS-CL, will determine which applicant is the more appropriate trustee.

C. Submitting Application and Documentation for Appointment of Trustee

All applications to appoint a trustee and related documentation should be submitted to:

Defense Finance and Accounting Service
Retired Pay Department
P.O. Box 998021, Room 1579,
Cleveland, OH 44199-8021

160205. Bond Requirement for Appointed Trustee

The trustee designated to receive monies on behalf of the incompetent retiree must furnish a suitable bond in all cases when the amounts to be received may be expected to exceed $1,000. The bond so required and furnished must have, as the surety a company approved by the U. S. Government and must be in such amount as required by the Retired Pay Department, DFAS-CL. The person who has been designated as trustee acts in this capacity without remuneration; however, if a bond is required, the premium fee charged by the bonding company may be paid from the funds received on behalf of the mentally incompetent retiree. Any other expenses incurred in securing the bond may not be paid from the amount payable to the incompetent retiree.

160206. Defense Finance and Accounting Service-Cleveland Appointed Trustee Authority

The trustee appointed by the Retired Pay Department, DFAS-CL, has the authority only to receive, expend, and account for monies received from the military. The appointment does not convey authority to act as a trustee in a civilian capacity without prior authority from a court of competent jurisdiction. The trustee must use the monies received for the benefit of the incompetent retiree. Payment made to a person so designated under 37 U.S.C. 602 discharges the obligation of the U. S. as to the amount paid. The Government may not appoint a trustee in any case in which a court of competent jurisdiction has appointed a legal committee, guardian, or other representative.

160207. Required Reports and Documents

The designated trustee submits accounting reports annually or at such times as directed by the Retired Pay Department, DFAS-CL. The reports must show all funds received, all expenditures made on behalf of the incompetent retiree, and a statement of the condition of the trustee account at the time the report is submitted. The trustee also may be required to provide all receipts, canceled checks, voucher accounts, savings account passbooks or statements, and/or other records concerning the trustee account. If the trustee fails to report promptly at the end of the accounting period, then the appointing authority may either temporarily suspend or terminate further payments to the trustee and may designate a successor trustee.

1603 PHYSICAL INCAPACITY

*160301. Physical Infirmity

A. Physical infirmity alone does not warrant the appointment of a guardian for the estate of a person. In some cases, incompetence to manage an estate or property has been found primarily from evidence of advanced age and physical infirmity, and a guardian or conservator has been appointed. In some jurisdictions, there are statutes, held to be constitutional, which authorize the appointment of guardians of the estates of those who, because of old age or physical incapacity, are incapable of managing their property.

* B. In the case of a retiree suffering from a physical condition, that renders him or her mentally incapable of managing his or her affairs, see section 1602 for guidance in preparing and submitting the application for trustee, and the DFAS-CL requirements in establishing and appointing a trustee.

160302. Conservator or Guardian

In several states, statutes authorize persons who, although of sound mind, believe themselves incapable of managing their own estates or of caring for their own property, to apply for, request, or consent to the appointment of a conservator or guardian of the estate or of their persons, or both. The conservator or guardian, when appointed, possesses over the estate substantially the same power and is subject to substantially the same duties as a guardian of an incompetent person. The following are examples for determining whether the appointment of a conservator may be necessary for a physically incapacitated retiree:

A. A person who is bedfast and physically incapacitated as the result of two strokes is not necessarily incompetent so as to require the appointment of a guardian.

B. A 77-year-old woman suffering from complete paralysis of the left side was unable to speak except for an occasional word, could not swallow, and could write only with difficulty and very briefly, but could hear, read, watch television, walk with assistance, and could be out of bed and sit up for short periods of time. According to medical testimony, she was mentally competent, but the evidence was sufficient to support a finding that she was physically incompetent and unable to manage her property.

C. When an adult person has sufficient mental capacity to understand the nature and consequences of the application for a conservator, that person's wishes, if conducive to welfare and contentment of mind may properly be given great weight in determining whether a conservator (rather than a guardian) should be appointed.

D. The physical condition of the person for whom a conservator is required can be considered only insofar as it may affect the person's mental condition.

160303. Court Orders

Because of the variety of county and state statutes regarding the appointment of legal representatives for physically incapacitated retirees, DFAS-CL accepts and processes court orders appointing such representatives. It is not the responsibility of DFAS-CL to authenticate each order.

1604 COURT APPOINTMENT OF GUARDIAN OR OTHER LEGAL REPRESENTATIVE FOR PHYSICALLY OR MENTALLY INCAPACITATED RETIREE

160401. Request for Incapacity Determination

The incapacitated retiree or any person interested in the welfare of the retiree may petition a court of competent jurisdiction for a finding of incapacity and appointment of a guardian or other legal representative.

160402. Certification of Court Appointment

A copy of the appropriate court order certifying to the appointment of the guardian, committee, or conservator is required before payments may be made to the appointee.

160403. No Requirement for Accounting Reports

Accounting reports similar to those identified in paragraph 160207 are not required. Such reports, if required by the court, are matters of concern between the court-appointed guardian or legal representative and the court.

1605 TERMINATION OF PAYMENTS AND DISCHARGE OF TRUSTEE

160501. Conditions for Termination of Payments

Payments due an incompetent retiree cease to be paid to the trustee upon receipt of notification by the DFAS-CL of:

A. Death of the incompetent retiree;

B. Death or disability of the trustee;

C. Receipt of notice that a committee, guardian, or other legal representative has been appointed for the incompetent retiree by a court of competent jurisdiction;

D. Failure of a trustee to render required accounting reports;

E. Probable cause to believe that there is improper use of monies received on behalf of the incompetent retiree; or

F. Receipt of notification that a board of medical officers or other appropriate medical authorities has now found the retiree to be capable of managing his or her own affairs. The appointing authority may, at his or her discretion, accept the findings of a VA or Public Health Service medical facility, or the findings of other public or private medical facilities that a person formerly found incompetent is now competent.

160502. Discharge of Trustee Duties

A. When payments cease to be paid to the trustee as described in paragraph 160501, the trustee files a final accounting report with the Retired Pay Department, DFAS-CL. When the final accounting report has been approved, the trustee is discharged and the surety is released of its bond.

B. If payments are terminated under subparagraph 160501.B, D, or E, then the Retired Pay Department, DFAS-CL, may appoint a successor trustee. Upon death or disability of a trustee, the trustee's legal representative makes the final accounting report.

160503. Death of Incompetent Retiree

Upon the death of the incompetent retiree, any funds remaining in the fiduciary account, maintained on behalf of the incompetent retiree by the trustee, must be made payable to the deceased retiree's estate.

1606 COMFORT ITEMS DURING HOSPITAL STAY

160601. Hospital Stay of Mentally or Physically Incompetent Retiree

The commanding officer of any military hospital or the director of a VA hospital may designate an officer under the command to receive and receipt for a sum of money from the accrued pay of a retiree who, as a patient at the hospital, is found physically or mentally incapacitated in a report of medical officers.

160602. Money Received For Comfort Items

During the retiree's hospital stay, the sum of money received from the accrued pay of a retiree may be used only for the purchase of comfort items for the use and benefit of that retiree when all of the following conditions exist:

A. A trustee has not been designated and a guardian or other legal representative has not been appointed by a court of competent jurisdiction;

B. There are no other funds available for use on behalf of the retiree; and

C. Competent medical authority agrees that the items to be purchased will serve the comfort of the retiree.

1607 GENERAL MAINTENANCE OF ACCOUNTS

Once the appointment of trustee, guardian, committee, or other official party has been made, DFAS-CL must change or update the account per the appropriate provisions of this Regulation.

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1605 – TERMINATION OF PAYMENTS AND DISCHARGE OF TRUSTEE

160501 – 160502	37 U.S.C. 602(f)

VOLUME 7B, CHAPTER 17: "BANKRUPTCIES"

SUMMARY OF MAJOR CHANGES

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and ensured format complied with current administrative standards.	Update
170101 170102	Inverted order of paragraphs for clarity.	Update
1702	Changed section title from "Wage Earner's Plan Under the Bankruptcy Act" to "Adjustment of Debts of an Individual with Regular Income, Bankruptcy, Chapter 13 (The Plan)".	
170201	Used language consistent with Section 1702 title.	Update
170205 170206	Replaced "Chapter 13 Wage Earner's Plan" language with "Chapter 13 plan" for compliance with current title to Title 11 United States Code (U.S.C.), Chapter 13, (The Plan).	Update
170301	Updated paragraph title to "Bankruptcy Notices and Withholding Orders", corrected the FAX number, and added the statement, "DFAS Cleveland Garnishment Operations is the designated agent for service of process for all military retiree bankruptcy notices and withholding orders."	Update
170302	Added "the division of property awards" as another item that will not be terminated as a result of an automatic stay.	Add
Bibliography	Updated Bibliography with correct U.S.C.	Update

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CHAPTER 17

BANKRUPTCIES

1701 GENERAL INFORMATION

*170101. Purpose

This chapter applies to military retirees who have filed a bankruptcy petition under ***Title 11 United States Code (U.S.C.), Chapter 7***, or ***11 U.S.C., Chapter 13*** of the Bankruptcy Code. The law waives the United States Government's sovereign immunity for purposes of compliance with payroll deduction orders issued by the bankruptcy courts. Accordingly, the Defense Finance and Accounting Service (DFAS) will honor the bankruptcy orders.

*170102. Voluntary Bankruptcy

Military retirees may seek protections of voluntary bankruptcy as "debtors," a class of persons specified in ***11 U.S.C. 101***, entitled to the benefits of voluntary bankruptcy.

170103. Automatic Stay Provisions

Continued deduction from the retiree's pay of most types of debts owed to the United States after the filing of a petition in a bankruptcy is improper and violates the automatic stay provisions of the bankruptcy statute. Such amounts withheld after the date the bankruptcy petition is filed must be refunded to the retiree's pay account. The automatic stay provisions of the bankruptcy statute do not preclude continued deductions based on court-ordered support obligations or divisions of retired pay.

170104. Proof of Claim

Upon notice or actual knowledge of the filing of a bankruptcy petition, when the retiree has listed the United States Government as a creditor, DFAS-Cleveland, Retired and Annuitant Pay Operations, will file a proof of claim with the Bankruptcy court concerned.

170105. Post-Petition Debt

A new item of indebtedness incurred after the filing of the bankruptcy petition is known as a post-petition debt. Post-petition debts should be coordinated with the DFAS Office of General Counsel, Garnishment Operations, prior to taking any action.

*1702 ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME, BANKRUPTCY, CHAPTER 13 (THE PLAN)

*170201. Repayment Plan

A retiree may file a petition with the court to enter into a "Chapter 13 plan" under the Bankruptcy Code (11 U.S.C.). Under ***11 U.S.C., Chapter 13***, a retiree must submit a proposed repayment plan to the bankruptcy court that provides, among other things, that all or a specified amount of future income as is necessary to pay priority claims under the plan, are under the control of the bankruptcy trustee. An adjustment of debts of an individual with regular income plan under ***Chapter 13 of the Bankruptcy Act*** is one relating to future earnings of the debtor, and relief is predicated upon the primary concept that, while the debtor is unable to pay existing debts, a plan to effect a composition or extension out of future earnings has been presented to the bankruptcy court for approval. The plan will provide for the submission of such earnings or wages to the supervision and control of the court for the purpose of enforcing the plan.

170202. Provisions

When the plan is confirmed by the court, its provisions are binding upon the debtor and all creditors of the debtor, whether they are affected by the plan, have accepted it and have filed their claims, or whether their claims have been scheduled or allowed, or are allowable.

170203. Authority

The court has authority to issue orders needed to implement the provisions of the plan including orders directed to an employer of the debtor.

*170204. Retired Pay

The retired pay of a retiree is used to pay the ***Chapter 13*** plan and is payable to the trustee appointed by the court. The payment by DFAS of part of the retiree's pay in response to a court order issued in a ***Chapter 13*** plan does not violate ***31 U.S.C. 3713*** (Priority of Government Claims). Compliance with such a court order gives the government a valid acquittance against the retiree since the court order is binding on the retiree.

*170205. Judicial Determination

If the United States Government is a creditor when the retiree files a ***Chapter 13*** Wage Earner's Plan, then the Government's priority under ***31 U.S.C. 3713*** may be asserted in the absence of a judicial determination to the contrary.

170206. Delinquent Taxes

A retiree who is participating in a ***Chapter 13*** Wage Earner's Plan must pay the delinquent taxes which he or she owes that had not been assessed before the date of confirmation of the plan. The retiree also is responsible for all taxes that may become due. The United States may accept the provisions of any plan which includes the assumption, settlement, or payment of any such delinquent taxes.

A. When DFAS-Cleveland, Retired and Annuitant Pay Operations, sends the entire amount of the retiree's pay to the court-appointed trustee, the Internal Revenue Service (IRS) Notice of Levy should be forwarded to the court-appointed trustee for disposition.

B. When DFAS-Cleveland, Retired and Annuitant Pay Operations, sends part of the pay due the retiree to the court-appointed trustee, the IRS Notice of Levy should be processed in the normal manner against the amount due the retiree. The court-appointed trustee is provided a copy of the IRS Notice of Levy and notified of the action taken in establishing the liquidation procedures on a continuing Notice of Levy.

1703 PROCEDURES

*170301. Bankruptcy Notices and Withholding Orders

All bankruptcy notices and withholding orders should be submitted or faxed to:

DFAS-Cleveland
Garnishment Operations
P.O. Box 998002
Cleveland, OH 44199-8002

Commercial Fax: (877) 622-5930
(216) 522-6960
DSN Fax: 580-6960

DFAS-Cleveland Garnishment Operations is the designated agent for service of process for all military retiree bankruptcy notices and withholding orders.

A. The following information should be included with the withholding order:

1. Full name and

2. Full social security number.

B. The notice is effective when it is received in the office of the designated official.

C. When the notice does not sufficiently identify the retiree, it will be returned directly to the person who submitted the order with an explanation of the deficiency.

*170302. Case Review and Execution of Bankruptcy Withholding Order

Upon receipt of notice of a bankruptcy, together with all the required information, the office of the designated official will review the case to determine if there are any involuntary allotments, garnishments, or debt collections that must be terminated as a result of the automatic stay (child support, alimony and child support arrears, and division of property awards are not

terminated unless the bankruptcy order requires it). If a withholding order is submitted, the office of the designated official will then establish the withholding against the retiree's pay to comply with the bankruptcy order within 30 days. Withholdings will continue until the amount specified in the order is collected, or the order is cancelled or suspended.

A. Within 30 calendar days after the date of receipt of the order, the designated official will send notice to the retiree stating this fact.

B The letter will inform the retiree the date that the withholding is scheduled to begin and the amount or percentage that will be deducted.

C. When the retiree identified in the order is found not to be entitled to money due from or payable by DFAS, the designated official will return the order to the person who submitted it and advise him or her that no money is due from or payable by DFAS to the named individual. When it appears that amounts are exhausted temporarily or otherwise, unavailable, the authorized person shall be told why and for how long any money is unavailable, if known.

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CHAPTER 17 – BANKRUPTCIES

1701 – GENERAL INFORMATION

170102	11 U.S.C. 106
170103	11 U.S.C. 362
170104	11 U.S.C. 501
170105	11 U.S.C. 1305

1702 – ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME, BANKRUPTCY, CHAPTER 13 (THE PLAN)

170201	11 U.S.C. 1301-1330
170202	11 U.S.C. 1327
170203	11 U.S.C. 105
170204	11 U.S.C. 1326
170205	31 U.S.C. 3713 47 Comp Gen 522 (1968) US vs. Shannon, 342 US 288 (1951)
170206	31 U.S.C. 3713 47 Comp Gen 522

1703 – PROCEDURES

170302	10 U.S. 1408(a)(2)

VOLUME 7B, CHAPTER 18: "RELEASE OF INFORMATION"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 June 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted to comply with current administrative instructions.	Updated
1801	Referenced Department of Defense (DoD) Directive 5400.07 and DoD 5400.07-R.	Add
1802	Referenced DoD Directive 5400.11 and DoD 5400.11-R.	Add
Bibliography	Updated Bibliography with references cited in Sections 1801 and 1802.	Updated

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CHAPTER 18

RELEASE OF INFORMATION

*1801 FREEDOM OF INFORMATION ACT

Public Law 89-554, enacted September 6, 1966, commonly known as the Freedom of Information Act (FOIA), ***Title 5, United States Code (U.S.C.), section 552***, as amended, was enacted with the intent of having openness in government and making information available to the public. ***Department of Defense (DoD) 5400.7-R***, "DoD Freedom of Information Act Program," September 4, 1998, as amended, was reissued under the authority of ***DoD Directive 5400.07***, "DoD Freedom of Information Act Program," January 2, 2008. It provides guidance on ***5 U.S.C. 552***, as amended, and prescribes uniform policies and procedures for the DoD implementation of the FOIA.

*1802 PRIVACY ACT

Public Law 93-579, enacted December 31, 1974, commonly known as the Privacy Act of 1974, ***5 U.S.C. 552a***, as amended, was enacted to safeguard individual privacy by governing the collection, safeguarding, maintenance, public notice, use, access, amendment, and dissemination of personal information. ***DoD 5400.11-R***, "DoD Privacy Program," May 14, 2007 was reissued under the authority of ***DoD Directive 5400.11***, "DoD Privacy Program," May 8, 2007. It provides guidance on ***5 U.S.C. 552a***, as amended, and prescribes uniform procedures for implementation of the DoD Privacy Program.

1803 ADMINISTRATION

Administration of the Freedom of Information Act and the Privacy Act must be in accordance with the following:

A. For Army refer to ***Army Regulation (AR) 25-55***, ***AR 340-21***, and ***32 Code of Federal Regulation, Part 518***.

B. For Air Force refer to Air Force Document (AFD) 070702-060, ***DoD 5400.7-R_Air Force Manual (AFMAN) 33-302***, and ***Air Force Instruction (AFI) 33-332***.

C. For Navy refer to ***Secretary of the Navy Instructions (SECNAVINST) 5720.42F*** and ***SECNAVINST 5211.5E***.

D. For Marine Corps refer to ***SECNAVINST 5720.42F***.

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CHAPTER 18 – RELEASE OF INFORMATION

1801 – FREEDOM OF INFORMATION ACT

1801 Public Law 89-554
Sep 6, 1966
Public Law 90-23,
June 5, 1967
Public Law 93-502,
Nov 21, 1974
Public Law 94-409,
Sep 13, 1976
Public Law 95-454,
Oct 13, 1978
Public Law 98-620,
Nov 8, 1984
5 U.S.C. 552, as enacted by PL 89-554,
, thereafter, amended by PL 90-23
PL 93-502, PL 94-409, PL 95-454,
and PL 98-620.
DoDD 5400.07, January 2, 2008
DoD 5400.7-R, September 4, 1998

1802 – PRIVACY ACT

1802 Public Law 93-579,
Dec 31, 1974
5 U.S.C. 552a, as amended.
DoD 5400.11, May 8, 2007
DoDD 5400.11-R, May 14, 2007

VOLUME 7B, CHAPTER 19: "GENERAL PROVISIONS GOVERNING ALLOTMENTS OF RETIRED PAY"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 July 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted to comply with current administrative instruction.	Update
190201	Clarifies that a retired member may terminate a discretionary allotment upon request.	Add
190204 and 190404	Updated/condensed titles to the paragraphs to avoid repetition.	Update

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CHAPTER 19

GENERAL PROVISIONS GOVERNING ALLOTMENTS OF RETIRED PAY

1901 GENERAL

190101. Purpose

Allotments are designed for the convenience and privilege of retirees and are not to be exploited or abused. The retired pay activity acts solely as an agent of the retiree in the payment of the allotments and assumes no liability concerning any contract between the retiree and the allottee. Allotments paid erroneously through administrative error must be recovered from the allottee, if possible, or may be collected from the retiree if such payment provided a benefit to that retiree.

190102. Definitions

A. Allotment. An allotment, as used in this chapter, is a definite portion of the retired pay of a person retired from a Military Service, which the retiree authorizes to be paid to a person, institution, or agency.

B. Allottee. An allottee is a person, institution, or agency to whom the allotment is made payable.

C. Allotter. An allotter is the person from whose retired pay the allotment is made.

D. Financial Institution. A financial institution is a bank (to include a military banking facility), credit union, or thrift association.

190103. General

Voluntary allotments of retired pay or retainer pay for military retirees are limited to discretionary and nondiscretionary allotments. To aid personnel in the transition from active duty to retired status, all existing authorized allotments of members on active military service may be continued as approved allotments. Authorized allotments include a maximum of six discretionary allotments, as outlined in paragraph 190201 and Volume 7A.

190104. Method of Payment

Electronic Funds Transfer (EFT) is the method of payment required for all individual allotments. For a list of exceptions to this requirement see Title 31 Code of Federal Regulations (C.F.R.), part 208.4 ***(31 C.F.R. 208.4)*** and Chapter 1 of Volume 8.

190105. Restrictions

The following restrictions apply to allottees:

A. Minors. Allotments (except to purchase United States (U.S.) Savings Bonds) may not be made payable to children under 16 years of age. Allotments may be made payable to the child's guardian or custodian. Spouses of retirees may be named as allottees regardless of age.

B. Mental Incompetents. Allotments are not payable to mentally incompetent persons. Such allotments are payable to a guardian or the institution where confined.

C. Multiple Allotments. See restrictions in paragraphs 190103 and 190201.

D. Special Power of Attorney. A special power of attorney may be used to establish, change, or stop an allotment. This special power of attorney must specifically grant the authority to establish, change or stop allotments. A general power of attorney is not acceptable to establish, change, or stop an allotment.

E. Reduced Retired Pay of Allotter. When a stoppage or reduction of retired pay does not leave enough funds for deduction of allotments in force, then those allotments are stopped administratively by the disbursing officer without the signature of the retiree, as described in section 1904, and Figure 19-1.

F. Administrative Stops. Allotments may be stopped because of the required deductions from retired pay listed in paragraph 190401. When possible, the retiree is allowed to determine the allotments to be stopped. If, however, the retiree involved refuses, or is unable, to identify those that should be stopped, then the allotments of that retiree are involuntarily stopped. See Figure 19-1 for the order of precedence.

1902 DISCRETIONARY ALLOTMENTS

*190201. Discretionary Allotments

Retirees are authorized no more than six discretionary allotments. A retiree may start a new allotment, as long as the total number of discretionary allotments does not exceed six. Discretionary allotments are identified as "class D" allotments. The retiree shall certify that the allotment is within the limits of the law (e.g., allotments may not be used to repay gambling debts in a state where gambling is not permitted). Discretionary allotments include, but are not restricted to, the allotments described in this section. A retired member may terminate a discretionary allotment upon request using the procedures set out in paragraph 190402.

190202. Allotments For Insurance Premiums

Allotments are authorized for paying various types of commercial insurance premiums. This includes payment for life, dental, health, and vehicle insurance. Premium payments are

combined when a retiree has more than one life insurance allotment within the same company. All payments to an insurer are made via EFT. The insurer is responsible for establishing an account for these payments. The start, change and stop dates for the insurance allotments are set out in Tables 19-2, 19-3, and 19-4.

A. Cash Deposit for Insurance. If a retiree's retired pay account is in a nonpay status due to full waiver of pay, failure to report for periodic physical examination, or 5 years on the Temporary Disability Retired List, then inform the member that he or she may request the Department of Veterans Affairs (VA) to pay VA insurance premiums by deduction from disability compensation benefits, or the member may pay premiums by sending remittances directly to:

Department of Veterans Affairs
P.O. Box 7787
Philadelphia, PA 19101

B. Eligible Allottees

1. United States Government Life Insurance/National Service Life Insurance (USGLI/NSLI),

2. Navy Mutual Aid Association.

3. Army Mutual Aid Insurance.

4. Dental and Health Insurers.

5. Vehicle Insurers.

6. Commercial Insurers.

190203. Allotments to Dependents or Relatives

Voluntary payment may be made by allotment to a spouse, other dependent(s), or to a relative(s) not legally designated as a dependent(s). Allotments shall be made payable to the allottee through a financial institution for credit to the account of the allottee. An allottee can be a state agency, court trustee, welfare agency, former spouse, or a child's guardian or custodian. The member or allottee must make satisfactory arrangements with the financial institution to accept EFT payment before starting the allotment.

*190204. Allotment Deposits to Financial Organizations

Retirees may authorize allotments of pay to financial organizations for credit to the account of the member. Allotments may be deposited to:

A. A financial organization for credit to a savings, checking, or trust account of the allotter.

B. A mutual fund or other company or investment firm.

190205. Allotments for Payment of Mortgage or Rent

Retirees may authorize allotments for mortgage or rent payment to a financial institution, mortgage company, realtor, or landlord.

190206. Other Allotments

Retirees may authorize an allotment for payment of personal loans; however, the restrictions in paragraph 190105 apply. Personal loans may include, but are not limited to the following:

A. Payment of a car loan.

B. Payment of a loan to repay consumer credit, such as to a finance company.

190207. Air Force Retired Members Only

Only retired Air Force members may authorize allotment payments to the Air Force Enlisted Members Widow's Home.

1903 NONDISCRETIONARY ALLOTMENTS

190301. Nondiscretionary Allotments

Nondiscretionary allotments of retired and retainer pay are limited to those described in this section.

190302. Voluntary Liquidation of Indebtedness

An allotment for repayment of indebtedness to the United States (U.S.) is registered for a definite period required to liquidate the indebtedness. Retired members may make allotments for payment of:

A. Indebtedness incurred due to defaulted notes insured by the Federal Housing Administration or guaranteed by the VA.

B. Any other indebtedness to any department or agency of the U.S. Government (except Department of Defense debts), to include those assigned to a collection agency.

C. Delinquent Federal income taxes. A member may execute an agreement with the Internal Revenue Service (IRS) to pay delinquent taxes by monthly deductions from retired pay. Agreements are made by executing an ***IRS Form 2159***, (Payroll Deduction Agreement).

D. Delinquent state or local income or employment taxes.

E. Loans to Navy and Marine Corps Relief Society, Army Emergency Relief, Air Force Aid Society, and American Red Cross.

190303. Charitable Contributions

Retirees are authorized to establish an allotment for making charity contributions to any of the Service Relief Organizations which includes the Army Emergency Relief; Navy and Marine Corps Relief Society; or affiliates of the Air Force Assistance Fund. Payment of pledges for one of these specified charities is authorized. These payments are for a definite period. Individual organizations are responsible for identifying an account for payment issue.

190304. Savings Bonds Allotments

A. Purchasing Savings Bonds by Allotment. As of October 1, 2010, the U.S. Treasury no longer issues paper savings bonds to federal employees (military, retired, and civilian personnel members) through payroll deduction. Retired members may purchase electronic savings bonds by establishing a personal TreasuryDirect account with the Treasury, and then initiating a nondiscretionary allotment made payable to Treasury at their TreasuryDirect account. Members are authorized one nondiscretionary allotment for the purchase of bonds. For information on TreasuryDirect, go to ***www.treasurydirect.gov***.

B. Establishment of Savings Bond Nondiscretionary Allotment. Retired members electing to purchase electronic savings bonds will first create a TreasuryDirect account at ***www.treasurydirect.gov***. This account can be used to purchase multiple bonds. Once created, members must either contact Defense Finance and Accounting Service (DFAS) Retired and Annuitant Pay or log into myPay to establish an allotment to the TreasuryDirect account. The following information is required to initiate the allotment:

1. The routing transit number for TreasuryDirect is: 051736158.

2. The TreasuryDirect account number provided by Treasury.

3. The specific dollar amount to be deducted monthly.

The myPay system also requires that the member designate the account type, either checking or savings, even though that designation is not applicable to an allotment to a TreasuryDirect account. Send written requests to begin Savings Bonds Allotments to:

Defense Finance and Accounting Service
P.O.Box. 7130
Retired Pay
London, KY 40742-7130

1904 ALLOTMENT ADMINISTRATION

190401. Excluded Amounts in Retired Pay Allotment

The amount of retired pay, which may be allotted, can be limited administratively to exclude amounts required to be withheld for:

A. Tax purposes.

B. Liquidation of an indebtedness determined under applicable provisions of law to be chargeable against the member's retired pay account.

C. Cost of participation in the Retired Serviceman's Family Protection Plan and/or Survivor Benefit Plan.

D. Garnishments.

E. Continuing tax levies.

F. VA compensation.

G. Former spouse.

190402. Establishment, Discontinuance, and Changes to Existing Allotments

A properly executed form (Department of Defense ***(DD) Form 2558***, Authorization to Start, Stop or Change an Allotment), a written request, or an automated data exchange (from specific organizations) may be used to establish, discontinue, or change an allotment. Automated computer programs that allow members to establish, discontinue, or change an allotment using a personal identification number are also permitted. In addition, requests may be accepted telephonically from members without written documentation, but only after the member's identity has been validated. Requests for allotment actions should be provided to the Defense Finance and Accounting Service, Retired and Annuitant Pay. Normally, allotments are not established retroactively.

190403. Administrative Changes

Changes beyond the control of the retiree are considered administrative in nature. These are dictated by events incidental to the purpose of the allotment. Examples include changes to the name, address, account number, and financial institution of the allottee. Other examples include amount changes due to contractual obligations existing at the time the allotment was executed (such as a mortgage payment changed because of variable rate mortgage or change in escrow requirement). Upon notice and request from the insurance allottee, administrative changes may be made without the member's consent under the following circumstances:

A. Death of retired member.

B. Policy terminated.

C. Policy has been surrendered.

D. Policy changed.

E. Policy paid up, no premiums due.

F. Policy not in force.

G. Lapsed policy.

The allotment will be terminated or reduced at the insurance allottee's request; and refund and notification of the returned premium shall be forwarded to the retired member.

*190404. Duration of Allotments

Allotments are registered for an indefinite period except for the following circumstances:

A. Situations listed in subparagraphs 190403.A through G.

B. Repayment of indebtedness to the U.S., to include payment of delinquent Federal income taxes.

C. Charity as specified in paragraph 190303.

190405. Allotment Overpayment Responsibilities

Any check or bond issued and mailed to a recipient for which entitlement does not exist must be recovered immediately by the issuing office. If an allotment payment is made after deductions from retiree's retired pay have stopped, and the retiree does not return the amount of that payment, then the office of issuance starts recovery action of an equal amount from the recipient, or the retiree, if that office determines that the retiree benefited from the payment. If the retiree is liable, then overpayment is recovered by deductions from retired pay due the retiree.

1905 RIGHT TO ALLOTMENTS IN CASE OF DEATH

190501. Death of Retiree

Entitlements to allotments end with the death of the member. No further allotment payments may be made after receipt of notice of the allotter's death. Deductions made from the retiree's pay, but not paid to the allottee, become part of the arrears of retired pay. Allotments paid after the retiree's death may not be collected from the allottee, except:

A. Allotments erroneously established after notice of death of the retiree; and

B. Unearned insurance premiums (insurance premiums are paid 1 month before the day payment is actually due).

190502. Death of Allottee

An allotment check, even though endorsed, does not become part of an allottee's estate if it is not cashed or negotiated before the allottee's death. It is not subject to any expense incurred by or on behalf of the allottee before or after death. All unnegotiated allotment checks must be returned to the office that issued them. Such checks are credited to the retiree's account.

Figure 19-1. Order of Precedence

ORDER OF PRECEDENCE

Precedence	Type	Letter Designation
1	Charitable contributions to Army Emergency Relief, Navy and Marine Corp Relief Society, or Air Force Assistance Fund	See Table 19-1
2	Bonds	B
3	Savings	D
4	Loans to service organizations	L
5	Payment of delinquent state or local income or employment taxes	T
6	Dependents	D
7	Home loans	D
8	Commercial life insurance/Army Mutual Aid Insurance	D
9	Navy Mutual Aid Insurance	M
10	Government life insurance	N
11	Veterans Group Life Insurance	See Table 19-1
12	Deductions for court-ordered support	D
13	Repayment of indebtedness to the U.S.	T
14	Payment of delinquent Federal income taxes	T

Table 19-1. Allotments of Retired Pay – General

ALLOTMENTS OF RETIRED PAY — GENERAL

RULE	A	B			C		D	
		and Service's letter designation is			and member is not on active duty and has allotment (notes 1 and 2)		then the allotment period required is	
	When the purpose of allotment is for	Army	Navy/ USMC	Air Force	authorized for carryover from active duty	authorized for establish-ment from active duty	Indefinite	Definite
1	Purchase of U.S. Savings Bonds	B	B	B	X	X	X	
2	payment to dependents (note 5)	D	D	D	X	X	X	
3	repayment of home loans	D	D	D	X		X	
4	commercial life insurance/Army Mutual Aid Insurance (note 3)	D	D	D	X	X	X	
5	repayment of loans to Navy and Marine Corps Relief Society, Army Emergency Relief, American Red Cross, or Air Force Aid Society	L	L	L	X	X		X
6	Navy Mutual Aid Insurance (note 2)	None	M	None	X	X	X	
7	U.S. Government Life Insurance and/or National Service Life Insurance (note 4)	N	N	N	X	X	X	
8	repayment of loans on Department of Veterans Affairs insurance (note 4)	N	N	N			X	
9	payment of financial institution or credit to account of retiree (note 6)	D	D	D	X		X	
10	payment of delinquent Federal income taxes and/or payment of indebtedness to the U.S. (note 7)	T	T	T		X		X
11	charitable contributions to the Army Emergency Relief, Navy and Marine Corps Relief Society, or affiliates of the Air Force Assistance Fund	L	C	F	X	X		X

Table 19-1. Allotments of Retired Pay - General (Continued)

ALLOTMENTS OF RETIRED PAY — GENERAL

RULE	A	B			C		D	
		and Service's letter designation is			and member is not on active duty and has allotment (notes 1 and 2)		then the allotment period required is	
	When the purpose of allotment is for	Army	Navy/ USMC	Air Force	authorized for carryover from active duty	authorized for establish-ment from active duty	Indefinite	Definite
12	payment of delinquent state or local income or employment taxes (note 8)	T	T	T	X			X
13	Veterans Group Life Insurance	D	D,V	D		X	X	

NOTES:

1. Includes members of the Fleet Reserve or Fleet Marine Corps Reserve when not on active duty.
2. In addition to allotments authorized, member may continue any other allotments in effect (except Combined Federal Campaign and aviation premiums payable to the Navy Mutual Aid Association) at the time of retirement.
3. On the life of the allotter, spouse, and/or children.
4. Payment of allotments for insurance premiums and repayment of insurance loans are made by one NSLI or class N allotment.
5. Authorized to a spouse, former spouse, and/or children of the retired member having a permanent residence other than that of the retired member.
6. Includes credit unions within the U.S., its possessions, Puerto Rico, and Panama Canal Zone operating under a Federal or state charter. Also includes credit unions authorized under Volume 5, Chapter 34 to operate an overseas U.S. military installation.
7. Delinquent Federal income taxes are payable to the applicable District Director, Internal Revenue Service.
8. Delinquent state or local and employment taxes are payable to the applicable state or local tax authorities.

Table 19-2. Effective Dates for Starting Insurance Allotments (D, M, V, or N)

EFFECTIVE DATES FOR STARTING INSURANCE ALLOTMENTS (D, M, V, OR N)				
	A	**B**	**C**	**D**
RULE	**If a retired member of**	**is authorized a class**	**and the**	**then start allotment effective the first day of the month**
1	any Military Service	N allotment		before the month in which insurance premium is due (note).
2			insurance policy is dated back to save age	in which application is made. Retiree must pay the Reserve to cover previous months by direct payments to VA.
3	the Army or Air Force	D allotment		specified by retiree, if authorization reaches the servicing finance center before the date specified in Military Service procedural regulations.
4	the Navy or Marine Corp	D or M allotment		
5	any Military Service	D or V allotment		the date submitted by the Veterans Group Life Insurance through the automated data exchange process.

NOTE: A U.S. Government or National Service Life Insurance allotment deducted for 1 month pays the premium for the succeeding month. For example, if premium for July is paid by allotment, then allotment must be effective June 1.

Table 19-3. Effective Dates for Changing Insurance Allotments (D, M, V, or N)

EFFECTIVE DATES FOR CHANGING INSURANCE ALLOTMENTS (D, M, V, OR N)					
	A	**B**	**C**	**D**	**E**
RULE	**If a retired member of**	**has a class**	**and**	**then stop present allotment effective the last day of the month**	**then start new allotment effective the first day of the month**
1	the Army or Air Force	D or N allotment	the retiree or fiduciary or guardian requests a change in allotment	specified in request if allotment change can be processed by the date specified in procedural regulations of the concerned Military Service	after the month old allotment is stopped.
2	the Navy or Marine Corps	D, M, or N allotment			
3	any Military Service	N allotment	allotment was authorized in incorrect amount or effective date	before its effective date	specified in original request or authorization of the date requested by the VA.
4		D or V allotment	the Office of Servicemembers' Group Life Insurance (OSGLI) automated data exchange provides a change in the allotment	as specified by the automated data exchange process	specified by the automated data exchange process.

Table 19-4. Effective Dates for Stopping Insurance Allotments (D, M, V, or N)

EFFECTIVE DATES FOR STOPPING INSURANCE ALLOTMENTS (D, M, V, OR N)				
	A	**B**	**C**	**D**
RULE	**If a retired member of**	**has a class**	**and**	**then stop allotment effective the last day of the**
1	the Army or Air Force	D or N allotment	the retiree requests the allotment be stopped	month specified by the retiree, if authorization reaches the servicing DFAS Site before the date specified in procedural regulations of the Military Service concerned.
2	the Navy or Marine Corps	D, M, or N allotment		
3	any Military Service	N allotment	the application for insurance is disapproved by the VA	month before the effective starting date of the allotment.
4	the Army or Air Force	D allotment	has insufficient "net" pay to satisfy IRS Notice of Levy for delinquent income tax determined by IRS to be a "problem case"	month before the month in which IRS levy is received (stop insurance allotments only if discontinuance of other voluntary allotments will not satisfy levy).
5	the Navy or Marine Corps	D or M allotment		
6	the Army or Air Force	D or N allotment	has pay suspended (note 1) or insufficient pay	last month in which enough pay accrues to satisfy deduction. Avoid stopping allotment unnecessarily or earlier than required.
7	the Navy or Marine Corps	D, M, or N allotment		
8	the Army or Air Force	D or N allotment	dies	(note 1.)
9	the Navy or Marine Corps	D, M, or N allotment		
10	any Military Service	D or V allotment	the retiree or OSGLI requests the allotment	month specified by the retiree, if authorization reaches the servicing DFAS Site before the date specified in Military Service procedural regulations; for OSGLI as specified by the automated data exchange process (note 2).

NOTES:
1. See procedural regulations of Military Service concerned.
2. Advise OSGLI immediately of reason for stoppage of allotment if it was discontinued by the automated data exchange process.

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CHAPTER 19 – GENERAL PROVISIONS GOVERNING ALLOTMENTS OF RETIRED PAY

1901 – GENERAL

190103	37 U.S.C. 701
190104	31 U.S.C. 3332

1902 – DISCRETIONARY ALLOTMENTS

190201	37 U.S.C. 701

1903 – NONDISCRETIONARY ALLOTMENTS

190304	31 C.F.R. Part 363

1905 – RIGHT TO ALLOTMENTS IN CASE OF DEATH

190501	Comp. Gen. B-225873.2 31 U.S.C. 3727(e)(2)

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VOLUME 7B, CHAPTER 22: "FUNERAL HONORS DETAIL STIPEND FOR RETIREES"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 May 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	The "Stipend" authority is extended by the Office of the Under Secretary of Defense, Personnel and Readiness annual Memorandum.	Update

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CHAPTER 22

FUNERAL HONORS DETAIL STIPEND FOR RETIREES

2201 GENERAL

The Secretary of a Military Department is authorized to provide support for persons participating in a funeral honors detail, including retired military members in the form of either transportation (or reimbursement for transportation) and expenses or a daily stipend as prescribed by the Secretary of Defense. The prescribed daily stipend must be set at a single rate that is designed to defray the typical costs of transportation and other miscellaneous expenses for persons participating in a funeral honors detail who are members of the Armed Forces in a retired status or others who are not members of the Armed Forces or employees of the United States. See Volume 9, Chapter 4 for information regarding reimbursement for transportation and expenses.

2202. ENTITLEMENT TO STIPEND

Secretaries of Military Departments are asked to authorize stipend payments for retirees under ***Section 1491(d) of Title 10, United States Code*** in lieu of authorizing an allowance under ***Section 495(a) of Title 37, United States Code***, in order to ensure uniform payments to all volunteers who assist in the delivery of military funeral honors. A member of the Armed Forces in a retired status, including a member of the Retired Reserves without pay, may receive a daily stipend payment, in addition to any payment of retired or retainer pay or other compensation to which they are entitled for performing funeral honors duty. Only one daily stipend may be earned and paid for 1 calendar day.

220201. Amount Payable

The Secretary of Defense is required to annually prescribe a flat rate daily stipend for certain individuals who volunteer to assist the active military in the delivery of funeral honors. The daily stipend payable to a member receiving retired or retainer pay or Retired Reserves without pay is currently $50.

220202. Taxability

The daily stipend payments under 10 U.S.C. 1491(d) are not reported as taxable income.

220203. Funding

Payments under this chapter must be funded by the approving military service from Operation & Maintenance funds for the fiscal year in which the payment is made.

220204. Payments

A. To be considered for the stipend, the retiree must be an authorized provider to participate in the specific honor detail and perform the honors as anticipated. The retirees that perform funeral honors should be a provider under the ***Authorized Provider Partnership Program*** (AP3). The AP3 was established by the Department of Defense for the benefit of commanders who have the responsibility to provide Military Funeral Honors to active duty service members, retirees and veterans.

B. The military service concerned is responsible for processing claims for authorized providers (retirees). Standard Form 1164 (SF 1164) "Claim for Reimbursement for Expenditures on Official Business," will be completed by the authorized provider (retiree) and submitted to the parent Service of the honored veteran.

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CHAPTER 22—FUNERAL HONORS DETAIL STIPEND

2201—GENERAL	DoDI 1300.15, October 22, 2007 10 U.S.C. 1491(d)
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220201—Amount Payable	10 U.S.C. 1491(d)(2) OUSD (P&R) memorandum, March 27, 2013 Public Law 106-398, section 575, October 30, 2000
220202—Taxability	OUSD (P&R) memorandum, March 27, 2013
220203—Funding	OUSD (P&R) memorandum, March 27, 2013
220204—Payments	DoDI 1300.15, October 22, 2007

VOLUME 7B, CHAPTER 23: "SPECIAL AND VOLUNTARY SEPARATION INCENTIVE PAY"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 January 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter with hyperlinks and formatted to comply with current administrative instruction.	Update
All	Expanded and rearranged chapter for clarity and renumbered sections and paragraphs accordingly.	Update
Chapter	Changed title of chapter from "Special and Voluntary Separation Payment Procedures" to "Special and Voluntary Separation Incentive (VSI) Pay."	Update
230102.A.1 230102.C 230102.D.1	Expanded information provided on the various responsible components in processing VSI payments.	Update
2303 2304 2305	Removed "Procedures" from section titles.	Update
230302.A.1 230502.A.1, 230502.C.1 230502.D.1	Changed VSI department code from FRCBC to JBJAA(D).	Update
230302.C.2	Added VSI address with new department code.	Add
230302.D.2	Updated referenced subparagraph from 010202.B.3 to 230302.C.2.	Update
230403.A	Expanded section regarding payments to beneficiaries.	Update
230501.A 230501.B	Expanded information provided on Reserve Special Separation Pay/Reserve Incentive Separation Pay (RSSP/RISP).	Update
TOC and Bibliography	Updated Table of Contents and Bibliography, accordingly.	Update

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CHAPTER 23

SPECIAL AND VOLUNTARY SEPARATION INCENTIVE PAY

2301 GENERAL PROVISIONS

230101. Purpose

This chapter provides procedures for the administration and payment of the special separation benefits programs to mid-career service members of the Military Services in over-strength inventories. Special Separation Benefits (SSB) and Voluntary Separation Incentives (VSI) benefits are authorized in Title 10, United States Code (U.S.C.), sections ***1174a*** and ***1175***. The applicable period for SSB and VSI was January 1992 through October 1995. Both options require member affiliation with a Reserve Component. See Volume 7A, Chapter 35 for detailed information on SSB/VSI benefits, entitlements, and eligibility requirements.

230102. Responsibilities

A. Defense Finance and Accounting Service (DFAS)-Cleveland Site

* 1. The DFAS-Cleveland Site will maintain the VSI account until all annual installments are paid, or until the death of the VSI member recipient. The member's entitlement to VSI is not transferable, except that the member may designate beneficiaries to receive the payments in the event of the member's death, in accordance with paragraph 230401.

2. The DFAS-Cleveland Site will make all VSI annual beneficiary payments. Following the death of a VSI recipient, the DFAS-Cleveland Site will provide customer service support for designated beneficiaries and be the primary source for VSI member beneficiary account assistance and maintenance.

B. Defense Manpower Data Center (DMDC). The DMDC will maintain a personnel database that identifies and tracks participation in the SSB/VSI programs. Because of the requirement for Reserve affiliation, the DMDC will provide advice of Reserve participation to the DFAS-Cleveland Site.

* C. Secretary of the Treasury. The "Voluntary Separation Incentive Fund" (hereafter referred to as the "Fund") is administered by the Secretary of the Treasury. All VSI payments made by the Secretary of Defense after December 31, 1992, pursuant to ***10 U.S.C. 1175***, shall be paid out of this fund. The Fund is classified as a trust fund and has been designated as account number 97X8335. This Fund will consist of both a receipt and an expenditure account.

D. Department of Defense (DoD) Board of Actuaries. The DoD Board of Actuaries (hereinafter referred to as the "Board") shall:

* 1. Determine an amount which is the total present value, as of January 1, 1993, of the future benefits payable to persons who separate under VSI prior to January 1, 1993. The Board also shall determine an amortization period and schedule for liquidating the original unfunded liability of the Fund. For members separated on or after January 1, 1993, the Secretary shall deposit in the Fund during the period beginning on that date and ending on September 30, 1999:

a. The sums necessary to pay the current liabilities during that period; and

b. The amount equal to present value, as of September 30, 1999, of future benefits payable as determined by the Board.

2. For each fiscal year after fiscal year 1999, carry out an actuarial valuation for the Fund and determine any new unfunded liabilities arising from gains and losses to the Fund. The Board also shall determine an amortization schedule for liquidating these new unfunded liabilities. For the upcoming fiscal years, the Board will determine, in sufficient time as to be included in the fiscal year's budget requests, the amount of DoD contributions to the Fund necessary to comply with the amortization schedules for the Fund's original and new unfunded liabilities.

2302 PAYMENT PROCESSING

230201. VSI Payments

A. Upon separation, the Service member will complete a ***Department of Defense (DD) Form 2058*** (State of Legal Residence Certificate) and Internal Revenue Service (IRS) Form W-4 (Employee's Withholding Allowance Certificate). Members who wish to designate beneficiaries must complete a ***DD Form 2864*** (Voluntary Separation Incentive (VSI) Beneficiary Designation Form).

B. DFAS-Cleveland Site will send annual VSI payments to the VSI recipient's bank via Electronic Funds Transfer (EFT). The Service member should complete ***Standard Form (SF) 1199A*** (Direct Deposit Sign-Up Form) to establish EFT payments. If an SF 1199-A is not available, the VSI recipient must submit the financial institution's routing transit number, a canceled check or deposit slip that shows his/her account number and bank address, and the member's signature.

C. After the initial payment, the DFAS-Cleveland Site will issue all subsequent annual payments on the anniversary of the member's separation. In the event that the anniversary date falls on a weekend or holiday, make the payment according to the same rules followed for regular active duty paydays.

230202. Effect of Disability Compensation

A member receiving VSI shall not be deprived of the VSI by reason of entitlement to disability compensation under the laws administered by the Department of Veterans Affairs.

A. Deduction. There shall be deducted from VSI an amount equal to the amount of any such disability compensation concurrently received.

B. No Deduction. No deduction may be made from VSI for any disability compensation received because of an earlier period of active duty if VSI is received because of discharge or release from a later period of active duty.

230203. Withholding Requirements

A. Federal Income Tax Withholding (FITW)

1. Initial SSB and VSI Payments. Withhold FITW at the applicable flat rate percentage of the gross payment. All SSB and initial VSI payments are included with the member's other taxable pay amounts during that calendar year and reported via the IRS Form W-2 (Wage and Tax Statement) in January of the following calendar year.

2. Annual VSI Payments. Withhold FITW from annual VSI payments based upon the annual Percentage Method of Withholding Table. A valid IRS Form W-4 is required to compute the proper withholding amount under this method. If the member does not submit an IRS Form W-4, compute the tax withholding as if the member is single, with no withholding exemptions. All anniversary payments are produced by the DFAS-Cleveland Site and reported to the member via IRS Form W-2 in January of the calendar year following the payment.

B. State Income Tax Withholding. All SSB and VSI payments are subject to state income tax withholding for residents of states which have entered into an agreement with the Secretary of the Treasury. State withholding and reporting for the SSB and initial VSI payment is based on the member's legal residence at the time of separation from active duty (see Volume 7A, Chapter 44 for those states which have entered into this agreement). For VSI anniversary payments, withhold State income tax based upon the State of legal residence claimed on DD Form 2058, or if no new DD Form 2058 is submitted, withhold State income tax based upon the State of legal residence claimed on the member's DD Form 2058 on file at separation.

C. Withholding of Federal Insurance Contributions Act (FICA). The responsible DFAS-Site will not withhold FICA or any other payroll taxes from SSB and VSI payments.

230204. Recoupment of SSB/VSI

A member who has received SSB/VSI and who later qualifies for retired or retainer pay shall have deducted from each payment of such retired or retainer pay the amount of SSB/VSI received. SSB shall also be deducted from disability compensation under the laws administered by the Department of Veterans Affairs. For detailed information on recoupment, see Chapter 4.

*2303 DEBT COLLECTION

230301. General

SSB/VSI payments are subject to offset for debt collection. When a Service member is released from active duty with debts due the United States, offset from the initial SSB/VSI entitlement the amount of the debt. In the case of VSI, if the debt is greater than the initial payment, then the remaining debt may be collected from subsequent installments. Collections are made according to the administrative offset provisions contained in ***31 U.S.C. 3716***. The collection of debts from SSB/VSI payments must be consistent with standard debt collection procedures and policies.

230302. Debt Collection

A. VSI Overpayment

1. Overpayment of Initial VSI Installment. For collecting VSI overpayments, the responsible DFAS-Site will pursue collection action using out-of-service debt collection procedures. If the VSI account has already been transferred to the DFAS-Cleveland VSI pay system, notify the DFAS-Cleveland Site, Code JBJAA(D), within five days with the correct payment information. If debt collection actions prove unsuccessful, follow the provisions of paragraph 230302.C.2.

2. VSI Anniversary Overpayment. A debt incurred as a result of an anniversary overpayment, is pursued as an out-of-service debt by the DFAS-Cleveland Site. If the debt cannot be collected through these procedures, offset the amount owed from subsequent installment payments. This offset will include any applicable interest, administrative, and/or penalty charges.

B. SSB Overpayment. The Service member's responsible servicing DFAS-Site will treat a debt incurred as a result of overpayment of SSB entitlement, as an out-of-service debt. Pursue overpayment according to standard debt collection procedures.

C. Active Duty Debts

1. Amounts due the United States should be offset against the initial SSB/VSI payment at the time of the member's separation. The member's responsible servicing DFAS-Site will pursue any uncollectible amounts using out-of-service debt collection procedures.

2. The DFAS-Cleveland Site will retain debts for VSI recipients as long as collection efforts are satisfactory. If collection efforts prove unsuccessful, the responsible servicing DFAS-Site will forward the debt to the DFAS-Cleveland Site for administrative offset against the next VSI installment payment at the following address:

Defense Finance and Accounting Service
Attn: VSI (Code JBJAA(D))

P.O. Box 998011
Cleveland, OH 44199-8011

Such debts should be transferred to the DFAS-Cleveland Site no later than 90 days before the next VSI installment payment using a ***DD Form 139*** (Pay Adjustment Authorization). The DD Form 139 must state that due process has been accorded the member. Once offset action has been taken, the DFAS-Cleveland Site will credit the proper military personnel appropriation and notify the applicable DFAS-Site of the amounts collected. If the total debt cannot be liquidated from a single VSI anniversary installment, the respective DFAS-Site should resubmit the remaining debt for offset, including any applicable interest, administrative and/or penalty charges, until the total debt has been satisfied.

D. Debts from Non-Appropriated Fund Instrumentalities (NAFI). A member's annual VSI installments are available for collection of debts owed to NAFI activities.

1. The NAFI is responsible for providing notification of the existence of the debt and due process to the debtor. The initial NAFI notification to the debtor must include demand for immediate payment in full of the debt.

2. To effect collection, the NAFI must send a DD Form 139 to the DFAS-Cleveland Site to the address listed in subparagraph 230302.C.2. The DD Form 139 must contain the following statement: "Member has been provided due process according to DoDFMR, Volume 7A, Chapter 50, subparagraph 500104.A.3."

3. The entire amount of VSI entitlement is available for offset according to the administrative offset provisions contained in ***31 U.S.C. 3716***.

E. Debts from Non-DoD Federal Agencies. DMDC will receive and certify all requests for administrative offset from non-DoD Federal Agencies. Once certified, the DMDC will send the request, via a DD Form 139 or letter of transmittal, to the member's responsible servicing DFAS-Site. This DFAS-Site will satisfy the request by administrative offset of the SSB or initial VSI payment. For VSI payments, once the account is transferred to the DFAS-Cleveland Site, refer any debts to the DFAS Cleveland-Site for offset against future VSI installments.

230303. Garnishments

Garnishment orders remain in effect. Transfer garnishment cases for VSI recipients to the DFAS-Cleveland Site for administration.

*2304 BENEFICIARY PAYMENT

230401. Designation of Beneficiaries

A. Service members may designate beneficiaries to receive VSI installments which remain unpaid after the death of the member.

1. The VSI recipient should make designations using the VSI Beneficiary Designation Form. The VSI recipient may designate different percentages to be received by multiple recipients. In the event percentage elections are not made, divide payments evenly among the designated beneficiaries.

2. After separation, the VSI recipient may change his/her beneficiary information by sending a notarized VSI Beneficiary Designation Form to the DFAS-Cleveland Site.

B. The DFAS-Cleveland Site will maintain beneficiary forms for all VSI accounts until the end of the VSI entitlement period, or until the person's death.

230402. Notification of Death and Beneficiary Claim

A. The DFAS-Cleveland Site requires notification of a VSI recipient's death. Proof of death, such as a civil death certificate, is required. Upon receipt of proof of death the DFAS-Cleveland Site will close out the member account and establish the beneficiary account.

B. No specific form is required for making claim for beneficiary payments. A statement claiming future VSI payments, signed by the beneficiary, and with the beneficiary's social security number, will be sufficient. Beneficiary claims are sent to:

Defense Finance and Accounting Service
Attn: VSI
PO Box 998011
Cleveland, OH 44199-8011

230403. Beneficiary Payment

* A. Death of the Member. Upon the death of the member, the DFAS-Cleveland Site will make all remaining annual installments to the member's designated beneficiaries for the remainder of the deceased VSI recipient's entitlement period. If a valid designation was not made or received, distribute payments according to the legal order of precedence contained in ***10 U.S.C. 2771*** as follows:

1. Beneficiary designated by the member in writing, if the designation is received by the Military Department concerned before the member's death;

2. Surviving spouse;

3. Children and their descendants, by representation:

a. Adopted Child. An adopted child is a legal heir in every state and, therefore, is entitled to payment of unpaid pay and allowances, if otherwise proper. If the deceased retiree's child is adopted by others, then the child is a beneficiary only in those

states where an adopted child inherits from its natural father.

b. Stepchild. A stepchild is not an eligible beneficiary unless adopted by the deceased retiree.

c. Illegitimate Child. An illegitimate child may not be paid unpaid pay and allowances of a deceased retiree unless that child is recognized for inheritance purposes under the laws of the jurisdiction involved.

4. Father and mother in equal parts or, if either is dead, the survivor;

5. Legal representative; or

6. Person entitled under the law of the domicile of the deceased retiree.

B. Death of the Beneficiary. Payments will be distributed to a beneficiary's estate in the event a beneficiary dies after a VSI recipient's date of death. The DFAS-Cleveland Site will make such payments according to the laws governing the beneficiary's state of legal residence.

C. Withholding Requirements

1. FITW is based upon the IRS Form W-4P (Withholding Certificate for Pension or Annuity Payments) submitted by the recipient. If an IRS Form W-4P is not submitted, the DFAS-Site will calculate withholding as for a married person claiming three withholding allowances.

2. State income taxes or FICA will not be withheld from beneficiary payments.

3. The DFAS-Cleveland Site will issue an IRS Form 1099-R (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) to each beneficiary recipient.

D. Garnishment of Beneficiary Payments. The DFAS-Cleveland Site will not honor garnishment orders against beneficiary payments.

E. Offset of Beneficiary Payments. Beneficiary payments generally are not subject to offset. For instance, VSI beneficiary payments are not offset even though the beneficiary is entitled to receive Social Security on behalf of the deceased VSI recipient. However, if a beneficiary is indebted to the government, the debt may be collected from VSI installment payments.

230404. Report of Existence

The DFAS-Cleveland Site will send a report of existence letter annually to each

beneficiary. For additional information on Report of Existence, see Chapter 15 and Chapter 61, section 6104.

*2305 RESERVISTS DEBT COLLECTION

230501. General

Reservists' Special Separation Pay/Reservists' Involuntary Separation Pay (RSSP/RISP) payments are subject to offset for debt collection. Any debts remaining at time of separation/retirement is offset from the amount of the RSSP/RISP payment. In the case of RSSP, if the debt is greater than the initial payment, the remaining debt may be collected from any subsequent installments. Collections are made according to the administrative offset provisions contained in ***31 U.S.C. 3716***.

* A. RSSP. RSSP may be paid to Reservists who have performed more than 20 years of service and are under 60 years of age, provided the member receives the approval of the Secretary concerned and meets the eligibility requirements in Volume 7A, Chapter 58, subparagraph 580504.A.

* B. RISP. Subject to the approval of the Secretary concerned and the restrictions contained in Volume 7A, Chapter 58, paragraph 580505, a member of the Selected Reserve may be paid RISP. RISP may be paid to a member who is separated from service on or after March 11, 1993, and has performed 6 years or more, but less than 15 years of service prior to date of discharge from a Reserve Component or involuntary transfer from the Selected Reserve.

230502. Debt Collection

A. RSSP Overpayment

1. Overpayment of the Initial RSSP Payment. The DFAS-Cleveland Site will pursue collection action against the RSSP recipient. If the RSSP account has been transferred to the DFAS-Cleveland Site RSSP pay system,that Site, Code JBJAA(D), will be notified of the correct payment information within 5 days. If debt collection actions prove unsuccessful, follow the provisions of subparagraph 230502.C.1. If the debt cannot be satisfied through RSSP offset, the DFAS-Cleveland Site will forward the uncollectible amount to the DFAS-IN Site for collection action. Offset from retired pay will include all appropriate interest, administrative, and/or penalty charges.

2. RSSP Anniversary Overpayments. The DFAS-Cleveland Site will collect RSSP anniversary overpayments as an out-of-service debt. In the event the debt cannot be collected through these procedures, the DFAS-Cleveland Site will offset from any subsequent installment payments. This offset will include all applicable interest, administrative, and/or penalty charges.

B. RISP Overpayments. The Reserve member's responsible servicing DFAS-Site will pursue all RISP overpayments according to out-of-service debt procedures.

C. Other DoD Debts

1. RSSP Payments. The Reserve member's responsible servicing DFAS-Site will offset debts against the initial RSSP payment. If debts are established after the initial payment, the RSSP recipient's responsible servicing DFAS-Site will pursue collection using out-of-service debt collection procedures. The RSSP recipient's responsible servicing DFAS-Site will retain the debt as long as collection actions are satisfactory. If collection actions prove unsuccessful, notice of the debt will be forwarded to the DFAS-Cleveland Site, Code JBJAA(D), for administrative offset against any remaining RSSP installment payment. The debt will be transferred to the DFAS-Cleveland Site no later than 90 days from the next RSSP installment payment using a ***DD Form 139***. Once offset action has been taken, the DFAS-Cleveland Site will credit the proper Military Personnel Appropriation and notify the applicable DFAS-Site of the amount collected. If the total debt cannot be liquidated from a single RSSP anniversary installment, the applicable DFAS-Site will resubmit the remaining debt for offset until the total debt has been satisfied. If the debt is not satisfied by offset from the last RSSP payment, the RSSP recipient's applicable DFAS-Site will collect against the Reserve member's retired pay.

2. RISP Payments. The DFAS-Site will offset amounts due the United States against the RISP payment at the time of the Reserve member's separation. If debts are established after an RISP payment, pursue the debt using out-of-service debt collection procedures.

D. Debts from non-DoD Federal Agencies. DFAS-Cleveland Site/Code ABA will receive and certify all requests for administrative offset from non-DoD Federal Agencies. Once certified, DFAS-Cleveland Site/Code ABA sends the requests to the Defense Manpower Data Site for locator service. Once the debtor's DFAS-Site has been identified, the requests for offset are sent via a letter of transmittal or cartridge to the Reserve member's responsible servicing DFAS-Site. This DFAS-Site provides the member with a courtesy notice of salary offset beginning and satisfies the request by administrative offset of the RISP or initial RSSP payment. For RSSP payments, once the account is transferred to the DFAS-Cleveland Site, advice of any debts owed to non-DoD Federal Agencies will be transmitted to the DFAS-Cleveland Site, Code JBJAA(D), for offset against any future RSSP installments.

E. Other RISP Offsets

1. Individuals who subsequently receive basic pay, compensation for inactive duty training, or retired or retainer pay under a purely military retirement program will have such pay or compensation reduced by 75 percent until the total amount withheld equals the RISP entitlement.

2. Service members, who subsequently receive disability compensation from the Department of Veterans Affairs, will have deducted from such

compensation the total amount of RISP. However, there is no reduction if the disability compensation is for a disability incurred or aggravated after the period for which the RISP was paid.

230503. Garnishments

Garnishment orders remain in effect. Garnishment cases for RSSP recipients will be transferred to the DFAS-Cleveland Site for administration.

*BIBLIOGRAPHY

CHAPTER 23 – SPECIAL AND VOLUNTARY INCENTIVE SEPARATION PAY

2301 – GENERAL PROVISIONS

	230101	10 U.S.C. 1174a(h)(2) 10 U.S.C. 1175
*	230102.C and D	10 U.S.C. 1175(h)

2302 – PAYMENT PROCESSING

230201.D	10 U.S.C. 1175(e)(4)
230201.E	10 U.S.C. 1175(f)
230202.A	10 U.S.C. 1175(e)(4)
230204	10 U.S.C. 1174a(g); 10 U.S.C. 1174(h)(1) DoD FMR, Vol. 7B, Para. 040603.A 10 U.S.C. 1175(e)(3) DoD FMR, Vol. 7B, Para. 040502 10 U.S.C. 1174a(g); 10 U.S.C. 1174(h)(2) DoD FMR, Vol. 7B, Para. 040602.B and 040802

* 2304 - BENEFICIARY PAYMENT

230403.A	10 U.S.C. 2771 DoDFMR, Vol. 7B, Para. 040602

* 2305 – RESERVIST DEBT COLLECTION

230501	Public Law 102-484, section 4416, October 23, 1992 DoDFMR, Vol. 7A, Chapter 58, Para. 580505

VOLUME 7B, CHAPTER 24: "COMPUTATION OF WAGES SUBJECT TO FEDERAL INCOME TAX WITHHOLDING"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 September 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted to comply with current administrative instructions.	Update
All	Replaced colloquial terms "FITW wages" and "VA Award" with "wages subject to FITW" and "disability compensation", respectively.	Update
2405	Rephrased for clarity.	Update
2406	Rephrased for clarity.	Update

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CHAPTER 24

COMPUTATION OF WAGES SUBJECT TO FEDERAL INCOME TAX WITHHOLDING

2401 BACKGROUND

Federal income tax withholding (FITW) is based on payments actually or constructively paid, regardless of date on which they are earned. Retired pay is paid constructively when it is credited to the account or set apart for a retiree so that he or she may draw on it at any time, although it is not actually reduced to possession. It must have been credited to or set apart for the retiree without any substantial limitation or restriction as to the time or manner of payment or condition under which it is to be made and brought within the retiree's control and disposition.

2402 RETIRED PAY SUBJECT TO FITW

Except as otherwise indicated in this chapter, retired pay is income and constitutes wages subject to FITW.

2403 RETIRED PAY NOT SUBJECT TO FITW

240301. Gross Retired Pay Not Subject to FITW

The gross retired pay of a member is not subject to FITW if the member's retired pay is computed only on the basis of percentage of disability, and the member is on the temporary or permanent disability retired lists, if:

A. On or before September 24, 1975, the member was entitled to receive retired pay computed on the basis of percentage of disability (***26 United States Code (U.S.C.), subparagraph 104(a)(4)*** and ***104(b)(2)(A)***);

B. On September 24, 1975, he or she was a member of the Armed Forces (or Reserve Component thereof) or under a binding written commitment to become such a member (***26 U.S.C. 104(a)(4)*** and ***104(b)(2)(B)***); or

C. The member receives disability retired pay because of a combat-related injury. The term "combat-related injury" means personal injury or sickness incurred as a direct result of armed conflict, or while engaged in extra hazardous service, or under conditions simulating war, or caused by an instrument of war. This determination is made by the applicable Service at the time of discharge. See ***DoDI 1332.38***.

2404 EFFECT OF DISABILITY COMPENSATION AWARD ON FITW

A member is entitled to exclude the following from the taxable portion of retired pay:

240401. Disability Compensation

The maximum amount that he or she would be entitled to receive as disability compensation upon application to the Department of VA.

240402. Additional Amount

An additional amount based on the difference between a prospective VA disability compensation award and the amount excluded under section 2403.

240403. Retroactive Disability Compensation

The retroactive amount of a VA disability compensation award not previously excluded from retired pay.

*2405 GROSS PAY PARTIALLY TAXABLE

For members who are entitled to have their retired pay computed on the basis of both percentage of disability and years of service, a portion of their retired pay may be subject to FITW. Any reduction of wages subject to FITW for disability retired pay must meet one of the conditions set forth in section 2403.

240501. Post September 30, 1949

Compute the wages subject to FITW for members retired for disability on or after October 1, 1949 as follows:

A. If the member is placed on the Permanent Disability Retired List, then subtract retired pay based on the percentage of disability from retired pay based on the years of service. The result of such subtraction is the amount of wages subject to FITW.

B. If the member is placed on the Temporary Disability Retired List, then use one of these two methods:

1. If the member's disability rating is 50 percent or more, then compute as in subparagraph 240501.A.

2. If the member's disability rating is less than 50 percent and retired pay is computed based on years of service, then subtract the amount of retired pay the member would have received if such pay were computed solely on the actual percentage of disability from the pay based on years of service, the result of the subtraction is the amount of wages subject to FITW.

3. If the member's disability rating is less than 50 percent and the member elects to receive disability retired pay based on the percentage of disability, then the retired pay received is not subject to FITW.

240502. Before October 1, 1949

The wages subject to FITW for members who retired before October 1, 1949 fell into two categories. Such retired pay was either based on years of service and was fully taxable or it was based on disability and was nontaxable. Members retired for physical disability before October 1, 1949 were assigned a disability rating for purposes of computing retired pay entitlement under the provisions of the Career Compensation Act. These members could either continue to receive the nontaxable retired pay they were receiving on September 30, 1949 or elect to receive retired pay computed under the provisions of the Career Compensation Act based on the percentage of disability assigned or years of active service. If members chose to have their pay computed based on the Career Compensation Act, then their wages subject to FITW were computed as described in section 2403 or subparagraph 240501.A.

*2406 FITW WAGE REDUCTIONS FROM DEDUCTIONS AND COLLECTIONS

Deductions and collections that reduce the amount of wages subject to FITW include:

*240601. Participation in Retired Serviceman's Family Protection Plan (RSFPP)

The amount of the member's retired pay subject to FITW is reduced by the full amount of the RSFPP costs deducted from the member's retired pay in order to participate in the RSFPP. This deduction did not reduce taxable income until the tax laws were changed to permit a dollar-for-dollar reduction effective January 1, 1966. The tax implication for a member who pays for this protection by direct remittance is discussed in section 2411.

*240602. Participation in Survivor Benefit Plan (SBP)

The amount of the member's retired pay subject to FITW is reduced by the full amount of the SBP costs deducted from the member's retired pay in order to participate in the SBP. The tax implication for a member who pays for this protection by direct remittance is discussed in section 2410.

*240603. VA Disability Compensation

There is a waiver of military retired pay when a member receives disability compensation or a pension from the VA.

Note: If a member is entitled to concurrent retirement and disability pay on or after January 1, 2014, the waiver provision does not apply.

A. If the member's gross retired pay is fully subject to FITW, then subtract the amount of the VA waiver applied to wages. (The VA waiver reduces the member's retired pay entitlement.)

B. In the case of a member retired because of physical disability, reduce wages subject to FITW, if any, by the amount of the VA waiver applied or the portion of the member's retired pay based on the actual percentage of disability, whichever is greater.

2407 UNITED STATES CITIZENS ABROAD

The retired pay of members who temporarily or permanently reside in a foreign country is subject to FITW as if they resided in the United States or its possessions. Thus, apply the withholding rules discussed in section 2402.

2408 ARREARS OF PAY

See Chapter 30, section 3003 for taxation policies that apply to deceased members and their beneficiaries.

2409 COLLECTION OF DELINQUENT TAXES

240901. Voluntary Withholding

A retiree may, with the consent of the Internal Revenue Service (IRS), have deductions made from his or her retired pay to satisfy a debt due to tax delinquency. The class T allotment has been designated to allow a member to make payments to IRS in this manner.

240902. Involuntary Withholding

If a retiree neglects or refuses to pay his or her Federal income tax liability within 10 days after receiving notice of liability, then the cognizant IRS District Director can collect the amount by placing a levy on the member's retired pay. The IRS is required to give the member 10 days notice that a levy will be executed. This notice normally is included with the notification of liability. See Chapter 28, section 2811.

2410 TAXABILITY OF SBP/RSFPP PREMIUMS

241001. Premiums

Premiums deducted from retired pay for SBP/RSFPP will reduce taxable retired pay.

241002. Premiums Paid by Direct Remittance

When the retired pay account of a SBP/RSFPP participant is placed in a suspended status, the retiree is required to pay the monthly premiums by direct remittances. For any year in which such a retiree receives taxable retired pay, a certificate may be issued to report any remittances

not previously reported which were received through the end of the year. The member may then reduce the reported taxable retired pay when he files the tax return. If the member does not receive taxable retired pay and subsequently dies, then a certificate will be issued to the annuitant for all remittances made not previously reported on a certificate.

2411 PROCESSING CORRECTION OF RECORDS CASES

If payment is made as the result of a correction of military records, then that payment is processed as follows:

241101. Amounts Previously Paid and Reported

When amounts previously paid and reported as FITW wages are not subject to FITW as a result of the correction, the member is provided either a corrected IRS Form 1099-R for the 3 calendar years before the year that the correction action is made or a letter citing the "before" and "after" amounts for each calendar year involved. The member then may obtain a tax refund, if any is due, from the IRS based on his or her total tax liability for 3 years. In accordance with 52 Comp. Gen. 420 (1973), a claim for the refund of income taxes paid in years prior to the 3-year period may be treated as a claim for pecuniary benefits under ***10 U.S.C. 1552*** and paid pursuant to the record correction.

241102. Retired Pay Subject to FITW

When the member's retired pay is subject to FITW, the payment is reported as FITW wages from applicable current year appropriations reserved for such payment.

2412 TAXABILITY AND WITHHOLDING OF DISABILITY SEVERANCE PAY

See Volume 7A, Chapter 35, paragraph 350404.

2413 TAXABILITY OF RETIRED PAY FOR FLEET RESERVIST/FLEET MARINE CORPS RESERVIST NOT PHYSICALLY QUALIFIED FOR RETENTION IN THE FLEET RESERVE/FLEET MARINE CORPS RESERVE (FR/FMCR)

The retired pay of a member of the FR/FMCR who is transferred to the retired list, when found not physically qualified for retention in the FR/FMCR (as stated in Chapter 2, paragraph 020102), is subject to FITW.

*BIBLIOGRAPHY

CHAPTER 24 - COMPUTATION OF WAGES SUBJECT TO FEDERAL INCOME TAX WITHHOLDING

2402 – RETIRED PAY SUBJECT TO FITW

26 C.F.R. 31.3401(a)-1.(b)

2403 – RETIRED PAY NOT SUBJECT TO FITW

240301 26 U.S.C. 104(a)(4)
26 U.S.C. 104(b)
26 U.S.C. 104(b)(2)(A)

240302 26 U.S.C. 104(a)(4)
26 U.S.C. 104(b)(2)(B)

2404 – EFFECT OF VETERANS AFFAIRS (VA) AWARD ON FITW

26 U.S.C. 104(b).(4)

240403 Strickland v. Commissioner of Internal Revenue, 540 F2d 1196(1976)

2405 – GROSS PAY PARTIALLY TAXABLE

240501 26 C.F.R. 1.104-1

240502 Career Compensation Act of 1949,
Public Law 351, 81st Congress, 63 Stat 802

*2409 – COLLECTION OF DELINQUENT TAXES

240902 26 U.S.C. 6331

2411 – PROCESSING CORRECTION OF RECORDS CASES

241101 Ray v. U.S., 453 F.2d 754, 197 Ct.Cl.2 (1972)
BIBLIOGRAPHY (continued)

52 Comp. Gen., 420 (1973)
10 U.S.C. 1552

VOLUME 7B, CHAPTER 25: "COMPUTATION OF FEDERAL INCOME TAX WITHHOLDING"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted to comply with current administrative instructions.	Update
250204.C.3	Replaced Form 1001 with Form W-8BEN.	Update
250204.C.3	Added the Defense Finance and Accounting Service mailing address.	Add

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CHAPTER 25

COMPUTATION OF FEDERAL INCOME TAX WITHHOLDING

2501 WAGES SUBJECT TO WITHHOLDING OF FEDERAL INCOME TAX

250101. Provisions of Chapter 24

Taxable pay, as computed under provisions of Chapter 24, is subject to federal income tax withholding (FITW).

250102. Annuity Amount

The gross monthly amount of the annuity, or the monthly amount of the Survivor Benefit Plan annuity remaining after it has been reduced by a Dependency and Indemnity Compensation award and/or Social Security offset, is taxable income and is subject to FITW unless the annuitant elects no withholding. See Chapter 37, Section 3718 and Chapter 46, Section 4614.

2502 RATES FOR REGULAR AND ADDITIONAL WITHHOLDING OF FEDERAL INCOME TAX

250201. FITW

Federal income tax will be withheld in accordance with ***U.S. Treasury Department Publication 15 (Circular E) Employer's Tax Guide***.

250202. Request Additional FITW

Consistent with the member's tax liability and tax planning, a member may authorize an additional monthly amount of Federal income tax to be withheld.

250203. FITW for an Annuitant

See Chapter 37, Section 3718 and Chapter 46, Section 4614.

*250204. Nonresident Alien

A. Service Outside the United States. Members who are nonresident aliens are not liable for United States income tax on income received for service outside the United States, and such income is not subject to FITW. Service by a nonresident alien member assigned to a base outside the United States, or to a United States vessel (other than vessels normally used in coastal waters only) on which the enlisted members are entitled to sea duty pay, is considered service outside the United States.

B. Service Within the United States. For purposes of this paragraph, the United States includes the 50 states and the District of Columbia. Service onboard a coast-wide vessel

is regarded as service within the United States. Duty on the Great Lakes, the Mississippi River, and other inland waters of the United States, or while serving on a vessel normally operating within the territorial limit of the United States, is considered service within the United States. Gross pay for this service is subject to FITW.

C. FITW Computation

1. Step 1. Compute the member's FITW wages from gross retired pay as if he or she is a United States citizen.

2. Step 2. Determine the ratio of the number of days of active duty inside the United States to the total number of days of active duty.

3. Step 3. Multiply FITW wages determined under Step 1 by the ratio determined under Step 2. The resulting amount is subject to FITW at the rate of 30 percent, without being reduced by withholding allowances of personal exemptions, unless the member is a citizen of a country that has a tax treaty with the United States. Use the withholding rate specified in the treaty if the member files ***Form W-8BEN***, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," with Defense Finance and Accounting Service, U.S. Military Retirement Pay, P.O. Box 7130, London, KY 40742-7130 and the Director of International Operations, Internal Revenue Service, Washington, DC 20225. Note that when the member files an income tax return, the Internal Revenue Service will refund any excess tax withheld. A member in this status is responsible for reporting the income to the country of the member's citizenship and paying any tax owed on this income.

2503 RATES OF FITW FOR ONE-TIME PAYMENTS

Special computation rules have been developed by the Internal Revenue Service for the computation of FITW for one-time payments. These rules differentiate whether the taxable portion of a one-time payment must be lumped together with normal taxable pay or treated separately. The rules are differentiated by whether the taxable portion of the one-time payment is made concurrently with a regular payment, or made separately from the regular monthly payment.

250301. One-Time Payments Made Concurrently With a Regular Monthly Payment

When a one-time payment is combined with the regular monthly payment, FITW may be computed at 25 percent on the one-time payment portion if it is separately identified and if tax is withheld on the monthly payment of retired pay at the appropriate rate. See Revenue Ruling 82-200, ***U.S. Treasury Department Publication 15 (Circular E) Employer's Tax Guide***.

250302. One-Time Payment Made Separately From a Regular Monthly Payment

There are two computation rules available. The difference between the rules is not the type of payment, but whether Federal income tax previously was withheld from the member's regular monthly payment of retired pay.

A. When Federal income tax was not withheld because the member's exemptions exceeded the taxable portion of retired or retainer pay, the one-time payment must be combined with the wages paid for the last pay period (in the same calendar year) or with the wages paid for the current pay period. The amount of withholding is then computed as if this was a single payment.

B. When Federal income tax has been withheld, there are two alternatives:

1. Combine the taxable portion of the payments, as in subparagraph 250302.A, and compute the aggregate withholding amount. Then subtract the amount of Federal income tax previously withheld or the amount scheduled to be withheld for the current period. The excess amount then would be deducted from the one-time payment.

2. Withhold a flat 25 percent of the taxable portion of the one-time payment without regard to the withholding exemptions claimed. This option cannot be used when the regular monthly payment does not have a FITW. (See Revenue Ruling 66-190, 1966-2 CB 457.)

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CHAPTER 25 – COMPUTATION OF FEDERAL INCOME TAX WITHHOLDING

2502 – RATES FOR REGULAR AND ADDITIONAL WITHHOLDING OF FEDERAL INCOME TAX

250201	U.S. Treasury Department Publication 15 (Circular E) Employer's Tax Guide
250204.A	Revenue Ruling 70-227, 1970-1 CB 155
250204.B	26 U.S.C. 7701(a)(9), 26 CFR 861- 4(c), Revenue Ruling 70-227, 1970-1 CB 155
250204.C.3	26 CFR 1.861-4(b)(1)

2503 – RATES OF FITW FOR ONE-TIME PAYMENTS

250301	U.S. Treasury Department Publication 15 (Circular E) Employer's Tax Guide 26 CFR 31.3402(g)(a)(6) Revenue Ruling 82-200
250302	26 CFR 31.3402(g)(a)(6) 26 CFR 31.3402(g)(a)(7) Revenue Ruling 66-190, 1966-2 CB 457

VOLUME 7B, CHAPTER 26: "STATE TAXES"

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
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CHAPTER 26

STATE TAXES

2601 GENERAL

The State taxing authorities of a member's legal residence may tax the member's retired or retainer pay. The designated state must have a signed standard written agreement with the Department of Defense for the voluntary withholding of State income tax. This agreement shall provide the Secretary concerned the authority to withhold State income tax from the member's monthly retired or retainer pay.

2602 WITHHOLDING

260201. State Income Tax Withholding (SITW)

A retiree may request voluntary SITW be withheld from their retired or retainer pay. The request shall include the member's full name, signature, Social Security number, the fixed amount withheld monthly from retired pay, the state designated to receive the withholding, and the member's current residence address. The retiree may submit the request via letter, e-mail, or fax to the address in section 2604 or submit the request through the member's myPay account. If using myPay, the member's signature is not required. In the case of incompetence, the member's guardian or trustee must sign.

260202. Amount

The retiree's request must be in writing and is revocable at any time. The withholding amount requested must be in a whole dollar amount, at least $10, or the state's minimum, if that amount is higher.

2603 PAYMENTS AND REPORTS

260301. Amounts Withheld

The Uniformed Services will disburse amounts withheld to the states in the month following the month of collection. Payment procedures and state income tax withholdings shall follow the usual fiscal practices of the Uniformed Services.

260302. Internal Revenue Service Form 1099-R

The Uniformed Services will provide each retiree an Internal Revenue Service Form 1099-R, "Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.," that indicates the total tax withheld for each state, following each calendar year end.

2604 UNIFORMED SERVICES' RETIRED PAY OFFICE ADDRESSES

260401. U.S. Military

The address and web sites for the U.S. Military Retirement Pay office follows:

Army, Navy, Air Force, and Marine Corps
Defense Finance and Accounting Service
U.S. Military Retirement Pay
P.O. Box 7130
London, Kentucky 40742-7130

Phone: 1-800-321-1080
Fax: 1-800-469-6559

Web site for general tax information:
http://www.dfas.mil/retiredmilitary/manage/taxes.html

Web site for state withholding tax:
http://www.dfas.mil/retiredmilitary/manage/taxes/sitw.html

260402. Coast Guard

Change requests for retired members of the Coast Guard must be in writing and mailed (faxes are not accepted) to:

Coast Guard and National Oceanic Atmospheric Administration
Commanding Officer (RAS)
U.S. Coast Guard
Pay & Personnel Center
444 S.E. Quincy Street
Topeka, Kansas 66683-3591

Web site: ***http://www.uscg.mil/hq/cg1/psc/ras***

260403. Public Health Services (PHS)

Mail or fax requests for voluntary SITW to PHS at:

U.S. Public Health Service Compensation Branch
8455 Colesville Road, Room 935
Silver Spring, Maryland 20857-0001

Phone: 1-301-427-3280
Fax: 1-301-427-3432

Web site: ***http://dcp.psc.gov/ccmis***

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CHAPTER 26 - STATE TAXES

2601 - GENERAL

10 U.S.C. 1045

2602 – WITHHOLDING

10 U.S.C. 1045

2603 – PAYMENTS AND REPORTS

260301 Public Law 109-163, Section 661,
January 6, 2006
10 U.S.C. 1045(a)

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270101 270103	Reorganized paragraphs for clarity.	Update

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CHAPTER 27

GARNISHMENTS

2701 GENERAL

*270101. Purpose

The purpose of this chapter is to provide information unique to the collection of child support and/or alimony from military retired pay. The provisions of Title 42, United States Code, Section 659 (***42 U.S.C. 659***) and Title 5, Code of Federal Regulations, Part 581 (***5 C.F.R., Part 581***) take precedence when in conflict with this chapter.

270102. Remuneration for Employment

Pursuant to ***42 U.S.C. `659(h)(1)(A)*** and ***5 C.F.R. 581.103***, remuneration for employment includes retired and retainer pay, including disability retired pay. These entitlements are hereafter referred to as "retired pay."

*270103. Processing of Garnishment Orders

The processing of garnishment orders for child support and/or alimony from the pay of individuals receiving remuneration for employment from the United States is governed by ***42 U.S.C. 659*** and ***5 C.F.R., Part 581***.

2702 DEFINITIONS

270201. Alimony

This is defined as periodic payments of funds for the support and maintenance of a spouse or former spouse. Subject to and in accordance with state law, alimony includes separate maintenance, alimony pending legal process, maintenance, and spousal support. It also includes attorney fees, interest, and court costs when, and to the extent that they are, expressly made recoverable as such by a decree, order, or judgment issued in accordance with applicable state law by a court of competent jurisdiction. Alimony, as used in Chapters 27, 28, and 29, excludes payments or transfers of property made in compliance with any community property settlement, equitable distribution of property, or other division of property between the spouse(s) or former spouse(s).

270202. Child Support

This is defined as periodic payments of funds for the support and maintenance of a child or children. Subject to and in accordance with state law, child support includes (but is not limited to) payments to provide for health care, education, recreation, clothing, or other specific needs. It also includes related attorney fees, interest, court costs, and other relief.

270203. Disposable Earnings

This is defined as an individual's gross retired pay less deductions for the following items which are not subject to legal process:

A. Amounts withheld in payment of debts owed to the United States, except that an indebtedness based on a levy for income tax under ***26 U.S.C. 6331*** shall not be excluded in complying with legal process for the support of minor children if the legal process was entered prior to the date of the levy.

B. Deductions required by law (e.g., Survivor Benefit Plan and Retired Serviceman's Family Protection Plan cost deductions and deductions for Department of Veterans Affairs waivers).

C. Regular Federal income tax withholding (FITW) and state income tax withholding, if required or authorized by law, and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he/she were entitled. A deduction for additional FITW is authorized when the individual presents evidence of a tax obligation which supports the additional withholding.

270204. Legal Process

This is defined as any writ, order, summons, or other similar process in the nature of garnishment. Legal process may be issued by:

A. A court of competent jurisdiction within any state, territory, or possession of the United States;

B. A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that obligates the United States to honor such process; or

C. An authorized official according to an order of such a court of competent jurisdiction or pursuant to state or local law.

2703 DESIGNATED AGENT

The Director, Garnishment Operations, or his or her representatives, is responsible for receiving and implementing all legal process concerning retired members. Legal process may be served by regular mail or by fax to:

Director, Garnishment Operations
DFAS Cleveland
P.O. Box 998002
Cleveland, OH 44199-8002
Fax: 216-522-6960; toll-free fax 877-622-5930

Any legal process served on Department of Defense (DoD) entities other than the designated agent, for the purpose of enforcing payment of child support and/or alimony, shall be forwarded to the designated agent for processing. For additional information or assistance call:

Garnishment Operations Customer Service
Toll Free: 888-DFAS411 (888-332-7411)

2704 IMPLEMENTING LEGAL PROCESS

270401. Legal Review

Once legal process has been served on the designated agent, the designated agent shall review the legal process to determine that it is regular on its face, appears to conform to the laws of the jurisdiction from which it was issued, was issued to enforce a member's legal obligation to provide child support and/or alimony, and contains sufficient information to accurately identify the member.

270402. Written Notification

The designated agent shall notify the member within 15 days after valid service of legal process. The written notification shall explain the potential effect of the legal process on the member's pay, including allotments, and advise the member that the member has the burden of raising any available defenses, such as violation of the member's rights under the Servicemembers Civil Relief Act or lack of personal jurisdiction over the member, in the appropriate court. A copy of the legal process shall be included with the written notice. The notice shall be sent to the member's address of record in the retired pay system. Where the designated agent has the capability to make notification through electronic means such as email, the notice will be made using those electronic means.

270403. Response

Within 30 days of effective service, or such longer period as may be allowed by applicable state law, the designated agent shall:

A. Determine the amount of the member's disposable earnings, as defined in paragraph 270203;

B. Where required, file an answer to the legal process with the court in which the proceeding was brought and answer any interrogatories regarding the disposable earnings due the member. The designated agent may use its standard answer form for this purpose; and

C. Establish deductions from the member's disposable earnings in an amount sufficient to satisfy legal process. In accordance with ***5 C.F.R. 581.305(f)***, governmental agencies, including DoD agencies, are not required to vary their pay or disbursing cycles to comply with legal process.

270404. Maximum Amount of Pay Subject to Garnishment

Unless a lower maximum garnishment limitation is provided by applicable state or local law, the maximum part of disposable earnings for any pay period which is subject to legal process shall not exceed:

A. Fifty percent of disposable earnings if the member concerned asserts by affidavit or other acceptable evidence that he or she is providing over half of the support for a spouse or dependent child (other than a spouse or dependent child with respect to whose support the legal process is issued);

B. Sixty percent if the member concerned is not supporting a spouse or dependent child as stated in subparagraph 270404.A; or

C. If it appears from the face of the legal process that the member is in arrears for a period which is 12 weeks prior to the beginning of that pay period, the maximum percentage under subparagraph 270404.A is 55 percent and under subparagraph 270404.B is 65 percent.

270405. Allotments to be Discontinued

If the member does not have enough net pay available to comply with legal process, then one or more of the member's allotments shall be stopped in accordance with the order of precedence for items 1 through 14 in Figure 19-1 of Chapter 19.

270406. Priority of Legal Obligation

If the designated official is served with legal process concerning more than one legal obligation owed by the same member, then the legal obligations shall be satisfied from the available funds in the following order of priority:

A. Legal process to enforce current support shall have priority over legal process to enforce support arrearages.

B. Legal process to enforce current child support shall have priority over legal process to enforce current alimony.

C. If the legal process is to enforce more than one child support obligation, and there are not enough funds available to fully satisfy all legal process served, then the available funds shall be allocated among the obligations in proportion to the amounts of current child support due. Alimony obligations shall be satisfied on a first-come, first-served basis.

2705 APPEALS

Where notice is received that the member has appealed either the legal process or the underlying alimony and/or child support order, payment of moneys subject to the legal process

shall be suspended; i.e., moneys shall continue to be withheld, but these amounts shall be retained until the Government is ordered by the court, or other authority, to resume payments or otherwise disburse the suspended amounts. However, no suspension action will be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending.

2706 GARNISHMENT OF RENOUNCED RETIRED PAY

270601. Retired Pay Subject to Garnishment

Legal process, as defined in paragraph 270204, must be honored even though the member has renounced receipt of retired pay. The member's refusal to receive retired pay does not permit the Government to deny satisfying a writ, order, summons, or other similar process in the nature of a garnishment. The entitlement to retired pay, even if renounced, continues to be treated as an amount "due from or payable by" the United States, which accrues to a member's retired pay account and is subject to garnishment.

270602. Waiver of Retired Pay

The right to accrue retired pay may not be waived, except as authorized by law. See Chapter volume concerning the waiver of retired pay.

2707 INDEMNIFICATION

270701. Liable for Payment

Neither the DoD, nor any disbursing officer or employee, shall be liable for any payment made from moneys due from, or payable by, the DoD to any individual pursuant to legal process regular on its face, if such payment is made in compliance with ***42 U.S.C. 659***, ***5 C.F.R., Part 581***, and this chapter.

270702. Disciplinary Action, Civil or Criminal Liability, or Penalty for Disclosure of Information

DoD employees, whose duties include responding to relevant interrogatories, shall not be subject to any disciplinary action or civil or criminal liability or penalty for any disclosure of information made in connection with answering such interrogatories.

270703. Liable for Failure to Comply with Legal Process

Neither the DoD, nor any disbursing officer or employee, shall be liable to pay money damages for failure to comply with legal process.

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5 C.F.R., Part 581
42 U.S.C. 659

2702 DEFINITIONS

270203 26 U.S.C. 6331

2704 IMPLEMENTING LEGAL PROCESS

270403.C 5 C.F.R. 581.305(f)

2706 GARNISHMENT OF RENOUNCED RETIRED PAY

MS Comp Gen B-196839,
Apr 24, 1980

2707 INDEMNIFICATION

270701 5 C.F.R., Part 581
42 U.S.C. 659

VOLUME 7B, CHAPTER 28: "COLLECTION OF DEBTS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 January 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted to comply with current administrative instructions.	Update

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CHAPTER 28

COLLECTION OF DEBTS

2801 GENERAL

A debt may be the result of an overpayment or erroneous payment not legally due a member, or an amount due to the United States Government but unpaid by a member. A debt may be for an overpayment of retired pay, an overpayment of active-duty pay and allowances, or other indebtedness arising from service on active duty (e.g. unpaid government hospital bills, unpaid rent due military installations or bad checks tendered to appropriated or nonappropriated fund activities). A debt may also be due to an overpayment from another Federal agency, Internal Revenue Service (IRS) tax levies, and/or court judgments. Also, a failure to deduct or an under-deduction from retired pay from the Department of Veterans Affairs (VA) compensation, Federal civil employment, Retired Serviceman's Family Protection Plan (RSFPP) or Survivor Benefit Plan (SBP) costs, or allotments constitute an overpayment of retired pay. Pay or salary that has been earned for personal services rendered to the United States is authorized to be withheld only when expressly provided for by statute. See Table 28-1 for additional information. See Chapter 19 of this volume for precedence of discontinuing allotments, if required, to increase available pay for collection.

2802 SPECIALIZED TERMS

280201. Administrative Offset

The withholding of money payable by the U.S. Government to, or held by the Government for, a person to satisfy a debt that person owes to the Government is called an administrative offset.

280202. Compromise

The acceptance of a lesser amount in settlement of a debt in accordance with ***Title 31, United States Code (U.S.C.), section 3711*** and ***Title 31, Code of Federal Regulations (C.F.R.), Chapter IX, Part 902***, is called a compromise.

280203. Creditor Agency

Creditor Agency is the United States agency to which the debt is owed.

280204. Delinquent Debt

Delinquent Debt is a debt that has not been paid by the due date specified in the initial written demand for payment (i.e., invoice, demand letter, or other applicable agreement or instrument (including a post-delinquency repayment agreement)) unless other satisfactory payment arrangements have been made. Delinquency starts one day after the payment due date or other agreed upon date, depending on the agreement or instrument. If an installment agreement is provided and the payment is not made by the due date, then the entire balance of the receivable becomes delinquent from the due date of the missed payment. If payment is not made according

to the agreed upon installment, then the full amount of the account and related interest and penalties, if any, are reported as delinquent. Delinquent debts are aged from the date of delinquency. A debt becomes delinquent when:

A. Payment has not been made by the payment due date, or by the end of the "grace period" as established in a loan or repayment agreement, as in the case of a debt being paid in installments. Date of delinquency is the payment due date; or

B. Payment is not made by the due date specified in the initial billing notice, in the case of administrative debts such as fines, fees, penalties, and overpayments. The due date is usually 30 days after the notice is mailed. The date of delinquency is the date the billing notice or invoice is mailed or delivered.

280205. Disposable Pay

Disposable pay is the amount that remains after retired pay is reduced by amounts that are:

A. Required by law to be deducted;

B. Properly withheld for Federal, state, and local income taxes;

C. Deducted as health insurance premiums;

D. Deducted as normal retirement contributions;

E. Deducted as normal life insurance premiums; and

F. Levies pursuant to the Internal Revenue Code.

280206. Erroneous Payment

A payment that was not legal and proper when made is called an erroneous payment.

280207. Involuntary Collections

Collection action taken without a member's consent following provision of procedural due process rights to member is called an involuntary collection. This action requires a statute specifically authorizing such collection.

280208. Pay

Pay is considered that part of current pay remaining after any reductions in entitlements required by law because of:

A. Civilian employment (foreign employment and conflict of interest restrictions);

B. Reserve duty Inactive Duty Training/Active Duty Training (IDT/ADT);

C. RSFPP premium;

D. SBP premium; and

E. VA compensation.

280209. Paying Agency

The Federal agency from which the debtor is receiving current pay is called the paying agency.

280210. Routine Adjustments

The correction of an overpayment resulting from clerical or administrative errors or delays in processing pay documents that is discovered and corrected within no more than two monthly pay periods after the date of overpayment is called a routine adjustment. This includes retroactive VA increases resulting from legislation.

280211. Salary Offset

The collection of a debt to the United States by installment deduction(s) at officially established pay intervals from the current pay account of a member is called a salary offset.

280212. Waiver and Waive

The statutory authority to forego the collection of a government claim arising out of an erroneous payment or an overpayment of pay or allowance when facts indicate it is appropriate is called a waiver.

2803 COLLECTION WITH MEMBER'S CONSENT

Members indebted to the United States will be encouraged to discharge their indebtedness through lump-sum cash payment when possible. When the amount of the debt relative to the member's ability to repay indicates that lump-sum settlement would create financial hardship for the member, installment payments will be accepted. Members will be encouraged to accept liability voluntarily for their indebtedness and agree to repayment schedules that adequately protect the interests both of the United States and those members.

2804 AUTHORITY FOR INVOLUNTARY COLLECTION

280401. Authorized by Statute

Current pay is available for repayment of indebtedness without the member's consent only if such recovery is expressly authorized by statute.

280402. Deductions from Pay

Debts to the Department of Defense (DoD) or any of its instrumentalities or other Uniformed Services will be deducted from pay under ***37 U.S.C. 1007(c)***.

280403. Deduction by Salary Offset

Debts administratively determined to be owed to another Federal agency shall be collected by salary offset under authority of ***5 U.S.C. 5514***.

280404. Deduction by Administrative Offset

Debts determined to be owed to another Federal agency shall be collected administratively under authority of ***31 U.S.C. 3716***.

280405. Unauthorized Involuntary Offset

Requests by courts to be paid money due nonfederal debtors are not debts to the United States that can be involuntarily offset, unless the offset specifically is authorized by statute.

2805 NOTIFICATION TO DEBTOR AND DUE PROCESS

280501. General Requirements for Debt Notification and Demand for Payment

The Federal Claims Collection Standards (FCCS) require the issuance of a minimum of one demand letter. That requirement may be a single, all-inclusive demand letter or several successive and progressively stronger demand letters depending on the type and amount of the debt and the debtor's response to collection efforts. Use demand letters to expedite the resolution and collection of debts or arrive at the earliest practicable decision on the final disposition or referral of debts to Department of Justice (DOJ) for litigation. In determining the timing of the demand for payment, give consideration to the need to refer delinquent debts promptly to DOJ for litigation.

280502. Demand Letters

Debt Collection Offices (DCOs) shall issue demand letter(s) within 5 working days following confirmation of the debt, the basis of indebtedness, and the amount of the debt. DCOs shall exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. Demand letters will inform the debtor of the following information and requirements:

A. The reason for the indebtedness (e.g., overpayment of living quarters allowance), the authority of establishing the debt (e.g., ***31 U.S.C. 3716***), and the rights, if any, that the debtor may have to seek review within the DoD Component or DCO.

B. The applicable standards (e.g., ***31 C.F.R. 901.9***) upon which any interest, penalties, or administrative charges are based.

C. The date by which payment must be made in order for the debtor to avoid late charges and enforced collection (that date generally will not be more than 30 days from the date that the demand letter is mailed or hand-delivered).

D. The name, address, and telephone number of a point of contact or office that the debtor may speak with or write to regarding the demand for payment of the debt.

E. Remedies that the DCO will use to enforce payment of debts may include:

1. Federal salary offset, including routine pay adjustments and recoupments, or salary offsets according to the policies and procedures specified in Volumes 7A, 7B, 8 or other provisions of this Regulation, as appropriate;

2. Assessment of interest, administrative charges, and penalties;

3. Allotments;

4. Collection of collateral and collection from other sources;

5. Tax refund and administrative offset (through the Department of the Treasury Offset Program);

6. Credit bureau reporting;

7. Collection agencies;

8. Administrative wage garnishment; and

9. Litigation.

F. Other appropriate information, if applicable, including the DCO's willingness to discuss alternative methods of payment, any rights to a hearing, and any opportunity to seek a waiver or remission of the debt.

2806 COLLECTIONS FOR MILITARY RELATED DEBTS

The law authorizes the deduction from a member's pay of amounts that the Secretary of the Military Department concerned (or designee) administratively determines to be owed the United States or any of its instrumentalities.

280601. Routine Adjustments and Categories of Debts

A. Routine Adjustments. A routine adjustment corrects an overpayment resulting from clerical or administrative errors, delays in processing pay documents, or an automated pay system error which is discovered and collected within no more than two monthly pay periods after the date of overpayment. The member shall be provided with a written notice of the adjustment as well as notice of due process rights as soon thereafter as practicable.

B. Categories

1. All debts of $100 or less will automatically be collected at two-thirds of disposable pay on the first available payday after they are identified. These debts will not require a notice to the retiree before collection action is taken. A Retiree Account Statement (RAS) remark will advise the retiree that the debt has been collected from their pay.

2. Routine adjustments greater than $100 will be processed for collection in the month they are identified and a notice will be sent to the retiree (RAS remark) regarding an impending collection. If the retiree does not request a change in the repayment schedule, then the system will automatically collect the debt utilizing the two-thirds disposable pay rule.

3. Debts greater than $100 require formal notification to the member in the form of a due process letter from the Defense Finance and Accounting Service (DFAS), Cleveland (DFAS-Cleveland Site). The DFAS-Cleveland Site will initiate debt collection based upon an appropriate liquidation schedule.

280602. "No Pay Due" Notice

As a precaution to prevent avoidable hardship to the retiree, a "no pay due" RAS will be generated to the retiree.

280603. Due Process Debts

See section 2805.

NOTE: The Secretary concerned may prescribe additional rights prior to collection by offset under ***37 U.S.C. 1007(c).***

280604. Debt Transfer on Retirement

Active-duty debts will be transferred on retirement, and collection will be resumed from retirement or retainer pay. It will not be necessary to repeat the due-process procedures in paragraphs 280501 and 280502.

280605. Debt Owed to Another Military Service

Where a member of one Military Service owes a debt to another Military Service and the Secretary of the creditor Service makes an administrative determination of indebtedness, the Secretary may forward that determination, along with certification of compliance with appropriate procedures set forth above, to the Secretary of the member's Military Service. That Secretary (or designee) then may initiate collection.

280606. Request for Delay

The member shall have a reasonable opportunity to request a delay in the imposition of the repayment requirement to recover the indebtedness. If delay is requested, the Secretary concerned shall consider the reasons provided by the member for the requested delay, including the financial ability of the member to repay the indebtedness, and the hardship that immediate collection would impose on the member and the member's dependents.

280607. Limitations on Collection

Collection against the member's pay may not exceed 15 percent of disposable retired pay, except that a greater amount may be deducted with the written consent of the individual.

2807 COLLECTIONS FOR OTHER DEBTS OWED TO THE GOVERNMENT

280701. Installment Deductions

When the Secretary of the Military Department concerned (or designee) determines that a member is indebted to the United States or is notified of such debt by the head of another agency, the amount may be collected in monthly installments by deduction from the current pay account of the individual, under the authority of ***5 U.S.C. 5514***. The designated agent listed is responsible for receiving these collection requests:

DFAS-AHADC/CL
1240 E. 9th Street
Cleveland, OH 44199-8002

280702. Not to Exceed 15 Percent of Disposable Pay

Collection may be made in monthly installments or at established pay intervals not to exceed 15 percent of disposable pay for any pay period, unless a greater percentage is authorized by written consent of the member. Unsatisfied debts at discharge or retirement shall be deducted from subsequent payments of any nature due the member.

280703. Due Process

See section 2805.

2808 LIMITATION ON AMOUNT OF DEDUCTIONS

280801. Minimum Amount

The amount to be collected each month in order to recoup indebtedness from a member's retired pay should be no less than $50, or an amount reasonable to the size of the debt and the member's ability to pay as supported by financial information provided by the member. Minimum amounts do not apply where collection amounts are specified by statute.

280802. Maximum Amount

The maximum monthly amount that may be collected under section 2806 is the lesser of:

A. Two-thirds of the member's pay less the amounts deducted for court martial, if any, and any amounts authorized by law to be withheld, or

B. Fifteen percent of the disposable retired pay.

2809 INTEREST, PENALTIES, AND ADMINISTRATIVE COSTS

Title 31, U.S.C., section 3717 and the FCCS authorize the assessment of interest, penalty, and administrative charges on delinquent debts. All interest, penalty, and administrative charges on delinquent debts shall be calculated and recorded in the DoD Component accounting system. Refer to Volume 4, Chapter 3, Annex 1 of this Regulation for guidance on assessing these charges and possible waiver of these charges.

2810 WAIVER OF INDEBTEDNESS

281001. Remission of Indebtedness Due from Military Members

Title 10, U.S.C., sections ***4837***, ***6161***, and ***9837*** provide authority for the remission of indebtedness due from a military member. This process is not available to DoD civilian employees. Requests from Army and Air Force military members will be forwarded to their respective services for processing. Requests from Navy and Marine Corps military members will be submitted on a ***Department of Defense (DD) Form 2789*** (Waiver/Remission of Indebtedness Application) and will be forwarded to DFAS-IN, Department 3300 (Waiver/Remission), 8899 East 56th Street, Indianapolis, IN 46249-3300 for processing.

281002. Waiver of Indebtedness Arising From Erroneous Payments

Title 5, U.S.C., section 5584, ***10 U.S.C. 2774***, and ***32 U.S.C. 716*** provide authority to waive an indebtedness which is the result of an erroneous payment of pay or allowances or an erroneous payment of travel, transportation or relocation expenses and allowances. All requests for waiver of indebtedness for DoD civilians (current and retired) and military members (active, reserve, retired and National Guard) will be submitted on a DD Form 2789 and will be forwarded to DFAS-IN, Department 3300 (Waiver/Remission), 8899 East 56th Street,

Indianapolis, IN 46249-3300 for processing. See ***DoD Instruction 1340.23, "Waiver Procedures for Debts Resulting from Erroneous Pay and Allowances"***, for additional guidance.

2811 COLLECTION OF DELINQUENT FEDERAL TAXES BY LEVY

281101. Background

When a member does not pay any Federal income taxes due within 30 days after the IRS has issued a notice and demand for payment to the member, the IRS may collect the tax by levy on the member's salary or other income, including retired or retainer pay. IRS tax levies are requests, on IRS Form 668-W (Notice of Levy on Wages, Salary, and Other Income), for a continuous levy from a member's retired pay to collect taxes owed. The effect of a levy on wages, salary, or other income payable to or received by the member shall be continuous from the date such levy is first made until such levy is released by the IRS on Form 668-D (Release of Levy). Medal of Honor recipients are exempt from tax levy.

281102. Procedures

The IRS will transmit IRS Forms 668-W or ***668-W(c)*** in five parts (the letter "c" designates a computer-generated form which is the same as the version of the form without the "c"), which will identify the member; specify the amount of the tax liability; give instructions for providing due process; show how to compute the levy based on input from the taxpayer; and give the address to which to send the payment. Read and follow the instructions on the IRS Form 668-W; in general, this requires notifying the taxpayer, computing the amounts available for payment to the IRS, and making the payment. Currently, the IRS Form 668-W requires the employer to send to the IRS all of the taxpayer's net pay less what is exempt from levy. Net pay is gross retired pay less all deductions and allotments in effect as of the date of receipt of IRS Form 668-W. Follow the instructions on that form when computing exemptions. Specific instructions are as follows:

A. Within 3 working days from the date of receipt of the levy, notify the taxpayer by using a formal letter and enclosing the member's copies of the IRS Form 668-W. See Figure 28-1 for an example of the formal letter.

B. If the date of receipt of the levy is between the 1st and the 15th day of the month, then advise the member that the deduction from retired pay will be on the first business day of the second month after the current month. If the date of receipt of the levy is between the 16th and the last day of the month, then the deduction will be on the first business day of the third month after current month. Thus, if the receipt of the levy is November 11, 2009, deduction will be in the retired pay check of January 1, 2010. If the receipt of the levy is November 28, 2009, then the deduction will be on February 1, 2010.

C. Notify affected former spouses with divorce dates prior to February 3, 1991 (division of property settlement cases only) that future payments will be reduced to reflect an adjustment to the member's disposable retired pay. Do not disclose the reason for the adjustment.

D. Even if the member's declaration of exemption is not timely, it should be honored if received prior to the last date for making changes to the member's retired pay account.

281103. Problem Cases

When the IRS has determined the taxpayer to be a "problem case," the taxpayer will be furnished with the IRS Form 668-W, a statement of the amount of delinquent taxes and a statement that "net pay" is not enough to pay the levy and that all available accrued pay should be sent to the IRS. Available accrued pay is gross retired pay less:

A. Withholding for current Federal taxes (statutory amounts only);

B. Amounts required to satisfy prior overpayments of pay;

C. Amounts waived in favor of compensation from the VA;

D. U.S. Government Life Insurance/National Service Life Insurance premiums;

E. Deductions for RSFPP and/or SBP costs;

G. Voluntary child-support allotments to satisfy court orders, provided the court order is dated prior to the date of the levy from the IRS;

H. Pay attached or garnished for child support or alimony; and

I. The levy exemptions calculated under normal levy procedures.

NOTE: The main difference between a regular levy and a problem case levy is that, under the latter, the member's voluntary allotments of retired pay must be stopped to satisfy the levy. If it is not necessary to stop all allotments, then the member should be given the opportunity to select those allotments to be stopped. If the member does not so elect, then stop such allotments as are necessary, stopping any commercial insurance allotments last.

2812 BANKRUPTCY

281201. Bankruptcy Petition

Upon learning that a bankruptcy petition has been filed with respect to a debtor, before taking any further collection action, DCO shall obtain legal advice concerning the impact of the Bankruptcy Code (Title 11) on any pending or planned collection action. In most cases, collection action should stop immediately unless it is determined that the automatic stay imposed at the time of filing pursuant to ***11 U.S.C. 362*** has been lifted or is no longer in effect.

281202. Proof of Claim

After obtaining legal advice, a proof of claim in most cases should be filed with the bankruptcy court or the trustee. Attorneys should be aware of and provide advice, as necessary, relating to the consequences on sovereign immunity of filing a proof of claim under the provisions of ***11 U.S.C. 106***.

281203. Relief from Automatic Stay

A secured creditor may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of ***11 U.S.C. 362***.

281204. Automatic Stay

Offset is stayed in most cases by the automatic stay. DCOs shall seek legal advice regarding initiation of action to freeze payments to the debtor and payments to other agencies available for offset pending relief from the automatic stay from the bankruptcy court. DCOs also shall seek legal counsel regarding the possibility of recoupment.

2813 PAY NOT AFFECTED BY CIVIL PROCESS

A retired member may not be deprived of his or her pay by civil process of garnishment or levy except as follows: garnishment of child support or alimony (see Chapter 27 of this volume); levy for delinquent Federal income taxes (see section 2811 of this chapter); or levy for child support.

2814 PRIORITY OF DEDUCTIONS AND COLLECTIONS

When the amounts due a member are not enough to cover authorized deductions or collection, collect applicable amounts shown in the following sequence:

281401. Reduction of Pay Entitlement

Losses of pay entitlement take precedence over all other items for deduction or collection. These reductions affect pay entitlements such as:

A. Readjustment pay,

B. Separation pay,

C. Severance pay,

D. Variable Separation Incentive (VSI),

E. Special Separation Benefit (SSB),

F. Reserve Special Separation Pay (RSSP),

G. Forfeiture of pay, and

H. VA compensation.

281402. Reimbursement

Reimbursement to the United States of deductions made on behalf of the member includes:

A. Federal income tax withholding (FITW),

B. TRICARE – Dental Plan,

C. RSFPP premiums,

D. SBP and Supplemental Survivor Benefit Plan (SSBP) premiums, and

E. Reserve Component Survivor Benefit Plan (RCSBP) premiums.

281403. Involuntary Repayment

Involuntary repayment of indebtedness to the United States, which includes:

A. Routine adjustments and automatic collections. (See paragraph 280501 of this chapter.),

B. Other overpayments of retired pay,

C. Debts arising from active duty,

D. Debts to DoD appropriated fund activities,

E. Hospital rations issued to member,

F. Excess cost of shipment of household goods,

G. Unpaid hospital bills for medical services furnished a dependent,

H. Delinquent RSFPP, SBP, SSBP, or RCSBP costs,

I. Court-martial fines, and

J. Debts from other departments or agencies outside DoD, including court judgments.

281404. Alimony, Child Support, and Uniformed Services Former Spouses' Protection Act

Collect deductions made for garnishment for alimony and child-support payments and Uniformed Services Former Spouses' Protection Act payments.

281405. Court-Ordered Bankruptcy Payments

Collect deductions made for court-ordered bankruptcy payments under Chapter 13 of the revised Bankruptcy Code.

281406. Non-appropriated Fund Activity (NAF)

Collect deductions made for indebtedness to a NAF.

281407. State Income Tax

Collect deductions made for state income tax withholding.

Figure 28-1. Example of Notification Letter for IRS Notice of Levy

Defense Finance and Accounting Service
Retired and Annuitant Pay

December 1, 20XX

CMSGT Anthony J. Celebreeze, U.S. Air Force (Retired)
1240 East 97th Street
Cleveland, OH 44199-2055

Dear Chief Celebreeze,

The IRS has sent us the attached IRS Form 668-W, (Notice of Levy on Wages, Salary, and Other Income). Please read the IRS Form 668-W carefully, as it may be advisable to discuss it with your attorney or other tax adviser.

Complete the attached form and return it to us within 3 working days to claim your partial exemption. If we do not receive the completed form, we will compute your exemption for you, using the exemption for a married person filing separately with one personal exemption. Please note that the exemptions you claimed for tax withholding purposes are NOT the same and we will not use them to compute your exemption from levy.

This is a continuous levy against your retired pay to collect delinquent federal taxes. We will deduct the levy from your (month/year) retired pay check. A specified collection will continue to be made against your retired pay until the levy has been satisfied. This levy remains in force and effect until the IRS serves our office with IRS Form 668-D, (Release of Levy).

If you have been awarded the Medal of Honor, you are exempt from levy. Send us a copy of the citation awarding you the Medal of Honor to prevent the levy of your retired pay.

Please contact the IRS office which issued the levy for questions that you may have concerning the levy.

Sincerely,

Military Pay Technician
Retired and Annuitant Pay

Attachment:
As stated

Table 28-1. Indebtedness to Government Agencies

INDEBTEDNESS TO GOVERNMENT AGENCIES					
RULE	**A**	**B**	**C**	**D**	**E**
	If a (an)	**of**	**is indebted for**	**then collect from retired pay**	**at maximum monthly rate of**
1	retired member	any Military Service	overpayment of retired pay	involuntarily	see note 1.
2			overpayment of active duty pay and allowances carried forward from active duty		rate established while on active duty (note 1).
3			unpaid hospital bills for medical services furnished a dependent	involuntarily or pursuant to Military Service regulations	see note 1.
4			excess cost of shipment of household goods		see notes 1 and 4.
5		the Army or Air Force	uncollectible check to a commissary issued or endorsed by member or member's agent	involuntarily	all pay (excluding FITW). See note 3.
6		the Navy or Marine Corps		involuntarily or pursuant to Military Service regulations	see notes 1 and 3.
7		any Military Service	any indebtedness to a non-appropriated fund activity		see note 1.
8			Hospital rations furnished to a member		
9			CHAMPUS payment on behalf of member's dependents	with member's consent	amount applicable.
10			delinquent federal income tax	involuntarily	see section 2811.
11		the Army or Air Force	loss, damage, or destruction of arms or equipment in member's care or use	involuntarily or pursuant to Military Service regulations	see note 1.
12		the Navy or Marine Corps		with member's consent	
13	accountable officer	any Military Service	loss or damage to military supplies, upon final settlement of accounts of officer charged with issue of the supplies	involuntarily or pursuant to Military Service regulations	

Table 28-1. Indebtedness to Government Agencies (Continued)

INDEBTEDNESS TO GOVERNMENT AGENCIES					
RULE	**A**	**B**	**C**	**D**	**E**
	If a (an)	**of**	**is indebted for**	**then collect from retired pay**	**at maximum monthly rate of**
14	retired member	any Military Service	damage to assigned family housing, or damage to or loss of equipment or furnishings caused by the abuse or negligence of the member or the member's dependent(s) or guests of member or the member's dependent(s) while on active duty and established by a Report of Survey	involuntarily	see notes 1 and 4.
15			a debt determined valid from another federal agency		not to exceed 15 percent of disposable pay.
16			RSFPP and SBP payments to a surviving annuitant when retiree presumed dead is later found to be alive		all pay or amount applicable.
17			advanced and unused travel expense		see notes 1 and 4.
18			dual compensation restrictions		see note 1.
19			negotiating both original and substitute checks		
20			retired pay paid concurrently with active duty pay while serving as a Reservist. (a) prior fiscal year(s) or prior month(s) (b) current		see note 1. 1/12 of total for fiscal year
21		any of the Armed Forces	readjustment pay (a) paid prior to Sep 15, 1981 see Volume 7B, Chapter 4, Table 4-1) (b) paid after Sep 14, 1981		all.
22			non-disability severance pay (a) paid prior to Sep 15, 1981 (see Volume 7B, Chapter 4, Table 4-2) (b) paid after Sep 14, 1981		see note 2.

Table 28-1. Indebtedness to Government Agencies (Continued)

INDEBTEDNESS TO GOVERNMENT AGENCIES					
RULE	**A**	**B**	**C**	**D**	**E**
	If a (an)	**of**	**is indebted for**	**then collect from retired pay**	**at maximum monthly rate of**
23	retired member	any of the Armed Forces	separation pay	involuntarily	see note 2.
24		any Military Service	an uncollectible check endorsed or issued by the member or a defaulted loan made to the member at a military banking facility overseas		see notes 1 and 4.
25			an uncollectible check endorsed by the member to a disbursing officer		see note 1.

NOTES:
1. Deductions will not exceed limitation set forth in paragraph 280802 of this volume.
2. Monthly rate based on service for which readjustment, severance, or separation pay was received as a proportion of the total deducted equals the lump-sum payment received.
3. Effective February 1, 1999, collection of dishonored checks written by the member or the person who presented the check based upon their status and relationship to the member as well as costs associated with that check may be collected involuntarily.
4. Submit these types of collections to the Debt Collection Management Office (DCMO).

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2807 – COLLECTIONS FOR OTHER DEBTS OWED TO THE GOVERNMENT

5 U.S.C. 5514

2808 – LIMITATION ON AMOUNT OF DEDUCTIONS

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2809 – INTEREST, PENALTIES, AND ADMINISTRATIVE COSTS

31 U.S.C. 3717

2810 – WAIVER OF INDEBTEDNESS

	MS Comp Gen B-185466, August 19, 1976
281001	10 U.S.C. 4837, 6161, and 9837
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	32 U.S.C. 716

2811 – COLLECTION OF DELINQUENT FEDERAL TAXES BY LEVY

26 U.S.C. 6321(a)
26 U.S.C. 6331, 6334

2812 – BANKRUPTCY

11 U.S.C. 106
11 U.S.C. 362

2813 – PAY NOT AFFECTED BY CIVIL PROCESS

42 U.S.C. 659

TABLE 28-1 – INDEBTEDNESS TO GOVERNMENT AGENCIES

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Rule 5	37 U.S.C. 1007(b) and (g)
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Rule 11	37 U.S.C. 1007(e) DoD 7200.10-M
Rule 13	37 U. S.C. 1007(c) DoD 7200.10-M
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Rule 24	10 U.S.C. 1174
Note 1	Public Law 102-484, section 643, October 23, 1992

VOLUME 7B, CHAPTER 29: "FORMER SPOUSE PAYMENTS FROM RETIRED PAY"
SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 December 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
290211	Clarified the definition of a formula award.	Add
290213	Clarified the definition of a hypothetical retired pay award.	Add
290215	Notarized statement definition removed so as not to mislead people into thinking it was always an option.	Delete
290601. E.	Clarified the type of percentage awards which would receive a proportionate share of the member's retired pay cost–of-living adjustments.	Add
290607	Clarified acceptable formula awards and included an example.	Add
290608. C.2.	Added an example of a retired pay award for a reservist.	Add
290608.F.	Clarified hypothetical retired pay base calculation.	Add
290608.I.	Clarified the adjustment for Career Status Bonus recipients.	Add
291002	Clarified the submission of applications from multiple former spouses.	Add
291102.E.	Added a statement authorizing that a former spouse may stop payments.	Add
291104	Added a note that some states do not automatically terminate an alimony obligation upon a former spouse remarriage.	Add
2912	Established a standard order of priority for the payment of unpaid amounts (arrears) of a property division of retired pay due the former spouse.	Add

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CHAPTER 29

FORMER SPOUSE PAYMENTS FROM RETIRED PAY

2901 PURPOSE

This chapter explains how a former spouse can apply for payments from a military member's military retired pay and how the former spouse's payments will be administered.

2902 DEFINITIONS

290201. Alimony

Alimony is a legal obligation where a member is ordered to pay an amount for the support and maintenance of a spouse or former spouse. This definition includes attorney's fees, interest, and court costs. Alimony does not include child support, property settlement, equitable distribution of property, or any other division of property.

290202. Child Support

Child support is a legal obligation where a member is ordered to pay an amount for the support and maintenance of a child. This definition includes costs for health care, arrearages, attorney's fees, interest, penalties, and other related relief.

290203. Court

Court means any court of competent jurisdiction of any state (in the United States), the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and any court of the United States, as defined in ***Title 28, United States Code (U.S.C.), section 451***. Court also includes a court of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.

290204. Court Order

Court order means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a property settlement incorporated into such an order. Court order also includes orders issued incident to a divorce, such as an order dividing military retired pay or a qualified domestic relations order (QDRO) that divides military retired pay. (NOTE: A QDRO is not required but will be accepted.) A court order also includes a support order as defined in section 453(p) of the Social Security Act (***Title 42 U.S.C section 653(p)***).

290205. Creditable Service

Creditable service means years and full months of military service creditable for the purpose of computing a member's retired pay entitlement. See ***Title 10, U.S.C. section 1405***, Chapter 1, subchapter 0103, and See Chapter 3, subparagraph 030101.B.1.

290206. Designated Agent

Designated agent is the agent authorized to review applications for direct payment made under this Regulation. See paragraph 290403 for specific designations.

290207. Disposable Retired Pay

Disposable retired pay is defined in paragraph 290701.

290208. Entitlement

Entitlement is the legal right of a military member to receive military retired pay. As used in this chapter, the term refers to members who actually receive retired pay rather than those who qualify by completing the required years of service.

290209. Final Decree

A final decree is an order from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

290210. Former Spouse

Former spouse is the former husband or wife, or if the parties are legally separated, the current husband or wife, of a military member.

*290211. Formula Award

A formula award computes a former spouse's property interest in a military member's retired pay based on the relationship of the length of the parties' marriage during the member's creditable service (numerator) to the member's total service that is creditable toward retirement (denominator). A formula award is stated as a marital fraction in which the numerator and denominator are multiplied by a given percentage.

A. For members qualifying for an active duty (i.e., regular service) retirement, the numerator is typically the number of months the parties were married while the member was performing creditable military service and the denominator is the number of months of the member's total creditable military service. The former spouse's award is usually

calculated by multiplying the marital fraction by ½ or 50 percent, or any other given percentage amount.

B. For members qualifying for a reserve (i.e., non-regular service) retirement, the numerator is typically the number of Reserve points earned during the parties' marriage, and the denominator is the member's total number of Reserve points. The former spouse's award is then usually calculated by multiplying the marital fraction by ½ or 50 percent, or any other given percentage amount.

290212. Garnishment Order

A garnishment order is an order directing an employer to issue payments from a member's pay to satisfy a legal obligation for child support, alimony, or division of property other than a division of military retired pay.

*290213. Hypothetical Retired Pay Award

Hypothetical retired pay award is an award based on a percentage of retired pay that is calculated using variables provided in a court order that are different from the member's actual retirement variables. The retired pay calculated using the court ordered variables is called the member's hypothetical retired pay. A hypothetical award typically attempts to define the property interest in the retired pay as if the member had retired at the time the court divided the member's military retired pay based upon the member's rank and years of service accrued to that point in time. Thus, the former spouse does not benefit from the member's pay increases due to promotions or increased service time after the divorce.

290214. Member

A member is an individual who is on active duty, one who is a reservist, or one who is retired from military service.

290215. Renounced Pay

Renounced pay is military retired pay to which a member is entitled, but which the member has waived receipt.

290216. Retired Pay

Retired pay is the statutory entitlement due a member based on conditions of the retirement law, pay grade or high-3 pay amount, years of service, and the date of retirement. Retired pay includes "retainer pay."

290217. Retired Pay Award

Retired pay award is a portion of disposable military retired pay awarded to a former spouse or current spouse by a court of competent jurisdiction as a property division.

290218. Standard Retired Pay Multiplier

The standard retired pay multiplier used to compute retired pay is the product of two and one-half percent and the member's years of creditable service. See Chapter 3, subparagraph 030101.B.1.

290219. Uniformed Services Former Spouses' Protection Act (USFSPA)

USFSPA is the Uniformed Services Former Spouses' Protection Act. Public Law 97-252, enacted on September 8, 1982, states that the section of Title 10 addressing former spouse protection, may be cited as the "Uniformed Services Former Spouses' Protection Act". Therefore, USFSPA is used throughout this chapter and refers to the provisions of ***10 U.S.C. 1408***.

2903 AWARDS THAT CAN BE COLLECTED UNDER THE USFSPA

290301. Child Support

A former spouse can collect child support if there is a court order that awards child support, and the former spouse and military member have ever been married to each other.

290302. Child Support Arrearages

To collect child support arrearages, a former spouse must submit a recent court order that lists the total arrearages. The order cannot be older than two years from the date the Defense Finance and Accounting Service (DFAS) receives it.

290303. Alimony

A former spouse can collect current alimony under the USFSPA, but not alimony arrearages.

290304. Retired Pay Award

A former spouse can collect current retired pay award payments, but not retired pay award arrearages.

290305. Property Other Than a Division of Retired Pay

A former spouse can collect a property division, other than a retired pay award, by garnishment if the order awards it to the former spouse and if the former spouse was also awarded alimony, child support, or a division of retired pay. See subparagraph 290401.B for more information.

2904 APPLICATION BY FORMER SPOUSE

290401. Application Process

A. The former spouse must submit a completed Department of Defense (DD) Form 2293 (Request for Former Spouse Payments From Retired Pay) and a certified copy of the court order awarding alimony, child support, or military retired pay. A court order for child support arrearages cannot be older than 2 years from the date the designated agent receives it. The court order must be certified by the clerk of the court that issued the order.

B. If the former spouse is applying for a property division other than a retired pay award, then the former spouse must submit a garnishment order in addition to the DD Form 2293 and the court order.

C. The former spouse may mail the application to the appropriate designated agent given in paragraph 290403, or may fax it to the number provided below. Please read the instructions and certification on the DD Form 2293 carefully.

290402. Additional Documentation

A former spouse may need to provide additional documentation if the designated agent cannot determine whether the former spouse is eligible for USFSPA payments based solely on the DD Form 2293 and the court order.

290403. Where to Send an Application for USFSPA Payments

The former spouse should send all application documents to the following designated agent for the appropriate Uniformed Service:

A. Army, Navy, Air Force, Marine Corps.
DFAS-Cleveland Site
DFAS-HGA/CL
P.O. Box 998002
Cleveland, OH 44199-8002

Fax: 877-622-5930 or 216-522-6960

B. United States Coast Guard
Commanding Officer (LGL)
Pay and Personnel Center
444 S.E. Quincy Street
Topeka, KS 66683-3591

Fax: 785-339-3788

C. Public Health Service
Attn: OCCSS, Compensation Branch
8455 Colesville Road, Room 935
Silver Springs, MD 20857-0001

Fax: 301-427-3432

D. National Oceanic and Atmospheric Administration
Submit to Coast Guard address.

290404. When to Apply for USFSPA Payments

A former spouse may apply for payments anytime after the court has issued a court order enforceable under the USFSPA. Although payments will not start under the USFSPA until after the member becomes eligible to receive military retired pay, the designated agent can approve a former spouse's application prior to that, and retain the application pending the member's retirement.

290405. Conditional Preapproval

A. If the former spouse applies prior to the member's receiving retired pay, the designated agent will perform a legal review of the application, and may conditionally approve it based on information available at the time of the review concerning the member's duty status (active or reserve).

B. At the time the member begins to receive retired pay, the designated agent will perform a second review prior to establishing the former spouse's direct payments. If the former spouse's award was based on a formula or hypothetical retired pay amount, and the member's duty status has changed since the initial legal review, it may be necessary to reject the application, and require the former spouse to submit a clarifying order or notarized agreement providing the necessary information. (Note: see paragraph 290607 concerning formula awards, and paragraph 290608 concerning hypothetical retired pay awards.)

2905 NOTICE

290501. Notification to Former Spouse of Approval or Disapproval

Within 30 days of the date of receipt of a former spouse's application, the designated agent will notify the former spouse if his or her application has been approved or disapproved. If approved, then the designated agent will state the month the former spouse's payments will tentatively begin. If the designated agent cannot approve the application, then the notice will include an explanation regarding the reason(s) why.

290502. Notification to the Member of Approval of an Application

If a former spouse's application is approved, the designated agent will notify the member affected within 30 days of the date of receipt of the application. The member will not be notified if the application is not approved.

290503. Second Notice

If the designated agent notified the member as part of a conditional preapproval more than 90 days prior to the member's becoming entitled to receive retired pay, the designated agent will provide a second notice to the member when the designated agent establishes the former spouse's payments at the time the member begins to receive retired pay.

290504. Contents of Notice to Member

A. The notice will explain that payments issued under the USFSPA cannot exceed 50 percent of the member's disposable retired pay (or 65 percent of the member's disposable pay when also withholding for an income withholding order issued pursuant to ***Title 42 U.S.C. 659***), and will contain the month that the payments will tentatively begin.

B. The notice will inform the member that he/she must notify the designated agent if the court order has been amended, superseded, or set aside.

C. The notice will inform the member that if he/she submits information in response to this notice, he/she consents to the disclosure of that information.

D. The notice will include a copy of the court order.

E. The notice will advise that the member's failure to respond within 30 days of the date that the notification is mailed may result in the payment of retired pay as set out in the notice to the member.

290505. How to Prevent USFSPA Payments from Starting

The member must provide documentary evidence that a former spouse's court order is legally defective or has been appealed, amended, or set aside. If the designated agent determines that the documentary evidence is sufficient to bar payments to a former spouse, then the designated agent will not start the payments. The designated agent will then inform the former spouse that payments will not start, and provide copies of the documentary evidence to the former spouse.

2906 COURT ORDERS

*290601. Contents of Court Order

A. The court order must be regular on its face. This means that a court of competent jurisdiction issued the order and nothing on its face provides reasonable notice that it was issued without authority of law.

B. The court order must award former spouse alimony, child support, or a retired pay award.

C. If the order contains a retired pay award, then that award must be expressed as a fixed dollar amount or as a percentage of disposable retired pay. A retired pay award expressed as percentage will automatically receive a proportionate share of the member's cost-of-living adjustments, while one expressed as a fixed amount will not.

D. The designated agent will construe all percentage awards (such as a percentage of gross retired pay) as a percentage of disposable retired pay, regardless of the language in the order.

* E. If the former spouse and the member were divorced before the member became entitled to receive military retired pay, then the retired pay award may be expressed as a formula or hypothetical retired pay award in accordance with paragraphs 290607 and 290608. Since the computation of formula and hypothetical retired pay awards result in a percentage, they are considered a type of percentage award, and would automatically receive a proportionate share of the member's retired pay cost-of-living adjustments.

290602. Divorces Finalized While the Member is Still on Active Duty

A. For court orders issued prior to December 19, 2003, the court order must show that the member's rights under the ***Soldiers' and Sailors' Civil Relief Act of 1940*** (50 U.S.C. Appendix § 501 et. seq.) were complied with.

B. For court orders issued on or after December 19, 2003, the court order must show that the member's rights under the ***Servicemembers Civil Relief Act*** (50 U.S.C. Appendix § 501 et. seq.) were complied with.

290603. Qualified Domestic Relations Orders

There is no requirement in USFSPA that a former spouse submits a qualified domestic relations order, but the designated agent will accept one if it is submitted and if it meets the requirements of the USFSPA.

290604. Requirements Specific to a Retired Pay Award

A. In the case of a retired pay award, the designated agent must be able to determine from the application that the court dividing military retired pay had jurisdiction over the member by reason of one of the following:

1. The member resided in the territorial jurisdiction of the court at the time of the legal proceeding due to other than military assignment;

2. The court finds that member's domicile was in the territorial jurisdiction of the court at the time of the legal proceeding; or

3. The member consented to the jurisdiction of the court. If the court did not find in the court order that the member consented to the court's jurisdiction, then DFAS-Garnishment Operations will presume that the member consented to the court's jurisdiction if the member participated in some way in the legal proceeding.

B. Also, in the case of a retired pay award, the designated agent must be able to determine from the application that the former spouse and the member were married for at least 10 years during which the member performed 10 years or more of service creditable toward retirement eligibility (the "10/10" requirement). There is no "10/10" requirement for payment of alimony or child support awards under USFSPA.

290605. State Law Jurisdiction

The satisfaction of state law jurisdictional requirements is not sufficient alone to satisfy the additional jurisdictional requirement stated in paragraph 290604. If the court states that it has USFSPA jurisdiction, then it must state the basis for the finding, i.e., member's residence, member's domicile or member's consent.

290606. Member's Consent to a Separation Agreement

If the member signed a separation agreement, then the designated agent will presume that the member consented to the jurisdiction of any court that at any time incorporates the agreement into a court order.

*290607. Acceptable Formula Awards

A. If the former spouse's award is expressed in terms of a formula, then the method of calculating the formula must be set forth in the court order. All the variables needed to calculate the formula must be included in the court order, with the exception of a member's total number of months of creditable service or total number of reserve retirement points, which DFAS-Garnishment Operations will provide in accordance with 290607. B and C. If the order provides all the variables needed to do the calculation, including total months of military service or total reserve retirement points, then DFAS-Garnishment Operations will calculate the formula using the variables provided, even if the figure is different from the member's actual total. If any

needed variable besides the total number of months of creditable service or total number of reserve retirement points is not provided in the order, then either the court will have to clarify the award or the parties will have to provide the missing variable to the designated agent in a notarized statement signed by both parties. All percentages derived from formulas will be carried out to four decimal places.

B. If the court order requires DFAS-Garnishment Operations to supply the denominator of a marital or coverture fraction, and the member qualifies for an active duty (i.e., regular service) retirement, then the formula award must be expressed in terms of whole months. Typically, the numerator of the formula fraction is the number of months of marriage during military service. This number must specifically be provided or adequately described in the court order. The denominator of the formula is typically the member's total number of months of creditable military service. DFAS-Garnishment Operations will provide the denominator if needed to compute the formula. Any days or partial months of service will be dropped. If the award is expressed in terms of years instead of months, DFAS-Garnishment Operations will convert years into whole months by rounding down to the nearest month.

C. If the court order requires DFAS-Garnishment Operations to supply the denominator of a marital or coverture fraction, and the member qualifies for a reserve (i.e., non-regular service) retirement, then the formula award must be expressed in terms of reserve retirement points. In the case of a reserve retirement, the numerator of the formula typically is the number of reserve retirement points earned during the marriage. This number must be provided in the court order. The denominator of the formula is typically the member's total number of reserve retirement points. The designated agent will provide the denominator if needed.

D. The sample Military Retired Pay Division Order (Figure 1) provides examples of acceptable formula award language. All the blanks in the sample awards represent variables that must be provided in the court order. The sample language is not required, but any award expressed using the applicable sample language will be acceptable.

Example of an active duty formula: The court order awarded the former spouse a percentage of the member's disposable retired pay calculated by multiplying ½ times a fraction, where the numerator is 144 months of marriage during military service, and the denominator is the member's total months of active duty service. The member later retired after 20 years (or 240 months) of creditable service. The former spouse's award is 30.0000 percent of the member's disposable retired pay (1/2 x 144 months/240 months).

*290608. Acceptable Hypothetical Retired Pay Awards

A. A hypothetical retired pay award is a percentage of a retired pay amount calculated using the standard method to compute retired pay, but using variables different from those used to calculate the member's actual retired pay. It is usually calculated as if the member had become entitled to receive retired pay at the time the court divided the member's retired pay.

B. To calculate a hypothetical retired pay award, the designated agent must first calculate the hypothetical retired pay amount. The hypothetical retired pay amount is calculated by multiplying the hypothetical retired pay multiplier times the hypothetical retired pay base. See Chapter 3, paragraph 030101. If the initial retired pay computation is not a multiple of $1, it is rounded down to the next lower multiple of $1. See Chapter 3, subparagraph 030109.A.

C. Hypothetical retired pay multiplier

1. The standard retired pay multiplier is 2.5 percent times the member's years of creditable service. For example, the retired pay multiplier for an active duty member who serves 20 years will be 50 percent (.025 x 20 years = 50%). See Chapter 3, subparagraph 030101.B.1. In the case of a hypothetical retired pay award, the hypothetical retired pay multiplier is determined by multiplying 2.5 percent times the hypothetical years of creditable service provided in the court order. The resulting percentage is rounded to two decimal places. See Chapter 3, subparagraph 030108.D.

*2. A hypothetical retired pay award for a reservist must be expressed in terms of reserve retirement points rather than years of creditable service. The reserve retirement points are converted into years of creditable service by dividing the reserve retirement points on which the award is based by 360. The resultant figure is carried to three decimal places; then rounded to two. See Chapter 3, subparagraph 030105.B. This resultant figure is used to compute the hypothetical retired pay multiplier. For example, 5,258 retirement points would convert to 14.61 years of service for multiplier purposes (5,258 points/360 = 14.61 years).

D. Retired Pay Base

1. For members entering military service before September 8, 1980, the retired pay base is the member's basic pay at retirement. See Chapter 3, subparagraph 030101.A.1. For these members, their hypothetical retired pay base would usually be their basic pay as of the hypothetical retirement date.

2. For members entering military service on or after September 8 , 1980 , the retired pay base is the average of the member's highest 36 months of basic pay at retirement (high-3 amount). See Chapter 3, subparagraph 030101.A.2. For these members, their hypothetical retired pay base would usually be their average basic pay for the most recent 36 months prior to the hypothetical retirement date.

E. In order to enable the designated agent to calculate the hypothetical retired pay amount, the court order must provide:

1. The percentage the former spouse was awarded;

2. The hypothetical years of creditable service, or, in the case of a reservist, the reserve retirement points on which the hypothetical retired pay is to be based;

3. The hypothetical retired pay base. In the case of members entering military service before September 8, 1980, the court order may provide either the member's hypothetical retired pay base or the member's hypothetical rank and years of service for basic pay purposes; and

4. The hypothetical retirement date.

*F. If the court intends that the hypothetical retired pay be calculated based on the pay tables in effect at the time the member becomes entitled to receive military retired pay, then the designated agent will use as the retired pay base either the basic pay for the hypothetical rank and years of service as of the date the member becomes eligible to receive retired pay, or the member's actual retired pay base, whichever is lower. The court order must provide:

1. The percentage the former spouse is awarded;

2. The hypothetical years of creditable service, or, in the case of a reservist, the reserve retirement points on which the hypothetical retired pay is to be based and the member's years of service for basic pay purposes;

3. The member's hypothetical rank; and

4. An unequivocal statement that the calculation is to be made as of the member's actual retirement date.

G. If the award language is missing any necessary variables, then either the court will have to clarify the award or the parties will have to agree on any missing variables and provide them to the designated agent in a notarized statement signed by both parties. See the sample Military Retired Pay Division Order (Figure 1) for examples of acceptable hypothetical retired pay award language.

H. All percentage hypothetical retired pay awards will be converted into a percentage of a member's actual disposable retired pay according to the following procedure:

Example: The court order awarded the former spouse 50 percent of the disposable retired pay the member would have received had the member retired with 17 years of creditable service, a retired pay base of $2,200.00 per month, and a hypothetical retirement date of June 1, 1999. The member actually retired on June 1, 2002, with 20 years of creditable service, a retired pay base of $2,400.00 per month, and an initial gross retired pay of $1,200.00 per month (.025 x 20 years = .50; .50 x $2,400.00 = $1,200.00).

1. First, the designated agent will calculate the member's hypothetical retired pay multiplier, which in this example is .425 (.025 x 17 years).

2. Next, the designated agent will calculate the hypothetical retired pay amount, which in this example is $935.00 per month (.425 x $2,200.00).

3. Then, the designated agent will apply retired pay cost-of-living adjustments (COLAs) to the hypothetical retired pay amount from the hypothetical retirement date to the date the member became eligible to receive retired pay, unless the court order directs otherwise.

a. This calculation will determine the present value of the hypothetical retired pay as of the member's actual retirement date. In this case, if the member had become eligible to receive retired pay on June 1, 1999, his hypothetical retirement date, then his hypothetical retired pay would have been $1,008 per month on June 1, 2002, his actual retirement date.

b. In this example, the COLAs would be as follows:

12/1/1999 1.7% $935.00 x 1.017 = $ 950.00 (cents are dropped) (See Chapter 8, subparagraph 080372.A.)

12/1/2000 3.5% $950.00 x 1.035 = $ 983.00

12/1/2001 2.6% $983.00 x 1.026 = $1,008.00

4. Finally, the designated agent will convert the former spouse's percentage of hypothetical retired pay to a percentage of the member's actual disposable retired pay as follows:

50% x $1,008.00/$1,200.00 = 42%.

This is the percentage the designated agent will establish in the retired pay system.

* I. The actual military retired pay of a post-July 1986 member who has accepted a Career Status Bonus (CSB) is calculated using a reduced multiplier. See Chapter 3, Subparagraph 030101.B.2. However, the CSB member's hypothetical retired pay will be calculated using the standard multiplier. The CSB member's retired pay will be recomputed using a standard multiplier effective the first day of the month after the member attains age 62. The former spouse's percentage will also be adjusted at the same time in accordance with Subparagraph 290608.H.4. using the member's recomputed retired pay in the denominator of the conversion fraction. This adjustment will result in a lower percentage being applied to a higher disposable pay figure, and will ensure that the former spouse continues to receive the amount intended in the court order.

290609. Orders Issued Before June 26, 1981 that Did Not Divide Retired Pay

Any court order that contains a retired pay award, which was issued before June 26, 1981 will be honored if it otherwise satisfies the requirements and conditions shown in this chapter. If the pre-June 26, 1981, decree or property settlement incident to the decree did not divide the member's military retired pay, and did not reserve jurisdiction to divide it, then DFAS-

Garnishment Operations cannot honor an application for payment based on an order issued on or after June 26, 1981, dividing retired pay as property.

290610. Survivor Benefit Plan (SBP) Premium

Pursuant to ***10 U.S.C. 1452***, the SBP premium must be deducted from the member's retired pay. The SBP premium cannot be deducted from the former spouse's portion of the member's retired pay. Any provision in a court order stating that the premium should be deducted from the former spouse's portion is unenforceable by DFAS, Garnishment Operations. The former spouse and the member may make alternate payment arrangements outside of the procedures of this Chapter.

290611. Conflicting Retired Pay Awards

A. If the designated agent is served with court orders issued by different jurisdictions which contain conflicting awards enforceable under the USFSPA, the designated agent will deduct an amount equal to the largest amount required to be paid to the former spouse by either order, but will pay to the former spouse the least amount required to be paid. The designated agent will retain the difference until served with an order certified by the member and former spouse to be valid, and then pay the retained funds in accordance with the order.

B. If the designated agent is served with a court order containing conflicting retired pay award language within the same court order, then the designated agent will pay the former spouse the lower award amount. If one of the parties disagrees with the amount being paid, that party must provide the designated agent with a new court order stating the correct amount.

290612. Court Orders Modifying Retired Pay Awards

A. If the designated agent is served with a court order modifying or clarifying a retired pay award, the designated agent will implement the order issued most recently. The order issued most recently supersedes all prior orders.

B. If the designated agent is served with a court order modifying or clarifying a retired pay award that was issued by a court of a State other than the State that issued the prior court order, the designated agent may implement the new order only if the court issuing this order had jurisdiction over both the member and former spouse in the manner specified in subparagraph 290604.A.

290613. Conditional Awards

The designated agent cannot honor a court order that makes the former spouse's payments conditional on the occurrence of some other event. There is no authority for the designated agent to ascertain whether a condition in a court order has been satisfied. The former spouse will need to obtain a modified court order without the condition.

290614. Awards Based on Retired Pay Accrued During Marriage

The designated agent cannot honor awards based on the value of what has accrued because military retired pay does not accrue over time. Military retired pay is not a pension. Rather, it is a statutory entitlement computed at the time the member retires and it is based on the member's rank and total years of service at the time of retirement, or member's high-3 and total years of service.

290615. Awards of a Percentage of the Marital Portion

The designated agent cannot honor an award of a percentage of the marital portion of a member's retired pay unless the court order also provides instructions on how to calculate the marital portion, and all variables necessary for the calculation.

290616. Factual Errors in Court Orders

If a party submits documentary evidence that shows a factual error in a court order, this will not be sufficient to modify or stop payments being made pursuant to the court order. The party asserting the error must move the court to correct the order. The designated agent does not have the authority to correct errors in court orders.

2907 DISPOSABLE RETIRED PAY DEDUCTIONS

290701. Disposable Retired Pay

Disposable retired pay is defined by the USFSPA as a member's total monthly retired pay entitlement minus authorized deductions.

A. If the former spouse and member were divorced on or before February 2, 1991, then USFSPA authorizes the following deductions:

1. Amounts owed to the United States.

2. Amounts withheld as Federal and State income tax withholding, consistent with the member's current actual tax liability.

3. Fines and forfeitures ordered by a court-martial.

4. Amounts waived in order to receive compensation under Titles 5 or 38 of the U.S.C.

5. SBP premiums paid, but only if the former spouse applying for a retired pay award payment under USFSPA is the beneficiary of the SBP.

6. The amount of retired pay for a member retired under Title 10, Chapter 61 computed based on percentage of disability.

B. If the former spouse and member were divorced on or after February 3, 1991, then the USFSPA authorizes the following deductions:

1. Amounts owed to the United States due to the overpayment of retired pay, or amounts required to be recouped due to the member's entitlement to retired pay.

2. Fines and forfeitures ordered by a court-martial.

3. Amounts waived in order to receive compensation under Titles 5 or 38 of the U.S.C.

4. SBP premiums paid but only if the former spouse applying for a retired pay award payment under USFSPA is the beneficiary of the SBP.

5. The amount of retired pay for a member retired under Title 10, Chapter 61 computed based on percentage of disability.

290702. Other Deductions Included in Court Order

If a court order directs the use of deductions other than those authorized above to compute the former spouse's award, then that provision of the court order is unenforceable. The designated agent will use only the deductions authorized above for the computation of disposable retired pay.

2908 STARTING PAYMENTS

290801. Starting Payments

If the former spouse's application is approved, then payments will start no later than 90 days after the date the designated agent received the former spouse's complete application, or no later than 90 days after the date the member becomes entitled to receive military retired pay, whichever is later.

290802. Timing of Payments

Payments will be issued in conformity with normal pay and disbursement cycles, which mean that payments will be issued monthly. Payments will be deducted from the month's pay and paid on the first business day of the following month. For example, a payment issued for the month of March would be sent at the beginning of April.

2909 PAYMENT AMOUNT

290901. Limitations

A. If the former spouse applies for payments under the USFSPA only, then the maximum amount a former spouse can receive is 50 percent of the member's disposable retired pay.

B. If the former spouse applies for payments under the USFSPA and there is also a garnishment order for support, then the maximum amount that can be paid toward both obligations is 65 percent of the member's disposable earnings calculated in accordance with ***42 U.S.C. 659*** (child and spousal support statute) and its implementing regulation.

C. For garnishments for property other than a retired pay award, the maximum amount payable is 25 percent of disposable earnings in accordance with ***15 U.S.C. 1673***.

290902. Cost-of-Living Adjustments

If a retired pay award is expressed as a percentage of disposable retired pay, then the former spouse will automatically receive a proportionate share of the member's cost-of-living adjustments (COLAs) unless the court order states otherwise. Formula and hypothetical retired pay awards are considered a type of percentage award, and thus will automatically include a proportionate share of the member's COLAs. If the retired pay award is a fixed amount, then COLAs cannot be added, even if awarded in the court order, and the former spouse's payments will remain fixed.

290903. Offset of Former Spouse's Payment for Garnishment or Other Obligation

A former spouse's payment cannot be offset or garnished for any legal obligation, including child support owed to the member.

2910 PRIORITY OF PAYMENTS

291001. Multiple Awards

If a court order includes multiple types of awards to a former spouse, then the former spouse may designate the priority of payments on the DD Form 2293. If the former spouse does not specify otherwise, then the designated agent will pay the retired pay award first, child support second and spousal support third.

*291002. Multiple Former Spouses

If the designated agent is served with applications from more than one former spouse, then the designated agent will honor the applications on a first-come, first-served basis. Subsequently served USFSPA applications shall be satisfied out of the disposable retired pay

that remains after the satisfaction of all court orders which have been previously served, subject to the limitations of paragraph 290901.

291003. Garnishment Orders for Support and Applications Under USFSPA

If the designated agent is served with both a garnishment for support and an application under USFSPA, then the designated agent will pay whichever is served first. If the garnishment is served first and is payable directly to the former spouse, then the former spouse may reverse the priority of payments by instructing the designated agent to terminate deductions pursuant to the garnishment, and then later requesting that garnishment deductions be reestablished.

2911 STOPPING PAYMENTS

291101. Erroneous Payment Information From Former Spouse

The former spouse has a continuing duty to provide the designated agent with correct payment instructions. If a former spouse's payments are returned due to erroneous payment instructions (i.e., invalid address or incorrect account number for direct deposit payments), then the designated agent will send notice to the last known correspondence address that, unless new payment instructions are received within 30 days of the date of the notice, payments will stop. If the former spouse submits new payment instructions after the payments have terminated, then the designated agent will restart the payments on a current basis, and will not make up any missed payments.

*291102. Termination and Suspension of Retired Pay Award Payments

A. Unless the court order specifies otherwise, payments will stop upon the designated agent's receipt of notice of the death of either party. Payments will be prorated for the month of the death of either party.

B. Unless the court order specifies otherwise, retired pay award payments will not stop upon the designated agent's receipt of notice of the former spouse's remarriage.

C. If the designated agent is served with an order staying payments, then the designated agent will stop the payments until served with an order indicating that the former spouse's payments are to resume.

D. If the designated agent has already started payments and is served with documentation showing that an appeal of the order has been filed within the forum State's appeal timeframe, then payments will stop. The designated agent will not recoup any payments already issued.

* E. A former spouse may stop payments under USFSPA by sending the designated agent a letter with his/her signature notarized withdrawing their application for payments under USFSPA. (A former spouse can later reapply for payments by submitting a new

DD Form 2293 and certified copy of the court order that awards him/her the division of military retired pay.)

291103. Termination of Child Support Payments Under USFSPA

Child support payments will stop in accordance with the provisions of the court order. If the court order is silent as to when the payments should stop, then payments will stop in accordance with the law of the State that issued the court order. The member has the burden of providing sufficient documentation to justify stopping payments on or before a child's age of majority. The former spouse has the burden of providing sufficient documentation to justify continuing payments after a child's age of majority.

*291104. Termination of Alimony Payments Under USFSPA

Alimony payments will stop in accordance with the provisions of the court order. If the court order is silent as to when the payments should stop, then payments will stop in accordance with the law of the State that issued the court order, or upon receiving a court order terminating the alimony payments. (NOTE: the law of some states does not provide that an alimony obligation automatically terminates upon a former spouse's remarriage. For such states, a court order terminating the alimony will need to be provided.) If the designated agent does not already have sufficient documentation to stop payments, then additional evidence such as a marriage certificate will be required.

291105. Payments and Bankruptcy

Absent a court order, there is no authority to stop a former spouse's retired pay award, current and arrearage child support payments, and current spousal support payments, if a member files bankruptcy.

291106. Certification of Eligibility

The designated agent may request that a former spouse submit a signed certification of continued eligibility to receive payments under USFSPA. The certificate of eligibility should include notice of a change in status or circumstance that affects eligibility, if any such change exists. If the former spouse fails or refuses to comply with the certification requirement, then the designated agent may stop the payments after notice to the former spouse.

*2912 RETIRED PAY ARREARS OWED A DECEASED FORMER SPOUSE

291201. Applicability

This section applies to the settlement of arrears of a property division of retired pay that may be due a deceased former spouse pursuant to a previous application for direct payment completed under section 2904 of this chapter. Arrears of a retired pay property division may result from prorating a member's disposable retired pay for the month of the former spouse's death, from checks not negotiated before the former spouse's death, or the designated agent's

failure to establish and/or make payments to the former spouse in the correct amount prior to the former spouse's death for a period that the former spouse was entitled to a property division.

291202. Documentation

To settle the arrears of retired pay owed a deceased former spouse, the following documentation must be on file:

A. Copy of Death Certificate. A notification of death from any source (next of kin, post office, or neighbor) is sufficient to suspend future payment of the retired pay property division. However, an official copy of a certificate of death for the former spouse is required before the arrears of a property division of retired pay are paid under this section.

B. Written Claim. A written claim containing the claimant's signature and address, or that of the claimant's authorized agent or attorney. ***Standard Form 1174*** (SF 1174) is not required, but may be used for this purpose, so long as the claim specifies the claimant's relationship to the deceased former spouse and documents other living relatives of the deceased former spouse.

C. Other Documentation as Required. A claimant may be required to submit any other documentation DFAS deems necessary to establish the claimant's status and entitlement to the property division arrears including, but not limited to, marriage certificates, birth certificates, divorce decrees, or other documentation that validates the living beneficiaries of a former spouse in any class of persons entitled to the arrears pursuant to paragraph 291204.

291203. Recoupment of Outstanding Payments

All outstanding checks or direct deposits (not negotiated before the former spouse's death or made after the former spouse's death) or the proceeds thereof must be returned to the DFAS-Cleveland Site before a settlement of arrears may be made.

291204. Payment of the Arrears

Former spouse payments from retired pay are prorated in the month of the former spouse's death. When all documentation has been received and all outstanding payments have been recouped, payment of the arrears is made to the person living on the date of the former spouse's death who is highest on the order of precedence set forth in Chapter 30, subparagraphs 300104.A.2 through A.6. For the purpose of payment of arrears under this paragraph, the provisions of subparagraphs 300104.C, D and E apply, and all references to a "retiree" in subparagraphs 300104.A.2 through A.6, C, D, and E should be considered as referring to a deceased former spouse rather than a retiree.

291205. Indebtedness Resulting From Overpayment to a Former Spouse

Any indebtedness resulting from overpayment to a deceased former spouse must be liquidated before former spouse payment arrears can be settled.

291206. Claim for Arrears

A claim for arrears must be filed within the 6-year statute-of-limitation restriction. Any claim received 6 years after the date of the former spouse's death is barred.

291207. Taxability

In the case of deceased former spouses, one or more Treasury Department (TD) Forms 1099-R (Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) may be used. If no former spouse arrears are paid, then one TD Form 1099-R will be issued in the former spouse's name to cover any entitlement through date of death. If arrears are paid, then an additional TD Form 1099-R is issued to each claimant to whom the arrears were paid.

2913 ADMINISTRATIVE APPEAL PROCESS

291301. Either Party Disagrees

If either party disagrees with a determination by the designated agent, then that party may request reconsideration by writing to the designated agent. If the party requesting reconsideration asserts that the designated agent has erroneously overpaid the other party, then the request for reconsideration will be considered a claim against the designated agent. An attorney will review the request and issue a decision in writing.

291302. Party Requesting Reconsideration Disagrees

If the party requesting reconsideration disagrees with the attorney's determination, then that party may submit an appeal to the designated agent, which must be received within 30 days of the date of the initial determination. The designated agent will forward the appeal to the Defense Office of Hearings and Appeals for their decision.

291303. Additional Information

Parties are referred to Department of Defense Instruction Number 1340.21 (available at ***http://www.dtic.mil/whs/directives/corres/ins1.html***) for additional information concerning the submission of claims and appeals.

2914 LIABILITY

291401. Payments Made In Accordance With The USFSPA

Neither the United States nor any employee of the United States shall be liable regarding any payment made from retired pay to a retiree or former spouse pursuant to a court order that is regular on its face, if such payment is made in accordance with the USFSPA.

291402. Designated Agent Liability

If the designated agent processes a former spouse's USFSPA application and administers the former spouse's payments in accordance with the USFSPA and this regulation, and in accordance with all documentation in its files, then the designated agent is not liable for any former spouse payments issued after a former spouse's eligibility to receive payments has ended. Nor is the designated agent liable for any payments that the former spouse may have been entitled to prior to the designated agent's beginning direct payments pursuant to the former spouse's USFSPA application.

291403. Court Order

If the court order awarding child support or alimony appears on its face to conform to the laws of the jurisdiction from which it was issued, then the designated agent will not be required to ascertain whether the court had obtained personal jurisdiction over the member.

Figure 1. Appendix A Military Retired Pay Division Order

STATE OF _____ COURT OF _____
COUNTY OF _____ Case No. _____

_____
Petitioner

MILITARY RETIRED PAY DIVISION ORDER

_____
Respondent

This cause came before the undersigned judge upon the petitioner/respondent's claim for a distribution of the respondent/petitioner's military retired pay benefits. The court makes the following:

FINDINGS OF FACT:

The Petitioner's Social Security Number is _____ and current address is _____.

2. The Respondent's Social Security Number is _____ and current address is _____.

The Parties were married on _____. Their marital status was terminated on _____ pursuant to a(n) _____entered in _____ County, State of _____. This current order is entered incident to the aforementioned order.

The parties were married for a period of ten or more years during which time the Petitioner/Respondent performed at least ten years of service creditable for retirement eligibility purposes.

If the military member was on active duty at the time of this order, Respondent/Petitioner's rights under the Servicemembers' Civil Relief Act, 50 U.S.C App. 501-548 and 560-591, have been observed and honored.

This court has jurisdiction over the Respondent/Petitioner by reason of [choose those that apply] (A) his or her residence, other than because of military assignment, in the territorial jurisdiction of the court, during the [divorce, dissolution, annulment, or legal separation] proceeding, (B) his or her domicile in the territorial jurisdiction of the court during the [divorce, dissolution, annulment, or legal separation] proceeding, or (C) his or her consent to the jurisdiction of the court.

CONCLUSIONS OF LAW:

1. This court has jurisdiction over the subject matter of this action and the parties hereto.

2. Petitioner/Respondent is entitled to a portion of Respondent/Petitioner's United States military retired pay as set forth herein.

IT IS THEREFORE ORDERED THAT:
[Choose and complete one of the following. Please note that all awards expressed as a percentage of disposable retired pay, including hypothetical awards, will automatically include a proportionate share of the member's cost-of-living adjustments (COLAs) unless this order states otherwise. Also, hypothetical retired pay amounts will be adjusted for all retired pay COLAS from the hypothetical retirement date to the member's actual retirement date, unless this order states otherwise.]

Figure 1. Appendix A Military Retired Pay Division Order (Continued)

[Retired member] **"The former spouse is awarded ___ percent [or dollar amount] of the member's disposable military retired pay."**

[Active duty formula] **"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying ____% times a fraction, the numerator of which is _____ months of marriage during the member's creditable military service, divided by the member's total number of months of creditable military service."**

[Reservist formula] **"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying ____% times a fraction, the numerator of which is _____ Reserve retirement points earned during the period of the marriage, divided by the member's total number of Reserve retirement points earned."**

[Active duty hypothetical calculated as of time of division, for all members regardless of service entry date] **"The former spouse is awarded _____% of the disposable military retired pay the member would have received had the member retired with a retired pay base of _____ and with _____ years of creditable service on _____."**

[Active duty hypothetical calculated as of time of division; may only be used for members entering service before 9/1/80] **"The former spouse is awarded _____% of the disposable military retired pay the member would have received had the member retired with the rank of _____ and with _____ years of creditable service on _____."**

[Active duty hypothetical calculated as of member's actual retirement date **"The former spouse is awarded _____% of the disposable military retired pay the member would have received had the member retired on his actual retirement date with the rank of _____ and with _____ years of creditable service."**

[Reservist hypothetical calculated as of time of division, for all members regardless of service entry date] **"The former spouse is awarded _____% of the disposable military retired pay the member would have received had the member become eligible to receive military retired pay with a retired pay base of _____ and with _____ Reserve retirement points on _____."**

[Reservist hypothetical calculated as of time of division; may be used for members entering service before 9/1/80] **"The former spouse is awarded _____% of the disposable military retired pay the member would have received had the member become eligible to receive retired pay on _____, with the rank of _____, with _____ Reserve retirement points, and with _____ years of service for basic pay purposes."**

[Reservist hypothetical calculated as of the date the member becomes eligible to receive retired pay] "**The former spouse is awarded _____% of the disposable military retired pay the member would have received had the member become eligible to receive retired pay on the date he [or she] attained age 60, with the rank of _____ , with _____ Reserve retirement points, and with _____ years of service for basic pay purposes."**

This _____ day of _____, 200__.

_____
JUDGE

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CHAPTER 29 – FORMER SPOUSE PAYMENTS FROM RETIRED PAY

Uniformed Service Former Spouses' Protection Act,
Title 10, United States Code, Section 1408

60 Fed. Reg. No. 66
April 6, 1995

VOLUME 7B, CHAPTER 30: "DEATH OF RETIREE"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks, statutes and formatted in compliance with current administrative instructions.	Update
Table of Contents	Updated Table of Contents according to administrative instructions.	Update
300104 and 300104.E	Added information on the estate as beneficiary.	Add
300104.C	Expanded on additional documents that may be required by DFAS under law of domicile.	Update
300106	Provided additional information on autopsy requirement.	Update
300201.C	Added information and hyperlink for gratuity application.	Add
300201.NOTE	Added reference to Volume 7A for detailed information on death gratuity and rearranged section so that information provided is presented in similar order as that of Volume 7A.	Add
300202	Deleted original paragraph 300202 "Definitions" because the information provided was not referenced in the chapter. Renumbered remaining paragraphs accordingly.	Delete
300202.A	Deleted original subparagraphs 300204.A through F, order of precedence and referenced Archived chapter.	Delete
300202.B	Added qualifying statement in designation of beneficiary.	Add
Bibliography	Updated referenced codified statutes.	Update

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CHAPTER 30

DEATH OF RETIREE

3001 ARREARS OF PAY

300101. General

Entitlement to retired pay terminates on the date of the retiree's death. Arrears of pay (AOP) is the retiree's final prorated retired pay check to include all unencumbered amounts due to the deceased member. Arrears are not due if the retiree waived retired pay in favor of a civil-service annuity. Department of Veterans Affairs (VA) benefits terminate on the last day of the month before death. For members who waive retired pay for VA benefits, only retired pay is due on behalf of the member for the month of death. A retiree's account is placed in a suspended status upon receipt of a notification of death from any source until the date of death can be verified. The Defense Finance and Accounting Service (DFAS) must attempt to obtain proof of death before closing an account. Acceptable forms of proof of death documentation include:

A. Death certificate;

B. ***Department of Defense (DD) Form 1300***, Report of Casualty;

C. Funeral Director's Report;

D. VA Cemetery Files;

E. The Defense Enrollment Eligibility Reporting System;

F. Social Security Reports; or

G. Other forms of official notification of death.

300102. Related Inquiries

The Military Department concerned advises the surviving spouse to contact the VA or the Social Security Administration on matters relating to entitlement benefits payable by those agencies.

300103. Responsibilities

When the Military Department concerned receives notification of the death of a retiree, they will notify DFAS-Cleveland. The DFAS-Cleveland site shall:

A. Terminate payment of retired pay;

B. Recoup outstanding retired pay checks or direct deposit payment;

C. Discontinue and collect overpayments of allotments;

D. Pay death gratuity if applicable;

E. Collect debts;

F. Provide claim forms to prospective beneficiaries; and

G. Prepare vouchers and tax statements for final account settlement.

*300104. Eligible Beneficiaries

Each Military Service periodically advises retirees of their right to designate a beneficiary or beneficiaries to receive the AOP amounts due, and disposition to be made of unpaid amounts where no beneficiary or beneficiaries have been designated. Any person or persons, or legal entity, including the estate or trust of the member, may be designated. In order for the member's estate to be an eligible beneficiary, the estate must be established pursuant to the laws of the member's domicile after the member's death. If the estate is not established, then the designation to the estate will fail.

A. Pursuant to Title 10, United States Code, section 2771 (***10 U.S.C. 2771***), arrears of retired pay are paid to the person living on the date of the retiree's death in the following order of precedence:

1. Beneficiary designated by the member in writing, if the designation is received by the Military Department concerned before the member's death.

2. Surviving spouse.

3. Children and their descendants, by representation:

a. Legitimate Child

b. Adopted Child. An adopted child is a legal heir in every state and, therefore, is entitled to payment of unpaid pay and allowances, if otherwise proper. If the deceased retiree's child is adopted by others, then the child is a beneficiary only in those states where an adopted child inherits from its natural parent.

c. Illegitimate Child. An illegitimate child may not be paid unpaid pay and allowances of a deceased retiree unless that child is recognized for inheritance purposes under the laws of the jurisdiction involved.

d. Stepchild. A stepchild is not an eligible beneficiary unless adopted by the deceased retiree.

4. Father and mother in equal parts or, if either is dead, the survivor.

5. Legal representative.

6. Person entitled under the law of the domicile of the deceased retiree.

B. The retiree may change a beneficiary previously designated if the change is in writing and is received by the Military Department concerned before the retiree's death.

*C. Where payment is to be made to the person entitled under the law of the domicile of the deceased individual under subparagraph 300104.A.6, DFAS may require the claimant(s) to submit evidence of entitlement under State law, including but not limited to funeral expense receipts, small estate affidavit, trust documents, court orders granting summary administration and where necessary, the deceased person's will.

D. If the retiree was killed by the beneficiary, then the arrears are not paid to that person unless evidence is received which clearly absolves the beneficiary of any felonious intent. This does not preclude the person from receiving the arrears in the capacity of custodian or guardian of minor children.

*E. If the beneficiary dies after the retiree but before receiving final settlement, then the AOP to the beneficiary's estate. If the beneficiary does not have an estate established and the arrears of pay is $3,000 or less, then DFAS shall pay the arrears of pay to the deceased beneficiary's survivors in the order of precedence set out in subparagraph 300104.A.2 through 5. If the arrears of pay is greater than $3,000, then DFAS shall pay the arrears of pay in accordance with laws of the domicile of the deceased beneficiary. If doubt exists as to entitlement, then the Department of Defense (DoD) will settle the claim.

300105. Substantiating Documents and Collection of Overpayments

A. To effect settlement, the following documents must be a matter of record:

1. Completed ***Standard Form (SF) 1174*** (Claim for Unpaid Compensation of Deceased Member of the Uniformed Services) from the beneficiary.

2. ***DD Form 1300*** or a copy of the death certificate.

3. Retirement orders.

4. Adoption papers, court orders of appointment, or custodianship papers, if required.

B. Every attempt should be made to recover all outstanding checks or direct deposits (not negotiated before the retiree's death or forwarded past the date of entitlement) or the proceeds thereof. Unrecovered funds are treated as erroneous payments to the member or the withdrawer of funds with the indebtedness subject to the debt collection authority. If the funds are not recovered, then there is no AOP due. In situations where the recipient of the member's

erroneous payment is also the beneficiary for AOP, the amount of arrears due the individual shall be offset administratively by the erroneous payments received by the individual, the remaining erroneous payment, if any, shall still be subject to the debt collection authority. Where there has been an erroneous payment of AOP made to an individual not entitled to retiree's AOP, and another individual is entitled to the retiree's AOP, then payment of the amount due as arrears shall be made to the appropriate payee, regardless of whether collection has been made from the recipient of the erroneous pay.

*300106. Questionable Date of Death

*A. When the date of death is shown as a "found date," the Military Department concerned verifies whether an autopsy was performed. If an autopsy was performed, then use the date of death determined by the coroner. If the results of the autopsy are reported on the death certificate, then a copy of the autopsy report is not required. If an autopsy was not performed, but the State has certified the date of death on the death certificate, then use that date. If two dates are shown, such as member died between 11:00 p.m. June 10, 2008, and 4:00 a.m. June 11, 2008, then use the earlier date since that was the last date member was known to be alive. If neither is available, then obtain a statement from one or more disinterested persons attesting to the last known date that the member was alive. When this statement is received, settle the arrears based on that date.

B. In claims involving missing persons, provided there is no evidence to the contrary, assume the date of death to be the presumed date established by state court decree.

C. If evidence exists that a retiree died on a particular date several years before the date of presumptive death declared by a state court, then AOP are payable only through the earlier date of suspected death.

D. A judicial decree is not necessary to establish Retired Serviceman's Family Protection Plan or Survivor Benefit Plan annuity payments if a person has been missing for more than 30 days under circumstances from which a reasonably prudent person would conclude that such person is dead, and a determination by the Secretary of the Military Department concerned (or designee) is made that presumes the member to be deceased. (See Chapter 42, paragraph 420212).

300107. Doubtful Claims

In accordance with Title 32, Part 282.5 of the Code of Federal Regulations (***32 C.F.R. 282.5***), cases involving questions of fact or law may be submitted to the Defense Office of Hearings and Appeals (DOHA) for resolution. These include cases when:

A. Doubt exists as to the amount or validity of the claim, or

B. Doubt exists as to the person or persons properly entitled to the payment.

If a doubtful claim is received, then notify the claimant that the claim has been forwarded to DOHA for approval of settlement.

300108. Six-Year Statute of Limitations

Title 31, U.S.C., section 3702 (***31 U.S.C. 3702***), Authority to Settle Claims, provides general authority for settling claims against the United States. Section 3702 provides that any claim against the United States Government shall be barred forever unless such claim, bearing the signature and address of the claimant or authorized agent or attorney is received by the responsible agency within 6 years after the date such claim first accrued. Under authority delegated from the Secretary of Defense, the Director, DOHA, may waive the time limitation for late claims involving the pay, retired pay, and survivor benefits of military personnel. This waiver authority does not apply to claims that in total exceed $25,000. A person may not request waiver of the statute of limitations even if the barred portion of the claim is less than $25,000, but the total claim exceeds $25,000.

300109. Death of Mentally Incompetent Retiree

If retired pay was waived in favor of VA compensation, but compensation was withheld because the retiree's estate exceeded $1,500, then contact the VA to ascertain periods and reasons for nonpayment of VA compensation and verify whether withdrawal of the waiver was made by guardian or trustee before the retiree's death. See Chapter 12, section 1202 regarding withdrawal of waiver.

NOTE: Nonpayment of compensation could occur at any time from the effective date of VA waiver through the month of death and is not limited to the month of death.

3002 DEATH GRATUITY

*300201. General

A. Death gratuity may be payable when the retiree's death occurs on or after January 1, 1957, during the 120-day period which begins on the day after release from active duty or active duty for training. The VA must certify entitlement to death gratuity. The Secretary of the VA must determine that the decedent was discharged or released under conditions other than dishonorable from the last period of the duty of training that he or she performed; and that death resulted from an injury or disease that was incurred or aggravated during the period of service of active duty, inactive-duty training or travel directly to or from such duty.

B. Death gratuity is not payable for a member who retires for non-Regular service (age and service) unless the member was on active duty the day before retirement.

* C. The application for Death Gratuity is submitted on a ***DD Form 397***, Claim Certification and Voucher for Death Gratuity Payment.

*NOTE: For detailed information on Death Gratuity, see Volume 7A, Chapter 36, section 3601.

*300202. Eligible Beneficiaries

* A. Eligible Beneficiaries Prior to July 1, 2008. Before May 25, 2007, payment of a death gratuity was made to or on behalf of the deceased retiree's living survivors as prescribed by the statute in effect at the time. Beginning on May 25, 2007 and ending on June 30, 2008, a qualified member was able to designate another person to receive not more than 50 percent of the death gratuity payable upon the death of the member with any remaining amount not designated paid in the order prescribed by statute. The designated amount of the death gratuity had to be specified in increments of 10 percent. Death gratuity payments were made to the deceased retiree's living survivors as prescribed by the statute at the time. (For order of precedence prior to July 1, 2008, please see the Archived Version of Volume 7B, Chapter 30, paragraph 300204).

* B. Eligible Beneficiaries On and After July 1, 2008. Effective July 1, 2008, a qualified member may designate up to 100 percent of their death gratuity entitlements, in 10 percent increments, to any person(s) of their choosing. If the qualified member has a spouse, but designates a person other than the spouse to receive all or a portion of the amount payable, then the Secretary concerned shall provide notice of the designation to the spouse. If a qualified person does not make a designation or designates only a portion of the amount payable, then the amount of the death gratuity not covered by a designation shall be paid as follows:

1. To the surviving spouse of the person, if any.

2. If there is no surviving spouse, then to any surviving children of the person and the descendants of any deceased children by representation. Surviving children without regard to age or marital status include:

a. Legitimate children;

b. Adopted children;

c. Stepchildren who were a part of the decedent's household at the time of his death;

d. Illegitimate children of the decedent. (See subparagraph 300203.A.4).

3. If there is no surviving spouse or children, then to the decedent's surviving parents in equal shares or the survivor of them. Surviving parents as prescribed by the following:

a. Parents include fathers and mothers through adoption.

b. Only one father and one mother may be recognized in any case.

c. Preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date of the retiree's death.

4. If there is no surviving spouse, child, or parent of the decedent, then to the duly appointed executor or administrator of the estate of the decedent.

5. If there are no survivors as prescribed in subparagraphs 300202.B.1 through 300202.B.4, then to other next of kin of the person entitled under the laws of domicile of the person at the time of the person's death.

300203. Documentary Evidence

A. In some cases, the beneficiary must furnish proof of relationship:

1. Lawful Spouse. Documentation may be required to substantiate the marriage or proof of termination of prior marriages entered into by the beneficiary or deceased retiree.

2. Legally Adopted Child. A copy of adoption papers.

3. Stepchild. Information to prove that the child was a member of the deceased member's household.

4. Illegitimate Child. Documentation is required as proof that the retiree was the parent of the child and must include one of the following:

a. An acknowledgement in writing signed by the decedent;

b. A judicial determination made before the decedent's death, the claimant is a child of the decedent;

c. Evidence that the Secretary of VA has determined the claimant to be the child of the decedent; or

d. A copy of the court order which ordered the parent to contribute to the child's support.

5. Designated Relative

a. Documentary evidence that any marriage entered into by the deceased retiree has been terminated and a notarized statement that there are no living children.

b. Persons in loco parentis must furnish satisfactory evidence of the relationship as deemed necessary by the Military Department concerned.

B. Payments for minor children must be supported by custodianship documents or court orders of guardianship appointment.

300204. Death of Eligible Survivor Before Receipt of Death Gratuity

If a person entitled to all or a portion of a death gratuity under subparagraph 300202.B dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed in subparagraph 300202.B.

300205. Determinations Affecting Entitlement

A. Death as Lawful Punishment. No death gratuity is payable in the case of a retiree whose death is the result of a lawful punishment for a crime or military offense, except when such death was inflicted by any hostile force with which the Armed Forces of the United States was engaged in armed conflict.

B. Member Killed by Beneficiary. No death gratuity is payable to a beneficiary or survivor who kills a retiree, unless there is evidence that clearly absolves the beneficiary or survivor of any felonious intent.

300206. Amount Payable

A. Deaths Between August 2, 1990 and September10, 2001. For deaths that occurred between August 2, 1990 and September 10, 2001, the amount of death gratuity is $6,000.

B. Deaths Between September 11, 2001 and October 6, 2001. For deaths that occurred between September 11, 2001 and October 6, 2001, the amount of death gratuity is $12,000.

C. Deaths On or After October 7, 2001. For deaths on or after October 7, 2001, the amount of death gratuity is $100,000.

D. Debt Collection. Do not collect debts from death gratuity payments.

300207. Erroneous Payment

An erroneous payment of death gratuity is one made because of administrative error to a person clearly not entitled to that payment, rather than a payment made reliant on statements of record made by the retiree about matters such as marital status and dependency status.

A. Make a second payment to the rightful beneficiary when the error resulted from improper maintenance of records or administrative negligence. Do not delay this payment pending recovery of the erroneous payment from the ineligible recipient. When erroneous payment is made, the respective DFAS site will follow the prescribed collection procedures in an attempt to recover such payment.

B. If the original payment of death gratuity was paid based on statements of record made by the retiree and the government had no reason to doubt the beneficiary's status was as stated, then the payment is not erroneous.

3003 TAXABLE INCOME

300301. Taxability of Arrears of Retired Pay

A. Arrears of retired pay due the deceased retiree at time of death are taxable to the beneficiary who receives payment if they were taxable to the retiree. The tax liability is computed in accordance with the Internal Revenue Code of 1986, as amended. The arrears of retired pay are not subject to Federal income tax withholding.

B. If arrears of retired pay are paid, then a Treasury Department (TD) Form 1099-R is issued to each beneficiary to whom the arrears were paid using the tax identification number of the beneficiary. If no arrears of retired pay are paid (see subparagraph 300104.B), then the retired pay activity issues one TD Form 1099-R in the decedent's name.

300302. Taxability of Death Gratuity

A. Death Occurred Between August 20, 1990 and September 10, 2001. The amount of death gratuity payments made to survivors of military members who died after August 20, 1996 that is excludable from income may not exceed $3,000, regardless of the number of beneficiaries. If there are multiple beneficiaries, then the $3,000 exclusion should be applied proportionately. Report all death gratuity payments separately, using TD Form 1099R (Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, Individual Retirement Accounts, Insurance Contracts). Enter the total amount of the distribution in Box 1. Enter the appropriate taxable amount in Box 2a. For members who died on or before August 20, 1996, the maximum exclusion amount is $5,000.

B. Death Occurred On or After September 11, 2001. The total amount of death gratuity is excludable from gross income for tax purposes.

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300207	Comp Gen B-132407, 37 Comp Gen 131

3003 – TAXABLE INCOME

300302.A	Public Law 104-188, section 1402, August 20, 1996 26 U.S.C. 134 Internal Revenue Service Publication 3, Armed Forces' Tax Guide

VOLUME 7B, CHAPTER 31: "DEATH OF SURVIVOR ANNUITANT"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

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

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

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated to comply with current administrative instruction.	Revision

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CHAPTER 31

DEATH OF SURVIVOR ANNUITANT

3101 GENERAL

310101. Overview

This chapter addresses the settlement of the arrears of an annuity where the annuitant is a spouse with no eligible child annuitant, the last remaining child annuitant, or a natural person with an insurable interest. Payment of the arrears of the annuity under Retired Serviceman's Family Protection Plan (RSFPP), Survivor Benefit Plan (SBP), and minimum income widow provisions of the SBP law is made by the Defense Finance and Accounting Service (DFAS) in accordance with procedures in paragraph 310103.

310102. Documentation

A notification of death from any source (next of kin, post office, or neighbor) is sufficient to suspend future payment of the annuity. To settle (pay) the arrears of an annuity, the following documentation must be on file:

A. Copy of Death Certificate.

B. Written Claim. A written claim over the signature and address of the claimant or of the claimant's authorized agent or attorney.

C. Proof of Recoupment of Outstanding Payments. All outstanding checks or direct deposits (not negotiated before the annuitant's death or forwarded past the date of entitlement) or the proceeds thereof must be returned to the DFAS-Cleveland Site before a settlement of arrears of annuity may be made.

310103. Payment of the Arrears

The annuity is not prorated for the month of annuitant's death. Entitlement stops as of the last day of the month before the date of the annuitant's death. When all documentation is received, payment of the arrears is made to the person living on the date of the annuitant's death who is highest on the order of precedence set forth in Chapter 30, paragraph 300104.A.2 through A.6 of this volume. For the purpose of payment of the arrears of an annuity under this section, the provisions of subparagraph 300104.C, D and E apply, and all references to a "retiree" in subparagraphs 300104.A.2 through A.6, C, D, and E of this volume should be considered as referring to the deceased annuitant rather than a retiree.

310104. Indebtedness Resulting From Annuity Overpayment

Any indebtedness resulting from the overpayment of the annuity (for example, overlap of SBP and Dependency Indemnity Compensation payment made beyond the date of entitlement or miscomputations) must be liquidated before arrears of the annuity can be settled. Any delinquent premiums for RSFPP or SBP still owed at the annuitant's death must be offset from the arrears of the annuity. Debts of the member may not be offset against the arrears of the annuity.

310105. Claim for Arrears

A claim for arrears of an annuity must be filed within the 6-year statute-of-limitation restriction. Any claim received 6 years after the date of the annuitant's death is barred.

3102. TAXABILITY

In the case of deceased annuitants, one or more Treasury Department, (TD) Forms 1099-R, *Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.*, may be used. If no arrears of an annuity are paid, then one TD 1099-R will be issued in the annuitant's name to cover any payments received by the annuitant before death. If arrears of an annuity are paid, then an additional TD 1099-R is issued to each claimant to whom the arrears were paid.

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CHAPTER 31 – DEATH OF SURVIVOR ANNUITANT

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310105 31 U.S.C. 3702(b)

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3201	Section re-titled "GENERAL" to comply with current administrative instructions and to introduce general information on this chapter and renumbered remaining section accordingly.	Revision

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CHAPTER 32

RECOVERY OF PAYMENTS MADE TO A FINANCIAL ORGANIZATION

*3201 GENERAL

By accepting a recurring benefit payment from the government, a receiving financial institution agrees to the provisions of Title 31 of the Code of Federal Regulations, Part 210 ***(31 CFR 210)***, including the reclamation actions and debiting of the financial institution's Federal Reserve Bank account for any reclamation for which it is liable. The government's right to reclaim funds is established in 31 CFR 210, Subpart B, Section 210.10(a).

3202 LIABILITY OF FINANCIAL INSTITUTIONS FOR DIRECT DEPOSIT PAYMENTS

320201. Liability of Financial Institution

A financial institution is liable for all benefit payments received after the death or legal incapacity of a recipient or death of a beneficiary unless the financial institution meets the qualifications for limiting its liability under paragraph 320203.

320202. Reclamation

Upon the notification of the death of a military retiree or annuitant, the Defense Finance and Accounting Service (DFAS)-Cleveland Disbursing Officer will contact the decedent's financial institution to request the return of all payments made since the retiree's or annuitant's death.

A. Reclamation must be initiated within 120 days after receipt of notification of death of retiree. The financial institution is not liable for payments made more than 6 years prior to date of reclamation.

B. Effective January 2, 2008, the Department of the Treasury, Financial Management Service (FMS) established a policy for the reclamation of federal payments disbursed electronically through the Automated Clearing House (ACH). Federal Agencies have 3 years from the date of the FMS-133, Notice of Reclamation, to submit an ACH reclaim via the FMS-135, Request for Debit. Attempts to pursue payments that are 3 years past the date of the FMS-133 will not be made. See the Department of the Treasury's ***Green Book*** for detailed instructions on the reclamation procedures.

Note: On October 7, 2012, the Financial Management Service and the Bureau of the Public Debt were consolidated into the Bureau of the Fiscal Service.

320203. Limiting Liability

A financial institution may qualify to limit its liability by full compliance with the regulations if it:

A. Had no actual or constructive knowledge of the death at the time of the deposit of any post-death benefit payments;

B. Returns all post-death benefit payments it receives after it learns of the death of retiree or annuitant; and

C. Responds to the reclamation so that it is received by the Disbursing Office within 60 days of the date on the reclamation.

320204. Calculating Limited Liability Amount

If a financial institution qualifies for limited liability, the amount which can be debited from the financial institution is the amount of the account balance at the time it first receives notice of death plus the lesser of the outstanding balance due (after any collection from the withdrawers) or the 45-day amount. The 45-day amount is the dollar amount of the post-death benefit payments received within 45 calendar days following the death. See the Department of the Treasury's Green Book for examples of calculating the limited liability amount.

3203 LIABILITY OF DISBURSING OFFICER

The accountability of the financial institution does not affect the liability of the disbursing officer for any amounts not recovered. The disbursing officer may be relieved of liability for amounts not recovered when the officer has shown that he or she did not know and could not have known of a retiree's or annuitant's death prior to making payments after the date of death.

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CHAPTER 32 – RECOVERY OF PAYMENTS MADE TO A FINANCIAL ORGANIZATION

3202 - LIABILITY OF FINANCIAL ORGANIZATION FOR DIRECT DEPOSIT PAYMENTS

31 CFR 210
Department of Treasury
Green Book, May 2013 Revision

3203 - LIABILITY OF THE DISBURSING OFFICER

59 Comp Gen 597

VOLUME 7B, CHAPTER 37: "RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN - ANNUITIES"

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371601.A.	Updated hyperlink for 31 Code of Federal Regulations 211.1.	Update

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CHAPTER 37

RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN – ANNUITIES

3701 GENERAL

370101. Provisions

An annuity payable under the Retired Serviceman's Family Protection Plan (RSFPP) is not assignable or subject to execution, levy, attachment, or garnishment, except for child support or alimony, or to collect a debt caused by an overpayment described in section 3709. A debt to the United States or its instrumentalities incurred by the annuitant may be offset from the annuity. The annuity may be paid to a trustee through bankruptcy court proceedings.

370102. Income Exceptions

Annuities payable are in addition to any pension or other payment to which the beneficiaries may now or later be entitled by law, and may not be considered as income under any law administered by the Department of Veterans Affairs (VA), except when the annuitant is entitled to Dependency and Indemnity Compensation (DIC) as a parent of a veteran.

370103. Additional Annuity Information

For additional information affecting annuity payments, see Table 37-1.

370104. Additional Settlement Information

For additional information concerning the settlement of arrears of annuities, see Chapter 31.

3702 EFFECTIVE DATE OF ANNUITY

370201. Annuity Accrual

Each annuity payable normally accrues as of the first day of the month in which the member dies. If the Secretary concerned makes a determination that a participating member is presumed dead, then the annuity accrues from the first day of the month in which retired or retainer pay was suspended on the basis of the member's missing status. When a member elects coverage for spouse and children (Option 3), an annuity is payable to eligible children on the first day of the month in which the widow or widower becomes an ineligible annuitant. For the child who is at least age 18 and attending a recognized educational institution (see subparagraph 371501.C for more information), the annuity accrues:

A. As of the first day of the month in which the retired member dies, if the eligible child's 18th birthday occurs in the same or a preceding month; or

B. As of the first day of the month in which the child's 18th birthday occurs, if the retired member died in the preceding month; or

C. As of the first day of the month in which the child becomes or again becomes eligible, if that child's 18th birthday and the retired member's death occurred in a preceding month or months.

370202. Application

The first payment of the annuity cannot be made until a completed application is received. If a properly completed application is received, then the first payment must be made not later than the 15th of the month after the month in which the retired member dies, nor later than the 15th of the month after the month in which the Secretary of the Military Department concerned (or designee) has made a determination that the member is presumed dead. Payments are made in equal monthly installments thereafter as long as entitlement exists.

370203. Annuitant Eligibility

No annuity accrues or is paid for the month in which all annuitants lose eligibility.

370204. Special Circumstance

If a member retires and dies during the same month, then the annuity is payable for the full month.

3703 ANNUITY PAYMENTS

Upon official notification of death or Secretarial determination that a participating member is presumed dead, annuity accounts are established in accordance with the provisions of the election made by or on behalf of the member. A completed Verification for Survivor Annuity (***Department of Defense Form 2656-7***) validates the annuity account. Payment of annuity is barred when the member is retired for disability before completing 19 years of service (18 years of service before October 1968) if beneficiaries are eligible for VA DIC. Payments for a representative payee of an RSFPP annuitant follow the same requirements as payment under the Survivor Benefit Plan. See Chapter 46, subparagraph 460103.B for more information.

3704 CLAIMS FOR ANNUITY

The claim for annuity payments must be properly completed and signed by the person or persons authorized to receive annuity.

370401. Power of Attorney

An individual holding a valid power of attorney may complete (including the signature element) and file the annuity application form on behalf of an annuitant provided payments are to be made directly to the annuitant and, further, that the annuitant has not been determined to be

incompetent of managing his or her own affairs by a state court, physician, or psychologist. (For additional information on annuity payments, see Chapter 46, paragraph 460103.) An annuitant whose application is signed with an "X" must be witnessed (by two disinterested persons) or notarized or countersigned by the person holding the power of attorney. A copy of the power of attorney and explanation why the annuitant required assistance must be submitted with the annuity application.

370402. Court Order

A claim signed by a legal representative must be accompanied by a copy of the court order of appointment.

370403. Custodianship

A claim signed by the custodian of a minor child or children must be accompanied by a document evidencing custodianship.

370404. Doubtful Claim

A doubtful claim must be submitted to the Defense Office of Hearings and Appeals for certification before payment.

370405. Limitation

When a claim is not received within 6 years, the case is closed.

3705 ANNUITY AMOUNTS

370501. Single Option

A. Retirements Before November 1, 1968. The monthly annuity payable, as elected by the retiree, is one-eighth, one-quarter, or one-half of the retiree's reduced retired pay as computed on the date of retirement or effective date of election, whichever is later.

B. Retirements From November 1, 1968 Through September 20, 1972. The monthly annuity payable as elected by the retiree is:

1. One-eighth, one-quarter, or one-half of the retiree's gross retired pay on date of retirement; or

2. A specific dollar amount of not more than 50 percent nor less than 12-1/2 percent of the retiree's gross retired pay on date of retirement, but in no case less than $25.

370502. Multiple Options

A. Retirements Before November 1, 1968. The monthly annuity payable for each option, as elected by the retiree, is one-eighth or one-quarter of the retiree's total reduced retired pay as computed on the date of retirement or effective date of election, whichever is later. The combined amount of annuities cannot exceed 50 percent of the retiree's total reduced retired pay.

B. Retirements From November 1, 1968 Through September 20, 1972. The monthly annuity payable for each option, as elected by the retiree, is:

1. One-eighth or one-quarter of the retiree's gross retired pay on date of retirement; or

2. A specific dollar amount of not more than 25 percent nor less than 12-1/2 percent of the retiree's gross retired pay on date of retirement, but in no case less than $25.

370503. Rounding

All monthly annuities to which a survivor becomes entitled on or after October 1, 1983, if not a multiple of $1, is rounded to the next lower multiple of $1. Annuities to which survivors were entitled on September 30, 1983 were not rounded until there was an adjustment made in accordance with ***10 United States Code 1401a***; then, and with each subsequent adjustment, the amount as adjusted, if not a multiple of $1, is rounded to the next lower multiple of $1. All subsequent adjustments are based on the rounded amount.

3706 PAYMENTS TO WIDOW OR WIDOWER

For unique conditions affecting entitlement of annuity payments to widow or widower, see Table 37-2 for decisions of the Comptroller General.

3707 PAYMENT TO CHILDREN

370701. Whom Payable

Annuities for a minor child or children are paid to the legal guardian or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child or children as the custodian, or to a representative payee of the child or children.

370702. Majority Age

Annuities may be paid directly to the child when the law governing the state of residence stipulates the child to be majority age. The child then is considered an adult for annuity payment purposes, and a custodian or legal fiduciary is not required. See Appendix H for majority age.

370703. Equal Shares

The annuity is payable in equal shares to or in behalf of all eligible children. If there are no other eligible children, then the annuity entitlement terminates when the youngest child becomes an ineligible annuitant.

370704. Unique Conditions

For unique conditions affecting entitlement and payment of annuities for a child or children, see Table 37-3 for decisions of the Comptroller General.

3708 COST-OF-LIVING ADJUSTMENT

370801. Annuities Payable on or After September 30, 1978

Annuities payable on September 30, 1978 to a spouse or child of a member who died on or before March 20, 1974 were increased by 66.1 percent, effective October 1, 1978. The 66.1 percent increase was the percentage change in retired and retainer pay authorized by ***10 U.S.C. 1401a*** from September 21, 1972 to September 30, 1978.

370802. Rounding

Whenever retired pay is increased through a cost-of-living adjustment, each annuity payable on the day before the effective date of that increase to a spouse or child, or to a member who dies on or before March 20, 1974, is increased at the same time by the same percentage. Beginning October 1, 1983, after each cost-of-living adjustment, the annuity as adjusted, if not a multiple of $1, is rounded to the next lower multiple of $1. All subsequent adjustments are based on the rounded amount.

3709 CAUSES OF OVERPAYMENTS

Overpayments in annuity payments may be caused by one or more of the following situations:

370901. Notification

Failure of the annuitant, custodian, or guardian to notify the Secretary of the Military Department concerned (or designee) of:

A. Remarriage of the annuitant, before age 60 or death; or

B. Youngest child reaching age 18; or

C. Marriage or death of a child annuitant; or

D. Recovery of an incapacitated child, or

E. Termination of student status; or

F. Erroneous computation; or

G. Correction of member's military records.

370902. Concurrent Payment

Concurrent payment of RSFPP annuity and DIC if the RSFPP was payable based on the service of a member who retired for disability before completing 18 years of service after October 5, 1961, or before completing 19 years of service after November 1, 1968.

370903. Presumption of Death

A secretarial determination that a member is alive after the Secretary of the Military Department concerned (or designee) previously determined that the member was presumed dead. The member is liable for any indebtedness created where the annuity payments were made based on the presumption of such member's death. The member's indebtedness cannot be considered for waiver under ***10 U.S.C. 2774*** or ***10 U.S.C. 1442***. If the member dies before those payments are fully recovered, then the annuitant may be liable for the indebtedness if the annuitant was the recipient of the annuity payments made under the presumption of death. (See Chapter 28, Table 28-1**,** for collection of indebtedness from retired or retainer pay.)

3710 RECOVERY OF OVERPAYMENTS

Upon discovery of an overpayment, start recovery action immediately. Advise the annuitant of the debt and the method in which the overpayment is being, or may be, recovered.

3711 METHOD OF RECOVERY

The debt resulting from an annuity overpayment shall be liquidated by one of the following methods:

371101. Direct Remittance

Send a direct remittance to the Defense Finance and Accounting Service (DFAS), Cleveland Center.

371102. Future Payment Amounts

Reduction by the DFAS-Cleveland Center of later RSFPP annuity payments, or withholding of future annuity payments until debt has been liquidated.

3712 WAIVER OF INDEBTEDNESS

When applicable, the DFAS-Cleveland Center advises the annuitant of the right to request a waiver of indebtedness.

371201. Overpayment Recovery

Recovery of an overpayment of the RSFPP annuity is not required if, in the judgment of the DFAS Director or the Director's designee, there was no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purpose of the plan or against equity and good conscience. Proof of hardship is not required if the waiver otherwise is in order. Suspension of collection action may be authorized on receipt of a waiver request. Refund of an amount withheld before receipt of a request for waiver is not authorized. When a waiver is granted, refund amounts collected after receipt of the waiver request.

371202. Failure to Withhold

Failure to withhold the cost of coverage from retired pay of a member cannot be considered an overpayment of annuity to a designated beneficiary to authorize waiver of recovery of the overpayment.

371203. Correction of Records

RSFPP annuitants who obtain a correction of records for entitlement to additional survivorship annuity under a second election may not retain the benefits of the original election. A correction made under ***10 U.S.C. 1552***, except when procured by fraud, is final and conclusive on all officers of the United States. Recovery of overpayments that occur in these instances may not be waived under ***10 U.S.C. 1442***. Repayment may be made over a reasonable period of time as determined by the retired pay activity.

3713 TERMINATIONS

371301. Time of Termination

Entitlement to the RSFPP annuity terminates as of the end of the month that precedes the month in which eligibility ceases.

371302. Reasons for Termination

Terminate RSFPP annuity upon:

A. Death of Widow or Widower. Terminate payments the last day of the month that precedes the month in which widow or widower dies. If children are involved, then see section 3714 for further information.

B. Remarriage of Widow or Widower Before Age 60. Terminate payments the last day of the month that precedes the month in which widow or widower, younger than age 60, remarries. If children are involved, then see paragraph 371402 for further information.

C. Loss of Eligibility by Child Annuitant. Reasons for loss are:

1. Youngest child reaching age 18 and not incapable of self-support (applicable to children of members who retired before November 1, 1968).

2. Youngest child reaching age 18 and not pursuing a full-time course of study nor incapable of self-support (applicable to children of members retiring on or after November 1, 1968).

3. Youngest child who is pursuing full-time course of study, reaching age 23 and not incapable of self-support (applicable to children of members who retired on or after November 1, 1968).

4. Marriage or death of child annuitant.

5. Recovery of an incapacitated child over age 18. Annuity may be suspended if the annuitant becomes independently capable of earning amounts sufficient for his or her own particular personal needs through substantial and sustainable gainful employment. The annuitant will receive advance written notice from DFAS prior to suspension. The annuitant will be given an opportunity to submit rebutting evidence. The annuity may be reinstated (see subparagraph 371402.B).

6. Termination of student status of a child over age 18 and under age 23 (applicable only to retirees who retired on or after November 1, 1968).

7. Reinstatement to widow or widower of annuity previously terminated.

D. Secretarial Determination. Terminate payments the last day of the month preceding the month in which the Secretary of the Military Department concerned (or designee) determines that a participating member previously presumed to be dead is now alive.

371303. Due and Unpaid Annuity

If, upon death of the annuitant, an amount remains payable to the annuitant but is unpaid because the annuity checks were not negotiated or because payments had not been established, then the account is settled in accordance with Chapter 31. There is no designated beneficiary for settlement of arrears of an annuity.

3714 REINSTATEMENTS

371401. Remarriage Before Age 60

The annuity is not reinstated.

371402. Reinstatement on Behalf of Children

A. If an annuity was terminated because of the death or remarriage of the widow or widower before age 60, and the member's election also included coverage for children, then reestablish the full annuity in equal shares in favor of the eligible children (see section 3707). The effective date is the first day of the month in which the death or remarriage of the widow or widower occurred.

B. An annuity to an incapacitated child over 18 years of age may be reinstated upon either a recurrence of the original disability that rendered the annuitant incapable of self-support or upon receipt of evidence from the annuitant that, although engaged in substantial and sustainable gainful employment, wages are not sufficient to cover his or her particular needs.

371403. Annulment

A. Annulment of a "Void" Marriage:

1. The annuity may not be reinstated for any period earlier than the date of separation after the discovery that the marriage was void.

2. The annuity may not be reinstated for any period in which annuity payments were made on behalf of children under subparagraph 371403.A.3. When notice is received that the widow or widower's remarriage was void, payment to the children under subparagraph 371403.A.3 is suspended pending resolution of the issues involved.

3. In the absence of a judicial decree terminating the marriage as void, the case must be sent to the Defense Office of Hearings and Appeals for decision.

B. Annulment of a "Voidable" Marriage. The annuity may not be reinstated when a voidable marriage is annulled.

371404. Reinstatement After Age 60 Remarriage

If the annuity was terminated because of remarriage, and the widow or widower was 60 years of age or older, then the annuity may be reinstated not earlier than October 1, 1978. The annuity will be increased by cost-of-living adjustments, if appropriate, in accordance with paragraph 370802.

3715 ANNUAL CERTIFICATE OF ELIGIBILITY

371501. Purpose

The certificate validates the continued eligibility of annuitants, whether widow or widower, or eligible children. A widow or widower remains eligible, unless remarried before age 60. Children must meet prescribed criteria for continued eligibility;

A. Are unmarried and under 18 years of age.

B. Are more than 18 years of age, unmarried, and incapable of self-support because of being mentally defective or physically incapacitated, if that condition existed before they reached age 18.

C. Are at least 18 but under 23 years of age, and pursuing a full-time course of study or training (applies only to children of members who retired on or after November 1, 1968). This study may be in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution (a child is considered to be pursuing a full-time course of study or training during an interval between school years that does not exceed 150 days if the child demonstrated to the satisfaction of the Secretary of the Military Department concerned (or designee) that the child has a bona fide intention of resuming or continuing to pursue a full-time course of study or training in a recognized educational institution immediately after the interval). For the purpose of this subsection, a child who is at least 18 but less than 23 years of age, and is not pursuing a course of study or training, is considered an eligible beneficiary unless the member applies to the Secretary concerned to have such child considered not to be an eligible beneficiary.

D. Are legitimate or adopted children of the member, or step-children dependent upon the member for their support.

E. Are living on the date when the member is retired or becomes entitled to retired pay or, if the member was already retired or entitled to retired pay on November 1, 1953, living on that date.

F. Have been adopted by a third person before the parent-member's death. A child loses his or her eligibility for an annuity under the plan under this condition. However, the eligibility is not affected if the child is adopted by a third person after the parent-member’s death.

371502. Certification Frequency

A. Annually. A certificate of eligibility must be sent to the DFAS-Cleveland Center each year by either of the following:

1. Widow or Widower of Any Age. The form must be signed by the widow or widower. An electronic signature may be used provided access to the Defense Retiree

and Annuitant Pay System was gained using both the Social Security number and a personal identification number via MyPay. The legal fiduciary must sign the form or use the electronic signature if the annuitant is mentally incompetent. If the electronic signature is used, then it must include the annuitant's name.

2. Custodian or legal fiduciary for minor children.

B. Biennially. A medical certification must be submitted every 2 years for any incapacitated child over 18 years of age, unless a medical prognosis indicates that the disability is permanent.

C. Other. A student between ages of 18 and 23 must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided.

1. Payments to students continue during any interval between school years that does not exceed 150 days if the students have demonstrated to the satisfaction of the DFAS-Cleveland Center that they have a bona fide intention of starting, resuming, or continuing a full-time course of study or training in a recognized educational institution immediately after that interval.

2. An eligible student annuitant under the RSFPP who is properly enrolled in a recognized educational institution employing the usual quarter or semester system and who becomes ill or requires nonelective surgery during the school term retains the student status for the rest of that term.

371503. Failure to Return Certificate of Eligibility

The annuity payment is suspended if the annuitant, custodian, or legal fiduciary fails to furnish the certificate as required. Payments will be restarted only after receiving satisfactory proof of eligibility.

3716 REPORT OF EXISTENCE (ROE)

*371601. Purpose of ROE

The report of existence (ROE) fulfills the requirement for proof of existence for the following:

* A. Annuitants Who Receive Payments Through Foreign Postal Channels. Annuity checks mailed to an Army Post Office, Fleet Post Office, finance officer, or disbursing officer at an overseas address do not require submission of a report of existence. NOTE: Do not mail checks to an annuitant living in currency-blocked countries. See ***31 Code of Federal Regulations 211.1*** for specific conditions for withholding the delivery of checks to addresses outside the United States.

B. Mentally Incompetent Annuitants. Mentally incompetent annuitants who receive payments through a legal fiduciary.

C. Third Party Annuitants. Annuitants whose payments are sent to a third party, other than a financial institution for negotiation under a power of attorney.

371602. ROE Requirement

An ROE is required on a semi-annual basis for those annuitants that meet the criteria of paragraph 371601. Receipt of the certificate within the above prescribed timeframe verifies the annuitant's existence. Under no circumstances may the ROE be signed by other than the annuitant, custodian, or legal fiduciary; however, electronic signature as referenced in paragraph 371502 is authorized.

371603. Failure to Return ROE

The annuity payment is suspended if the annuitant, custodian, or legal fiduciary fails to return the ROE as required. Payments will be restarted only after receiving satisfactory proof of existence.

3717 FEDERAL INCOME TAX

Annuities paid under the RSFPP are taxable for Federal income tax purposes. Refunds for coverage premiums are taxable income to the annuitant. The refund of premiums may result from administrative error, corrections of record, late receipt of withdrawal request, or youngest child attaining age 18. See Chapter 46, Table 46-4, for exceptions on the taxability of the annuities.

3718 FEDERAL INCOME TAX WITHHOLDING (FITW)

371801. General Provisions

RSFPP annuity payments are subject to Federal income tax withholding (FITW). An annuitant has the right to elect no withholding. In the absence of such an election, or if the annuitant does not otherwise submit a withholding certificate, the DFAS Center will withhold on a "married-three exemptions" basis.

371802. Notice Requirements

The DFAS-Cleveland Center must advise the annuitant of the withholding requirement and the right to elect "no withholding" when making the first payment to the annuitant. Thereafter, the DFAS-Cleveland Center must send an annual notice to the annuitant of the right to elect no withholding, to revoke an election, or to submit a new withholding certificate. An annuitant also may submit a withholding certificate at any time to elect no withholding, revoke such election, or request any rate of withholding.

371803. One Time Payments

RSFPP annuity payments, other than the regular monthly entitlement, are subject to FITW at the rate of 20 percent unless the annuitant has elected no withholding.

3719 INCOME EXCLUSION

371901. Gross Income Exclusion

The annuitant may exclude from gross income:

A. Premiums for coverage deducted from retired pay before January 1, 1966 not previously excluded from the member's retired pay.

B. The amount of direct remittance for any RSFPP premiums not previously excluded from the member's retired pay.

371902. Special Exclusion

In addition, the annuitant may exclude from the RSFPP annuity gross income an amount not to exceed $5,000 if the member retired on disability and dies prior to attaining retirement age (Public Law 89-365).

3720 FEDERAL ESTATE TAX

The value of the annuity at the time of the member's death may be subject to Federal estate tax if any portion of the cost was paid by direct remittance, or if the value of the annuity exceeds the amount that may be excluded from the gross estate. DFAS may furnish the annuitant the current annuity amount and/or a summary of annual payments, and total cost paid (separate totals for deductions and direct remittances). For a computation of the amount of an annuity that will be subject to the tax, if any, the executor of the member's estate may write to:

Internal Revenue Service
Chief, Estate, and Gift Tax Branch
Attn: CC:IND:E
1111 Constitution Avenue, NW
Washington, D.C. 20224

3721 STATE TAXATION

Whether RSFPP annuities are subject to state inheritance or income tax and the method of calculating such tax depend upon the laws of the state concerned; however, the IRS Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) information is furnished to the appropriate state tax authority.

3722 FURTHER TAX INFORMATION

Survivors should be advised that further information concerning taxation of RSFPP annuities may be obtained from the District Director of Internal Revenue or the state tax authority (see Appendix J, of this volume for state tax reporting addresses).

Table 37-1. Comptroller General Decisions – Annuity Payments, General

COMPTROLLER GENERAL DECISIONS - ANNUITY PAYMENTS, GENERAL		
Decision Number		**Synopsis**
1	35 Comp Gen 12 41 Comp Gen 500	Unpaid Cost for Coverage. Any unpaid RSFPP cost at time of a retiree's death, including nonpayment of direct remittance or erroneous computation of cost, must be collected before payment of any annuities.
2	34 Comp Gen 664	Retired Pay Status Relinquished. Personnel who relinquish retired status (either voluntarily or involuntarily) are not permitted to pay RSFPP costs to entitle beneficiaries to annuities.
3	43 Comp Gen 125	Effective Date of Payment. Annuity payments are paid under provisions of the RSFPP law as amended effective Oct 4, 1961, even though the election was made on Oct 4, 1961, before the hour in which the President signed the bill which amended the law.
4	34 Comp Gen 151 38 Comp Gen 146	Annuity Payment Adjustments. Annuity payments must be adjusted on the basis of proper retired pay at the time the election became effective as though the member had actually been receiving such pay at that time. This applies to elections by members who elected while in a "saved pay" status, who later elected and received pay under the Career Compensation Act (CCA) retroactive to Oct 1, 1949.
5	MS Comp Gen B156862, June 30, 1965	Failure to Submit Valid Election Form. After a member's death a copy of the RSFPP election is found in his personal effects. If it is not attested or notarized, and neither the original nor duplicate is located, it cannot be established that the member made an election. On the basis of information available, no annuity is payable.
6	43 Comp Gen 418	Allocations of Annuity. The allocation of annuity payable under option 3 between the present spouse and the children of a former marriage applies to elections made before and after the October 4, 1961 RSFPP amendment. Public Law 90-485, August 13, 1968.
7	MS Comp Gen B-139217, June 29, 1959, August 12, 1960	Withholding Annuity to Satisfy Members Indebtedness. Annuity payments may be withheld to satisfy the member's indebtedness for overpayment of retired pay since the annuitant is under no obligation to the United States. However, the annuitant may voluntarily agree to repay the indebtedness by withholding from the annuity.
8	39 Comp Gen 481 MS Comp Gen B-141131, December 30, 1959	Valid Intent of Member to Elect Spouse and Child Coverage. Both the spouse and children are covered when it can be established that the member intended to cover the children listed on the election certificate even though the election was checked to show spouse only.
9	65 Comp Gen 621	Annuity Payments . Should not be made payable to an agent acting under power of attorney when the annuitant is mentally incompetent even if a state statute had preserved the validity of a power of attorney executed before the annuitant was declared to be incompetent.
10	66 Comp Gen 340	In the Absence of a Determination of Incompetence. Made by a state court, physician, or psychologist that an annuitant is incapable of managing his or her own affairs, payments may be made directly to the annuitant. An individual, in accordance with a valid power of attorney, may assist the annuitant in completing and filing the annuity application form. (65 Comp Gen 621, clarified).

Table 37-2. Comptroller General Decisions – Annuity Payments, Widow or Widower

COMPTROLLER GENERAL DECISIONS - ANNUITY PAYMENTS, WIDOW OR WIDOWER		
Decision Number		**Synopsis**
1	MS Comp Gen B-158906, June 7, 1966	Validity of Annuitant's Marriage to the Member. Evidence must be of record to establish that a former marriage was legally ended. No annuity payments are authorized to be paid until legal proceedings are instituted to determine the validity of the marriage.
2	44 Comp Gen 480	Foreign Divorce. The State of New York does not recognize a foreign divorce unless both parties appear personally or through authorized counsel in the country where the foreign divorce is obtained.
3	43 Comp Gen 567	Foreign Divorce. A member's marriage to a woman who had previously obtained an illegal foreign divorce is not valid for annuity payment purposes.
4	MS Comp Gen B-154387, July 16, 1964	Interlocutory Decree of Divorce. An interlocutory decree does not end a marriage. A foreign divorce in the interim period is not valid. The final divorce decree terminates the marriage.
5	42 Comp Gen 112	Divorce and Later Remarriage to Same Spouse. A spouse who divorces the member after retirement terminates eligibility for annuity. A later remarriage of the same people to each other does not reinstate eligibility to the annuity, even though deductions from pay are continued under terms of the member's election.
6	38 Comp Gen 208	Annuity Elections at Time of Correction of Records. A member is regarded as having been in a retired status on November 1, 1953, effective date of the RSFPP law, if after that date a Correction of Records retired the member retroactive to a date before November 1, 1953. A spouse whom the member married after November 1, 1953 is not entitled to annuity since he or she was not the spouse on November 1, 1953.

Table 37-3. Comptroller General Decisions – Annuity Payments, Child or Children

COMPTROLLER GENERAL DECISIONS - ANNUITY PAYMENTS, CHILD OR CHILDREN		
Decision Number		**Synopsis**
1	47 Comp Gen 270	Custodianship of Minor Child. Payment of RSFPP Annuity. May be made to a natural parent having care and custody of minor child or children, without the appointment of a legal guardian, even though such payments might eventually exceed the sum of $1,000.
2	35 Comp Gen 521	Custodianship of Minor Children. Payment. Can also be made to an adopting parent, as custodian of minor child since all rights and duties were acquired with the adoption.
3	47 Comp Gen 371	Child Physically Incapacitated. A chiropractor's statement attesting to a child's physical incapacity is sufficient to substantiate eligibility as a beneficiary under RSFPP.
4	48 Comp Gen 167	Ineligible Child. Child born May 1, 1950, became eligible for annuity benefits on May 1, 1968. Payment for month of April 1968 is proper.
5	MS Comp Gen, B-160876, April 18, 1967	Incapacitated Child. An incapacitated child does not have to meet that condition as of member's retirement date of Nov 1, 1953, if later (as required by DoDD 1332.17, section 102c) to qualify as an eligible RSFPP beneficiary. Also, proof of continued incapacitation of a child annuitant is required at least every 2 years after age 18.
6	MS Comp Gen B-158411, March 10, 1966	Mentally Incapacitated Child. Mentally incapacitated child who married and whose marriage was annulled is considered unmarried and an eligible contingent beneficiary.
7	44 Comp Gen 280	Unmarried Child. The term "unmarried child" is defined as not having a husband or wife at time of member's retirement, and without regard to the fact that the child may have been previously married
8	MS Comp Gen B-131677, June 3, 1957	Legitimate Child. Children born from illegal marriage (one spouse not legally divorced from prior marriage) may be considered legitimate children for RSFPP annuity payments.
9	MS Comp Gen B-132012, June 17, 1957	Clarification of Election Fraction. A member who elected option 2 with both 1/2 and 1/8 factors checked, who failed to clarify the fraction desired, and who later stated a wish not to participate in the plan, must be assumed to have elected the minimum of 1/8 rate.
10	36 Comp Gen 325	Adoption of Child. Child of deceased retired member receiving annuity under option 2 who is adopted after death of a retired member, is entitled to continue receiving the annuity. An adoption before death of retired member, or divorce from wife in which member elected option covering stepchild constitutes basis for terminating reduction of retired pay if option 4 included, and likewise voids entitlement to annuity upon later death of retiree.
11	35 Comp Gen 521	Amendatory Birth Certificate. Amendatory birth certificate along with statement on election form is normally sufficient to substantiate date of birth and claimed relationship of adopted child.
12	62 Comp Gen 193	Incapacitated Annuitant. Annuity payable to an incapacitated annuitant may not be suspended unless annuitant is capable of earning amounts sufficient for own particular personal needs through substantial and sustainable gainful employment. Advance written notice will be made prior to suspension and annuitant shall be given the opportunity to submit rebutting evidence.
13	62 Comp Gen 302	Incapacitated Annuitant - Reinstatement of Annuity - Payment to Third Parties. An annuity may be reinstated upon the recurrence of original disabling condition. Annuity payments to incapacitated adult can be made to third parties only if appointed as guardian by court or under valid power of attorney. Power of attorney executed by mentally incapacitated annuitant may be invalid, even in absence of formal adjudication of incompetence. If annuitant suffering from mental illness has not been adjudged incompetent, and is considered by psychiatrist to be competent to manage annuity properly for personal maintenance, annuity may be paid directly to annuitant. If annuity cannot be paid directly to annuitant or properly paid to third party, annuity should accrue to annuitant's account until annuitant recovers or until guardian is appointed by court.

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11 U.S.C. Chapter 13

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3702 – EFFECTIVE DATE OF ANNUITY

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370201.C	10 U.S.C. 1437
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370204	MS Comp Gen B-134298, November 27, 1957

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VOLUME 7B, CHAPTER 42 "SURVIVOR BENEFIT PLAN (SBP) – APPLICATION OF THE PLAN"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 August 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
420202	Included a note to clarify the base amount of members who selected a Career Status Bonus.	Add
420214	Added a statement to include members who selected a Career Status Bonus.	Add
Bibliography	Added citation.	Add

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CHAPTER 42

SURVIVOR BENEFIT PLAN (SBP) - APPLICATION OF THE PLAN

4201 PURPOSE

420101. Background

The Survivor Benefit Plan (SBP), established September 21, 1972, provides a survivor benefit program for military personnel in retirement to complement the survivor benefits under Social Security laws. This plan gives all retiring Uniformed Services retirees an opportunity to elect to have their retired pay reduced by a designated amount in order to provide their survivors an annuity payable after the retiree's death.

A. Under this plan, a member who retired before September 21, 1972 and who had previously elected to participate in the Retired Serviceman's Family Protection Plan (RSFPP), had the option to retain or cancel the RSFPP coverage when electing to participate in the SBP.

B. The plan provides without cost a minimum guarantee to a widow or widower of a member who died before March 21, 1974. For additional information see ***Chapter 46***. A surviving spouse of a member who died before November 1, 1953 is entitled to an annuity which may be in addition to the annuity payable under the minimum income annuity provisions.

420102. Additional Survivor Benefits

The plan includes survivor benefits for the surviving spouse, dependent child, or former spouse of a member who dies on active duty, or a Reserve Component annuity on behalf of a member who dies before notification of retirement eligibility, or during the 90-day period following notification of retirement eligibility if member had not made an election or, under certain circumstances, if the member dies in the line of duty during inactive duty training.

420103. Death Presumption Authority

The plan provides for annuity payments under a determination by the Secretary of the Military Department concerned (or designee) that a participating member is presumed dead.

*4202 SPECIALIZED TERMS

420201. Annuitant

The term "annuitant" means a person who is entitled for annuity payments under the plan.

420202. Base Amount

The money amount selected by the member, with the concurrence of the member's spouse if required, or the amount selected on behalf of a member by the Secretary of the Military Department concerned (or designee), on which the annuity is based. This amount may range from a $300 minimum up to full gross retired pay entitlement (Note: For a member who selected the Career Status Bonus, the amount is based on unreduced retired pay, not considering any reduction under ***10 U.S.C. 1409 (b) (2)***). Once selected, the base amount is adjusted consistent with cost-of-living increases in retired pay. If advancement or change from Temporary Disability Retired List (TDRL) to Permanent Disability Retired List (PDRL) occurs, the member's new base amount is the new full gross retired pay entitlement. A member may not designate different base amounts between the spouse and the children.

420203. Beneficiary

The term "beneficiary" means a spouse and/or child(ren) of the retiree; a former spouse or former spouse and children; a natural person with an insurable interest in the life of the retiree who is designated to receive coverage under the plan.

420204. Change in Coverage

The term "change in coverage" means an action taken because of a change in the member's family status which requires a change in beneficiaries.

420205. Change in Election

The term "change in election" means an authorized change in the type of beneficiary eligible for survivor coverage because of a change in the retiree's family status.

420206. Common-Law Marriage

A marriage as defined by pertinent state law

420207. Consideration for Contract

The total amount of premiums paid by the participant member for the type of SBP selected. Also see definition for cost of coverage in paragraph 420207.

420208. Cost of Coverage

The term "cost of coverage" means the cost for coverage under the plan paid by deductions from retired pay or by direct remittance when member is not receiving retired pay.

420209. Cost Refund

The term "cost refund" means the difference between cost paid by the member and the recalculated cost of the annuity after Dependency and Indemnity Compensation reduction.

420210. Date of Receipt

The day of receipt of an election or election change by the office administering payment of retired pay. The postmarked date of an election may be considered as date of receipt when the validity of such election might be prejudiced because of a limited time factor.

420211. Declination

The term "declination" means the result of a member with eligible beneficiaries who declines to elect any type of survivor coverage under this plan.

420212. Dependency and Indemnity Compensation Offset

The term "dependency and indemnity compensation offset" means the reduction of the SBP annuity due to compensation entitlement from the Department of Veterans Affairs to the widow or widower of a member who dies from a service-connected or comparable disability.

420213. Determination of Presumed Death

The determination by the Secretary of the Military Department concerned (or designee) that a participating member is presumed dead where the member's retired or retainer pay has been suspended or would have been suspended had the member been in receipt of pay and the member has been missing at least 30 days under circumstances which lead to a reasonable conclusion that the member is dead.

420214. Former Spouse

The term "former spouse" means the surviving former husband or wife of a person who is eligible to participate in the plan.

420215. Maximum Level

The full, gross retired pay used as a base amount for coverage. A member who elected to receive a Career Status Bonus shall, at the time of Program election, have the maximum base amount computed as if that member had not been subject to the Military Retirement Reform Act of 1986 (referred to as REDUX) under ***10 U.S.C. 1409 (b) (2)***.

420216. Minimum Income Widow

A person who on September 21, 1972 was, or during the period beginning on September 22, 1972 and ending on March 20, 1974 became, a widow of a person who was

entitled to retired or retainer pay when he died. This individual must have income below the threshold and meet the eligibility criteria in ***section 4615***.

420217. Missing Status

A member missing, missing in action, interned in a foreign country, captured, beleaguered, besieged by hostile force, or detained in a foreign country against his or her will.

420218. Natural Person With an Insurable Interest

The term "natural person with an insurable interest" means a person who has a reasonable and lawful expectation of pecuniary benefits from the continued life of the participating member. For further information see ***paragraph 440205***.

420219. Pre- and Post-September 21, 1972 Retiree

A Pre-September 21, 1972 retiree is a member who retired before September 21, 1972; a post-September 21, 1972 retiree is a member who retired on or after September 21, 1972.

420220. Plan

The term "plan" means the Survivor Benefit Plan or SBP.

420221. Recognized Educational Institute

The term "recognized educational institute" means the high school, trade school, technical or vocational institute, junior college, college, university, or comparable educational institution.

420222. Reduced Base Amount

The term "reduced base amount" means an amount less than the member's full gross retired pay, but not less than $300.

420223. Reduction Factor

A four-digit actuarial decimal used to compute the monthly cost for children.

420224. Reserve Component Annuity

An annuity provided by virtue of eligibility of a person who would be eligible for Reserve-Component retired pay but for the fact that they are under 60 years of age or is a member of a Reserve Component and dies in the line of duty during inactive duty training.

420225. Retired Pay

The term includes retainer pay.

420226. Social Security Offset

The term "Social Security offset" means a reduction from the SBP annuity due to widow's or widower's Social Security entitlements. Social Security offset was eliminated effective April 1, 2008.

420227. Standard Annuity

The annuity provided by virtue of eligibility of persons entitled to retired pay.

420228. Supplemental Survivor Benefit Plan (SSBP)

A supplemental annuity provided to a spouse or former spouse. SSBP was repealed, effective April 1, 2008.

420229. Surviving Spouse

The term "surviving spouse" means the widow or widower of a deceased member.

420230. Threshold

This term applies to one of the alternative cost formulas. In the cost formula of 2.5 percent of the first $XXX.XX, plus 10 percent of the remainder of the base amount, the portion of the base amount upon which the member is charged 2.5 percent cost is the threshold. The threshold is indexed.

4203 MEMBERS ELIGIBLE TO PARTICIPATE IN THE PLAN

420301. Standard Annuity Participants

A member entitled to retired pay who, upon retiring from active service or active duty, has a spouse, former spouse, or dependent child.

420302. Reserve Component Annuity Participants

A Reserve Component (RC) member who has a spouse, former spouse, or dependent child upon notification of eligibility to receive retired pay, or in the case of a member who elected not to participate in RCSBP, when the member becomes entitled to receive retired pay.

420303. Exceptions

A member otherwise eligible according to paragraph 420301 or 420302, except that:

A. A member who does not have a spouse or dependent child and did not elect coverage for a former spouse (if applicable) at the time of eligibility for the program may elect coverage for a person who has an insurable interest in the member.

B. A member who does not have a spouse or dependent child at the time of eligibility for the program may elect SBP or RCSBP coverage upon notification to the Secretary concerned within the 1-year period after acquiring a spouse or dependent child. An election shall be effective as of the first day of the first month following the month in which the Secretary concerned receives the election.

420304. A Member on the Temporary Disability Retired List (TDRL)

Eligibility ends when the member is removed from TDRL without further entitlement to retired pay. The coverage continues when the member is transferred from TDRL to PDRL. If the member's retired pay is reduced to an amount less than the base amount originally elected, then the full retired pay to which the member is entitled thereafter is considered the base amount.

420305. A Mentally Incompetent Member

The plan applies to a mentally incompetent member regardless of date of retirement. For members retiring after September 20, 1972, the Secretary concerned, upon request, may act on behalf of the member and elect other than the maximum automatic coverage. In the absence of an eligible spouse or children, the Secretary concerned may, upon request, elect coverage for a natural person with an insurable interest. The person applying to have an election made is not given preference in designation as the beneficiary.

420306. A Member Qualifying During an Open Enrollment Period

The Plan applies to any member who qualifies during an open enrollment period according to the provisions established by law.

420307. A Retired Member After a Record Correction

A. A member whose military record is corrected to show retirement before September 21, 1972 after September 20, 1972 is not automatically covered under the plan. Coverage may be established upon request of the member if the election is received within 18 months from the date of notification of the correction action.

B. A member who retroactively becomes entitled to retired pay on a date after September 20, 1972, generally will be given automatic full coverage, unless the member elects reduced coverage or declines participation, with proper concurrence of the eligible spouse, if applicable.

BIBLIOGRAPHY

CHAPTER 42 - SURVIVOR BENEFIT PLAN (SBP) - APPLICATION OF THE PLAN

4201 PURPOSE

DoDI 1332.42, June 23, 2009
10 U.S.C. Chapter 1223
10 U.S.C. 1448-1452
DoDD 1332.27, June 26, 2003
53 Comp Gen 847, 971
MS Comp Gen B -179018, August 6, 1976

4202 SPECIALIZED TERMS

420202	10 U.S.C. 1448
	10 U.S.C. 1447 (6)(A)
	DoDI 1332.42, June 23, 2009
420203	10 U.S.C. 1450(a)
420208	10 U.S.C. 1450(e)
420212	Public Law 98-525, October 19, 1984
420214	10 U.S.C. 1447 (6)(A)
420223	10 U.S.C. 1447(13)
420226	10 U.S.C. 1447(12)
420229	Public Law 99-145, November 8, 1985
	Public Law 101-189, November 29, 1989
420230	26 U.S.C. 122(b)(2)

4203 MEMBERS ELIGIBLE TO PARTICIPATE IN THE PLAN

420301	Public Law 92-425, section 3(b), September 21, 1972
420302.C	10 U.S.C. 1448(a)(5)
420303	53 Comp Gen 832
420304	MPAC Item SBP-21
420305	10 U.S.C. 1448(c)
420306	10 U.S.C. 1449
	52 Comp Gen 973
420307.B	54 Comp Gen 116

VOLUME 7B, CHAPTER 43: "SURVIVOR BENEFIT PLAN - ELECTIONS AND ELECTION CHANGES"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 December 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter is being formatted to comply with current administrative instructions.	Update
430103	Clarifies the commencement date when a member elects a deferred annuity.	Add
430104.D	Clarifies the consequences of changing the Plan elections.	Add
4309 Previous Version	The data required by retiring military personnel moved to Volume 7B Appendix P.	Delete

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CHAPTER 43

SURVIVOR BENEFIT PLAN—ELECTIONS AND ELECTION CHANGES

4301 ELECTIONS IN GENERAL

430101. All Elections

All Plan elections must be in writing, signed, and properly witnessed, if required. All elections are irrevocable unless otherwise provided by law.

430102. Standard Survivor Benefit Plan (SBP) Elections

In the case of a member electing a standard SBP annuity, the member must make such election before retired pay becomes payable, or if there is no eligible beneficiary at that time, within 1 year of acquiring an eligible beneficiary.

*430103. Reserve Component SBP (RC-SBP) Elections

In the case of a member electing a Reserve Component annuity, the member must designate either an immediate or deferred annuity. The beneficiary of a Reserve Component member who elects an immediate annuity or who dies while eligible to make such an election shall have that annuity commence the day following the death of the member. In the case of a member electing a deferred annuity, the annuity shall commence either on the date the member would have turned 60 years old, or the day following the member's death, whichever is later.

*430104. Special Rules Concerning Elections

A. In the case of a member electing SBP or RC-SBP coverage for a spouse who was not married to the member at the time the member became eligible for retired pay, the surviving spouse must have been married to the member for at least 1 year immediately prior to the member's death or be the parent of issue by that marriage to be an eligible beneficiary.

B. A member who did not elect child coverage for a dependent child, either at the time of becoming eligible for retired pay (if applicable) or within 1 year of acquiring the first dependent child, may not elect child coverage for subsequently acquired children unless otherwise provided by law.

C. A member who elected insurable interest coverage under Chapter 42, paragraph 420303 may, upon death of such beneficiary, elect to cover a new beneficiary who is a natural person with an insurable interest in the member. Such an election must be made prior to the end of the 180-day period beginning on the date of the death of the previous beneficiary and requires the member to pay, if applicable, an additional amount equal to the difference in the amount of the reduction in the member's retired pay for the previous beneficiary and the reduction in retired pay that would have been made had the previous beneficiary not died and been a covered beneficiary through the date of the new election. Such amount shall be computed

as if the previous beneficiary had been the same number of years younger than the member (if any) as the new beneficiary.

D. In the case of a member who is already participating in the Plan and elects to change spouse coverage or spouse and child coverage to former spouse coverage or former spouse and child coverage, any such election terminates any previous coverage under the Plan.

4302 ELECTION OPTIONS

430201. Base Amount

A member who participates in SBP must elect a base amount of maximum coverage or reduced coverage. The base amount at any level is adjusted with each cost-of-living increase after retirement. The annuity coverage amount is 55 percent of the base amount elected. See section 4901.

430202. Beneficiaries

Coverage may be provided for:

A. Spouse and/or children;

B. Former spouse or former spouse and children; or

C. Natural person with an insurable interest (at maximum level of coverage only).

4303 ELECTION DATA

430301. Elections by the Member

Department of Defense (DD) ***DD Form 2656*** (Data for Payment of Retired Personnel), ***DD Form 2656-1*** (SBP Election Statement for Former Spouse Coverage), ***DD Form 2656-2*** (SBP Termination Request), ***DD Form 2656-6*** (SBP Election Change Certificate), when available, are recommended for use by the member. Elections in writing, other than a request for termination request, signed by the member, which contain all information necessary for establishing or declining coverage, are acceptable. Spousal concurrence of certain elections has been required since March 1, 1986.

A. Former Spouse Elections (Retiring Members). A member who is retiring and is electing former spouse coverage should complete the former spouse election on a ***DD Form 2656***. In addition to the former spouse election, the member must also provide a separate written statement (completed on a ***DD Form 2656-1***, when available), that is signed by the member and the former spouse certifying whether the former spouse election is pursuant to court order or a voluntary written agreement. Information concerning content of the separate written statement and the proper court order appears in paragraph 430503.

B. Change in Election Coverage Spouse to Former Spouse (Retired Members). Members who are already retired should complete changes from spouse coverage to former spouse coverage on a ***DD Form 2656-1***.

430302. Deemed Elections Requested By the Former Spouse

On deemed elections, requested by the former spouse or the former spouse's attorney, the request for the Secretary of the Military Department concerned to deem that an election has been made must be accompanied by a court order or a statement from the clerk of the court. Information concerning content of the request by the former spouse or the former spouse's attorney and the statement from the clerk of the court, where necessary, appears in subparagraph 430503.C.

430303. Election Data Requirements

The election data requirements are:

A. Identification. Enter the member's name, social security number, birth date, and date of retirement.

B. Base Amount. The election form must specify full coverage, in lieu of a dollar amount, when maximum coverage is selected. When a reduced base amount is chosen, the dollar amount must be specified on the election form. The reduced base amount must not be less than $300. When retired pay is less than $300, then the election form must indicate full coverage.

C. Beneficiary. Show the name, birth date, and social security number for each beneficiary named.

1. If coverage includes spouse, or former spouse, then the member must provide the date of marriage and divorce, as applicable.

2. When the beneficiary is a natural person with an insurable interest, the address and relationship must be shown. For the natural person with an insurable interest, the member must provide a signed statement to show proof of financial benefit if the person designated is a cousin or anyone more distantly related than cousin if such statement is requested.

3. If the beneficiary designation is for a former spouse, then, in addition to the former spouse election, the member must complete a ***DD 2656-1*** setting forth whether the election is being made pursuant to a written agreement previously entered into voluntarily by the member as a part of or incident to a proceeding of divorce, dissolution, or annulment and (if so), whether that voluntary written agreement has been incorporated in, ratified or approved by, a court order.

D. Signature. The member must sign and date the election. If the document is signed with an "X", then two impartial persons must witness the signature. NOTE: An election made on behalf of the member through a power of attorney is not valid. Such an election is not binding and is without force or effect of law.

E. Spousal Concurrence. Written spousal concurrence is required when the member elects to decline coverage or provide the spouse with less than the maximum SBP coverage available, to include electing child-only coverage, and when a member eligible for RC-SBP declines coverage or elects coverage that provides less than a maximum immediate spouse annuity. The signature of the spouse must be notarized. The requirement to have the spouse's signature notarized is not to suggest that the spouse has received additional counseling regarding the option being selected. It simply provides certification that the spouse signed the form.

1. If all requirements for an election needing the spouse's concurrence have not been satisfied prior to retirement, for whatever reason, then full spouse costs and coverage will be implemented, regardless of any request by the member to do otherwise. In such cases, when the member has requested any form of child coverage, full spouse and child coverage will be implemented. A spouse's concurrence with, or request for, an election other than that requested by the member, shall be disregarded. Any change in SBP election subsequent to retirement will be done through an administrative correction of records. The requirements for spousal concurrence do not affect any obligation or right of the member to provide coverage for a former spouse. If former spouse coverage is elected or deemed, then the spouse's concurrence is not required; however, the spouse will be notified of that election, as previously required when spouse coverage was declined.

2. The Secretary concerned may waive the requirement for spousal consent when the spouse's whereabouts cannot be determined or, when due to exceptional circumstances, requiring the member to seek the spouse's consent would otherwise be inappropriate. Exceptional circumstances, such as mental or physical incapacitation of the spouse, require appropriate documentation such as a physician's statement attesting to the spouse's incapacity. Exceptional circumstances will be evaluated on a case-by-case basis.

3. The Secretary concerned shall notify the member's current spouse when a member who is eligible to provide an annuity to that spouse elects former spouse or former spouse and dependent child coverage.

4. The Secretary concerned shall notify the affected beneficiary when a member elects to discontinue coverage for a former spouse or insurable interest beneficiary.

4304 IRREVOCABLE ELECTIONS, CORRECTIONS AND DISCONTINUED PARTICIPATION

430401. Election Exceptions

An election is irrevocable, except under the following circumstances:

A. A member retired March 1, 1986, or later, who elected and received less than maximum SBP coverage without the spouse's concurrence, will have such coverage changed to full coverage if the Secretary concerned later determines that the spouse's concurrence in such election was appropriate, but not obtained;

B. A member may voluntarily discontinue SBP participation during the 1-year period beginning on the second anniversary of the date of commencement of retired pay under paragraph 430701;

C. The Secretary concerned may revoke an election when necessary to correct an administrative error. Revocation or correction based on administrative error is a Secretarial prerogative and, except when procured by fraud, is final and conclusive on all officers of the United States;

D. A member may voluntarily discontinue participation as a totally disabled member under paragraph 430703;

E. A member may voluntarily terminate SBP coverage for a natural person with an insurable interest (not a former spouse) under paragraph 430702, or

F. A mentally incapacitated member who is later determined to be mentally competent may revoke or change the SBP election within 180 days after such determination of judgment.

430402. Election Changes

The SBP election may be changed as explained in sections 4306 and 4307.

4305 ELECTION COVERAGE

430501. Spouse and/or Children

A. A member may elect coverage at the maximum level or at a reduced amount with spouse's concurrence, if required, for:

1. An eligible spouse only;

2. An eligible spouse and dependent children; or

3. Dependent children only.

B. A member at retirement is automatically covered at the maximum level for spouse and/or dependent children, unless, the member elects not to participate or elects to participate at a reduced level before the first day of eligibility to retired pay with the concurrence of the member's spouse, if required. See subparagraph 430501.D.

C. A member with an eligible spouse and dependent children on the date of retirement who:

1. Declines coverage is prohibited from electing into the Plan, except under section 4308; or

2. Refuses coverage for an eligible spouse, and chooses to elect coverage for children only, is prohibited from electing spouse coverage at a later date, except under section 4308; or

3. Refuses coverage for his or her dependent children, and elects coverage for spouse only, is barred from electing child coverage at a later date.

D. A married member who is eligible to provide SBP, may not elect without the concurrence of his or her spouse; to decline participation in SBP, to provide an annuity for the member's spouse at less than maximum level, or to provide an annuity for a dependent child, but not for a spouse unless the member establishes to the satisfaction of the Secretary concerned that:

1. The spouse's whereabouts cannot be determined; or

2. Due to exceptional circumstances, a requirement that the member seek the spouse's consent would otherwise be inappropriate.

E. A member with dependent children, who was unmarried on the date of retirement, may elect spouse coverage upon subsequent marriage regardless of whether coverage was elected for his or her dependent children. The election must be received by the Secretary concerned within 1 year of the marriage date.

F. A member with an eligible spouse who did not have dependent children on date of retirement later may elect coverage for dependent children. The election must be received by the Secretary concerned within 1 year of the date of acquiring a dependent child or children.

G. If a member elects to provide an SBP annuity for a former spouse or a former spouse and child and the member has remarried, then the member's spouse shall be notified of that election. The member may make this election without spousal concurrence.

430502. Natural Person with Insurable Interest

An election for a natural person with an insurable interest may be made only when the member is not married and does not have any dependent children upon becoming eligible to participate. The Secretary concerned must receive the election before the first day of eligibility for retired pay. A member must elect full coverage when electing for a natural person with an insurable interest. If the member is retired for reasons of disability under ***Chapter 61 of Title10, United States Code*** (U.S.C.), then refer to paragraph 430703.

430503. Former Spouse or Former Spouse and Children

When a member elects former spouse coverage, the member and the former spouse must complete an election statement indicating whether the election is being made pursuant to the requirements of a court order or by a voluntary written agreement. If the member entered into a voluntary written agreement as a part of, or incident to, a proceeding of divorce, dissolution or annulment, then the member must indicate on the written statement whether the agreement has been incorporated in, ratified or approved by, a court order. If the member has a spouse or child, then a former spouse election prevents an annuity to that spouse or child (other than the child beneficiary under an election for a former spouse and child). If there is more than one former spouse, then the member shall designate which former spouse is to receive the annuity:

A. Upon Retirement (Retiring Members). A member, who has a former spouse and dependent child when becoming eligible to participate, may elect former spouse or former spouse and child coverage, provided the child resulted from the member's marriage to that former spouse. If the former spouse is the member's former spouse at the time the member becomes eligible to participate in SBP or RC-SBP, an election for former spouse must take place at or before the member's retirement. If a member has a former spouse upon becoming eligible to participate, but is not required by a court order or court-approved agreement to provide former spouse coverage, any subsequent court order that requires former spouse coverage will not be honored.

B. Following Retirement (Retired Members). A member with spouse or spouse and child coverage may, within 1 year of date of the decree of divorce, dissolution, or annulment, whichever is later, change that election to provide an annuity to a former spouse or to a former spouse and child. If a member elects coverage for a former spouse who the member acquired after becoming eligible for retired pay, then the member and former spouse must have been married at least 1 year or the former spouse must be the parent of a child or children born of that marriage in order for the former spouse to be an eligible beneficiary. For provisions regarding the effective date of former spouse coverage, see subparagraph 430503.D.

C. Deemed Elections. Deemed elections are applicable in cases where a member enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to elect to provide an SBP annuity to a former spouse, and such agreement has been incorporated in, or ratified or approved by, a court order, or has been filed with the court of appropriate jurisdiction in accordance with applicable State law, or in cases where the member is required by a court order to make a former spouse election. If such member then fails or refuses to make such election, then the member shall be deemed to have made such election if the Secretary of the Military Department concerned receives a completed ***DD Form 2656-10*** (SBP Request For Deemed Election) from a former spouse or the former spouse's attorney on behalf of the former spouse. The ***DD Form 2656-10*** must be accompanied by a copy of the pertinent court order or agreement referring to the SBP coverage. (See subparagraph 430503.C.1).

1. The former spouse will provide a copy of the court order, regular on its face, which requires such election, or incorporates, ratifies, or approves the written agreement of the member; a statement from the clerk of the court (or other appropriate official)

that such agreement has been filed with the court in accordance with applicable state law; or, for a deemed SBP election only, a copy of the court order which requires the SBP election. A court order which requires the member to elect (or to enter into an agreement to elect) SBP for a former spouse or former spouse and child must be issued on or after November 14, 1986. If the member was ordered by a court to elect former spouse coverage before November 14, 1986, then a second court order, issued on or after November 14, 1986, enforcing the original order which requires a former spouse election, constitutes a modification of the previous order and establishes a new 1-year period during which a request for a deemed election may be filed.

2. The request from the former spouse must be received by the Secretary concerned within 1 year of the date of the court order or filing involved. If an election of former spouse coverage was agreed to or ordered by an earlier court order, then a subsequent order or modification that merely restates the previous provision and imposes no new obligation on the member does not begin a new 1-year period. A subsequent court order holding a member in contempt of court for failing to fulfill the prior agreement is not the type of court order that can be used to begin a new 1-year period to deem an election.

3. No election may be deemed to have been made which could never have been made by the member concerned.

4. If a member dies before making an election, then a former spouse's request, which is otherwise qualified, shall be honored even if the date of the request is after the date of the member's death.

5. If a member has more than one former spouse, then the first request for a deemed election received with complete documentation shall be the one honored.

D. Effective Date of Elections. For former spouse elections made under the provisions of paragraphs 430503.B and 430503.C, the following rules apply:

1. If the member is not required to make a former spouse election by a court order or filing, then the member's election of former spouse coverage is effective as of the first day of the first month following the month in which the election is received.

2. If a court order or filing dated on or after October 17, 1998, requires or provides for a member to make a former spouse election, then the effective date of former spouse coverage is the first day of the first month which begins after the date of that court order or filing, regardless of whether the coverage is the result of the member's election or of a deemed election request by the former spouse.

3. If a court order or filing dated prior to October 17, 1998, required or provided for a member to make a former spouse election, then the effective date of a deemed election is the first day of the first month after the date of that court order or filing. If the member made a former spouse election within the required 1-year period, then the effective date of the former spouse coverage will be the first day of the first month following the month in which the election is received.

430504. Federal Civil Service Retiree

A. A member with SBP coverage who: (1) retires under the civil service retirement program; (2) waives military retired pay to combine civilian and military service credits; and (3) elects survivor coverage, at any level, under the civil service retirement, has SBP coverage suspended while the waiver is in effect. If the waiver is terminated for any reason, then SBP coverage resumes concurrent with the resumption of retired pay. The type of coverage and level of participation, as adjusted by any changes in retired pay during the period of waiver, is as first elected. If the retired service member dies while the waiver of military retired pay is in effect, then no SBP annuity becomes due and payable to either the surviving spouse and/or children.

B. An election in SBP with concurrent cancellation of previous Retired Servicemen Family Protection Plan (RSFPP) coverage is without force or effect if retired pay previously was waived for civilian retirement and survivor coverage from the civilian annuity was elected.

C. A member who elects SBP coverage, and who does not waive military retired pay for civil service retirement, may have survivor coverage under both retirement plans.

D. Provisions in subparagraphs 430504.A do not apply to a member who retired under ***10 U.S.C. 12731*** or who retired due to a combat-incurred disability as determined by the service.

E. The survivor of a federal civil service employee who was awarded military retired pay based on any period of military service and whose death occurs before separation from civil service, shall receive a survivor annuity computed using military service. The survivor annuity from civil service shall be reduced by any military survivor benefits payable. The survivor may elect not to be covered by this provision, which automatically uses military service credit in computing the federal survivor annuity.

F. Except for participation in federal service survivor annuity programs, SBP coverage does not terminate when a member participates in other survivor benefit plans administered by the United States Government such as under the Foreign Service or Federal Judges Retirement systems.

4306 CHANGES IN ELECTION AND COVERAGE

430601. Later-Acquired Spouse and/or Child

A member who acquires a new spouse and/or child after retirement must make an election within 1 year of the event with the exception that there is no time restriction on the election period for a change under subparagraph 430601.B.5.

A. A member who is participating with spouse or spouse and child coverage and who does not have an eligible spouse beneficiary may, upon remarriage: resume coverage, increase the level of coverage up to and including full retired pay, or elect not to have spouse

coverage resumed. Unless a member elects not to cover the new spouse within 1 year after the marriage, spouse coverage automatically resumes at the first anniversary of the marriage.

1. The member may not add child coverage by virtue of this remarriage alone if child coverage was previously bypassed.

2. The level of SBP coverage may not be reduced nor may child coverage be eliminated.

3. SBP elections become effective when the new spouse becomes an eligible beneficiary, and any increase in premium, plus interest, has been paid. When the level of SBP coverage is increased, the member must pay the difference between the present premium and the premium that would have been incurred had the higher level of coverage been elected originally, plus interest. Interest is compounded monthly using a factor equal to the 12th root of one plus the current annual interest rate used by the Department of Defense (DoD) Board of Actuaries to calculate the retirement accrual costs. Interest is to be compounded monthly on the accumulated difference existing prior to any computation month. If payment of cost plus interest is not completed before the spouse becomes an eligible beneficiary, then the election becomes null and void and a refund of cost and interest and reinstatement of original election coverage occurs. Cost plus interest will be paid to member's estate should the member die before refund is completed.

4. If a member has spouse or spouse and child coverage and elects not to resume SBP participation for the spouse, then the spouse must be notified. An election to terminate spouse coverage is irrevocable. If the member elects to increase the level of spouse coverage to an amount less than full retired pay, then the spouse must be notified.

B. If, on date of retirement the member;

1. Has no eligible beneficiaries and declines to participate; then the declination does not prohibit the later election for spouse and/or children; or

2. Has no eligible spouse and elected for children only, then he or she may, within 1 year after marriage or remarriage, include the spouse with coverage previously elected for the children; or

3. Has no eligible children and elected for spouse only, then he or she may, within 1 year of acquisition of children, include the children with coverage previously elected for the spouse; or

4. Has no eligible spouse and declines coverage for an eligible child, then he or she may, within 1 year of the acquisition of a spouse, elect for that spouse; or

5. Has elected coverage for a former spouse or former spouse and children, or has elected coverage for a natural person with an insurable interest, then the member may later change the election to spouse and/or children, if not otherwise prohibited see paragraph

430602. The member is not required to change the election to spouse and/or children; however, if such a change is made, then it permanently terminates the eligibility of the former spouse or the natural person with insurable interest. It is not necessary that maximum level coverage be elected for the spouse and/or children. See subparagraph 430602.B and paragraph 430603, for additional information concerning changes in former spouse coverage.

430602. Change From Spouse or Spouse and Children

A member who elected spouse or spouse and child coverage may terminate that election for that spouse or spouse and child and provide an SBP annuity for a former spouse or former spouse and child, provided the child resulted from the member's marriage to that former spouse. If the member is married when the former spouse election is made, then that spouse must be notified (See subparagraph 430501.G). A former spouse may request that an election be deemed by the Secretary of the Military Department concerned (or designee).

A. Notification

The Secretary concerned shall notify the former spouse of any changes in the former spouse election.

B. Changes to a Former Spouse Election

1. If a member was required to elect former spouse coverage by a court order, incident to a proceeding of divorce, dissolution, or annulment, then the member may change to spouse or child coverage if the member furnishes, to the Secretary of the Military Department concerned (or designee) a certified copy of a court order that permits such a change. The court order, regular on its face, must modify the provisions of all previous court orders relating to the former spouse election so that the member is permitted to change the election. The member must certify to the Secretary concerned that the court order is valid and in effect. These same restrictions apply to the member who elected former spouse coverage pursuant to a written agreement that was incorporated in, or ratified or approved by, a court order.

2. In the case of a written agreement that has not been incorporated or ratified or approved by a court order, the member shall furnish, to the Secretary concerned, a statement (in a format prescribed by that Secretary), signed by the member and the former spouse that evidences the former spouse's agreement to an election change. The member must certify that the statement is current and in effect.

430603. Change to Former Spouse Coverage Under Insurable Interest

A member was allowed to change an election for former spouse coverage under the insurable interest category to former spouse coverage under the spouse category during the period November 8, 1985, through November 7, 1986. A member also could add child coverage to former spouse coverage provided the child was the result of the member's marriage to that former spouse and if the member is providing coverage for the former spouse under the spouse category. These election changes apply to elections effective before March 1, 1986.

430604. Changed Retirement Eligibility

If a member elects the RC-SBP coverage and subsequently becomes eligible for retirement under another law, thereby losing eligibility under ***10 U.S.C. 12731***, then the RCSBP election remains effective until the member actually retires. A member then may make a new election as any other retiring member.

430605. Mental Incompetency

The Secretary concerned may make an SBP or RC-SBP election on behalf of a member who is declared incompetent by medical officers of the Armed Force concerned, or of the Department of Veteran Affairs (VA), or by a court of competent jurisdiction. In the event the member is later declared competent by one of these authorities, the member may elect to revoke that election within the 180-day period following a determination of competency. There shall be no refund of premiums paid for coverage during a period of declared incompetence.

430606. Correction of Administrative Error

The Secretary of the Military Department concerned (or designee) may correct any election or any change or revocation of an election when the Secretary considers it necessary to correct an administrative error. See chapter 42, paragraph 420307.

4307 DISCONTINUANCE OF PARTICIPATION

430701. Discontinuance of SBP Participation on Second Anniversary

A. An SBP participant may choose to voluntarily discontinue SBP participation during a 1-year period which begins on the second anniversary of the date of commencement of retired pay. The date of commencement of retired pay is defined as the date that the retiree becomes entitled to retired pay. A recall to active duty following retirement will not alter this date.

B. An SBP participant who is eligible to discontinue participation must send a written request to the Defense Finance and Accounting Services (DFAS)- on ***DD Form 2656-2*** (Survivor Benefit Plan (SBP) Termination Request). A request for information or a request for termination that is not on ***DD Form 2656-2*** is not considered a valid request to discontinue.

1. A married participant may not discontinue spouse coverage without the spouse's written concurrence, unless it is established that the spouse's whereabouts cannot be determined, or that, due to exceptional circumstances, obtaining the spouse's consent would be inappropriate. In exceptional circumstances, such as mental or physical incapacitation of the spouse, DFAS requires the appropriate documentation such as a physician's statement, which attests to the spouse's mental or physical incapacitation. Additionally, the incapacity must exist continuously since the date of the member's request.

2. If the SBP participant is providing former spouse coverage based on a court order, then an amended court order should accompany the request, even if the former spouse concurs with the request.

C. If termination is not otherwise prohibited by **law**, a spouse or former spouse who concurs in the request for termination is considered notified in accordance with the **law**. A spouse or former spouse who changes his/her mind after concurrence has 30 days from the date of the first request to submit a letter withdrawing their concurrence. If concurrence is withdrawn within 30 days, then the request to withdraw from SBP participation is void. The concurrence of the former spouse is applicable even though the coverage may be currently in a suspended status due to the former spouse's remarriage. Child concurrence is not required when a member elects to discontinue SBP participation for child coverage.

D. DFAS shall ensure that a natural person or former spouse who is not required to concur in the request for termination is notified of the termination of SBP coverage by sending a letter to such beneficiary at the address in the retired member's file.

E. A member's participation terminates on the first day of the month following the month in which DFAS receives a request for discontinuance. Any premiums deducted for periods on or after the effective date shall be refunded and the member notified of the final action concerning termination of coverage.

F. A member may withdraw the request to discontinue participation within 30 days of having submitted such request to DFAS. The 30-day period begins on the date that DFAS considers the withdrawal request received. Generally, this is the received date stamped on the ***DD Form 2656-2*** by DFAS.

1. To withdraw the request to discontinue SBP participation, the member must notify DFAS by a legible, signed, written notice. The request must identify the member by name and social security number and state that the member no longer wants to discontinue SBP participation. When available, the request should include a photocopy of the original ***DD Form 2656-2***.

2. If the member withdraws a request to discontinue participation within the prescribed 30-day period, then the member's participation shall not be discontinued. If the withdrawal notice is received after the prescribed date, then it shall have no effect and the member shall be so notified within 30 days. If the member provides proof of the date of mailing and such date is favorable to honoring the member's withdrawal request, then the date of mailing shall serve as the date submitted.

3. If the member effectively withdraws a request to discontinue participation, then that member shall be so notified within 30 days. If participation had already been discontinued, then it shall be reinstated as though no break in coverage existed. Premiums not collected or paid, or that were refunded shall be collected from the member's retired pay and the member notified of the final action concerning participation.

G. Once participation is discontinued under this provision, no benefits may be paid in conjunction with the member's previous participation. No refund of any premiums properly collected shall be made. The member may not resume participation in SBP for any category of beneficiary.

H. A member who discontinues SBP participation may not later elect SBP coverage upon acquisition of another class of beneficiary.

430702. Voluntary Termination of Coverage

A. A member who is participating in SBP with coverage for a natural person with an insurable interest (not a former spouse) voluntarily may terminate his or her participation in SBP.

B. A member considering termination of insurable interest coverage under RC-SBP should contact the responsible agent: DFAS, or the Military Service Reserve Component Personnel Center for members not yet age 60 (or an appropriately determined office for non-DoD Uniformed Services).

C. A member who is eligible and wants to terminate coverage may send a written request to the responsible agent identified in subparagraph 430702.B. The request, signed by the member, must identify the member and state that the member wants to terminate SBP participation. A request for information is not a request to terminate SBP participation.

D. When the responsible agent receives a request from an SBP participant eligible to terminate coverage, the agent will determine whether the request is for information or actually is a request to terminate participation. In either case, the member will be mailed two fact sheets that (1) explain the procedures for terminating participation and the advantages and disadvantages of participation; and, (2) the disadvantages of terminating participation. If the request is determined to be a request for termination, then the member will be advised in the cover letter that a request for termination can be withdrawn within 30 days of the date of that letter.

E. No premiums are refunded as a result of terminating coverage. No premiums will be charged after the effective date of termination unless the member had RC-SBP coverage. See Chapter 54, for recomputation of the original "add-on" portion of the RC-SBP premium when member terminates coverage before age 60.

F. A member who wishes to withdraw the request to terminate participation must notify the Secretary of the Military Department concerned (or designee) using a legible, signed written notice to the member's responsible agent in subparagraph 430702.B. The notice must identify the member's name and social security number and state that the member no longer wants to discontinue SBP participation. Such requests shall be handled in accordance with the provisions of subparagraphs 430701.F.2 and 3.

G. The member may only resume SBP participation by electing coverage for a spouse or dependent child within 1 year of acquiring the family member.

430703. Invalidation of Certain SBP Elections Made by Disability

A. The SBP elections for a natural person with an insurable interest, other than for a person who is a qualified dependent, is void for members who retired for reasons of disability under ***Chapter 61 of Title 10, U.S.C.***, if they die within 1 year after the disability retirement date, with the cause of death being related to the disability for which the member retired.

B. For voided election, refund SBP deducted from the member's retired pay to the person to whom the SBP annuity would have been paid pursuant to such election.

430704. Withdrawal by a Totally Disabled Member

A. Any person who elects to participate in SBP with a service-connected disability rated by the VA as totally disabling and is so rated for 10 or more continuous years (or, if so rated for a lesser period, at least 5 years from the date of last discharge or release from active duty) may request to discontinue participation in the Plan by submitting a request to the Secretary of the Military Department concerned (or designee). The initial date for determining the 5- or 10-year period is the effective date of the VA rating of total disability. Validation must be obtained from the VA if not available from the individual.

1. The request for discontinuance must be with the written consent of the beneficiary or beneficiaries under the Plan. Should that beneficiary be a dependent child or children, written consent may be accepted from a parent, stepparent, foster parent, guardian, or an individual appointed by a court of competent jurisdiction.

2. The Secretary concerned shall furnish to each person requesting discontinuance, a written statement of the advantages of participating and the possible disadvantages of discontinuing participation in the plan. Such statement should include the criteria for the Special Survivor Indemnity Allowance, the ability to receive both SBP and Dependency and Indemnity (DIC) without offset for remarriage of an annuitant over age 57, and the possibility that legislative action could either partially or fully remove the SBP-DIC offset.

3. A person may withdraw the discontinuance request within 30 days of submission to the Secretary concerned.

4. Participation in the Plan and cost of SBP coverage is discontinued on the first day of the month after receipt of the request by the Secretary concerned.

5. If a member dies after the date that the request for withdrawal has been received by the Secretary of the Military Department concerned, but before the effective date of that request, then the beneficiary is entitled to the annuity.

B. Upon the death of a person who has discontinued participation in the Plan under this section, a refund of SBP amounts deducted from retired or retainer pay without interest shall be made to the widow or widower.

C. Any person who has discontinued participation in the Plan may again elect to participate if the VA reduces the disability rating to less than total and the person applies within 1 year year to participate in the Plan and includes the required information determined by the Secretary concerned.

1. Participation in the Plan and reduction in pay is effective the first day of the month after receipt of the application to the Secretary concerned on ***DD Form 2656*** (Data for Payment of Retired Personnel). Documentation attesting to the less than total disability rating must accompany the application.

2. If the member applies for resumption of participation, but dies before the effective date, then the beneficiary is entitled to an annuity on the date the election would have been effective.

3. Resumption of participation shall be limited to the type and level of coverage initially elected allowing for beneficiary changes as otherwise provided for in Chapters 42 through 54.

4308 OPEN ENROLLMENT PERIODS

There are no regular recurring open enrollment periods. Open enrollment periods occur only when there are major changes to the SBP program and must be specifically prescribed by law. In the absence of such a legislatively prescribed period, members may only enroll or disenroll as specified in this chapter.

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VOLUME 7B, CHAPTER 44: "SURVIVOR BENEFIT PLAN (SBP) – BENEFICIARIES"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 November 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
440201	Clarified the spouse as an eligible beneficiary.	Revision

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CHAPTER 44

SURVIVOR BENEFIT PLAN (SBP) – BENEFICIARIES

4401 GENERAL

The eligible beneficiaries under the SBP are the spouse and/or dependent children, a former spouse and/or dependent children, or a natural person with an insurable interest, providing they meet certain eligibility requirements. The election, if required, must be received within the time period allowed. An individual may not receive more than one annuity as the surviving spouse or former spouse of different members (see Volume 7B, Chapter 46); however, an individual may be the recipient of two or more annuities concurrently, so long as only one is a spouse or former spouse annuity. For example, the child of two members could receive an annuity from each parent, or an individual who was a spouse beneficiary of one member could also be a beneficiary of another member under the insurable interest category.

4402 ELIGIBLE BENEFICIARIES

*440201. Spouse (Including the Spouse of a Common-Law Marriage)

A. If the spouse is married to a retiree on date of retirement, then the spouse is an eligible beneficiary. The spouse is automatically designated as the beneficiary even if the beneficiary data is not received before date of retirement. However, the spouse is not automatically the beneficiary if prior to retirement the member elects, with spouse's concurrence, to not provide coverage for the spouse and/or children.

B. If the member elected spouse coverage at retirement and the member's previous spouse has become ineligible for SBP due to death or divorce, the spouse who marries the member after the date of retirement is the eligible beneficiary. Spouse coverage is resumed upon the first anniversary of remarriage or birth of a child of that remarriage, whichever is earlier, unless the member elects not to resume spouse coverage within 1 year of the remarriage.

C. If the spouse is married to the member after the date of retirement and the member did not have a spouse at retirement and did not elect insurable interest coverage the spouse is an eligible beneficiary only if the member elects to provide spouse SBP coverage within 1 year of the marriage. The spouse coverage is effective on the first anniversary of the marriage or birth of a child of that marriage, whichever is earlier.

D. If the spouse is married to a retiree at the time of retirement and the member elected spouse coverage, then divorced, and later remarried the same spouse, the spouse becomes eligible immediately upon remarriage provided spouse coverage was resumed. However, the member has up to 1 year after remarriage to decide whether to resume spouse coverage.

E. If the spouse is married to a retiree after date of retirement, then divorces, and later remarries the member, the spouse becomes eligible upon first anniversary of remarriage

or date of the birth of child of that remarriage. The election must be received within 1 year of the remarriage.

F. A spouse who is married to a member who dies in the Line-of-Duty while on active duty or to a retirement eligible member, regardless of the Line-of-Duty determination is an eligible SBP beneficiary. See Volume 7B, Chapter 46.

G. A member may change election coverage from a natural person with insurable interest to coverage for a spouse within 1 year of marriage. The spouse becomes an eligible beneficiary upon the first anniversary of the marriage or the date of birth of child of that marriage, whichever is earlier, provided the member changes to spouse coverage. Until the spouse and/or child are eligible, the previously elected class of beneficiary remains eligible.

H. A member may change election coverage from former spouse to coverage for a spouse in accordance with Volume 7B, Chapter 43, paragraph 430602 at any time following remarriage, provided the former spouse is still living at the time the Secretary concerned receives the member's election. If the election change is requested more than 1 year from the date of the member's marriage, then the spouse becomes an eligible beneficiary on the date of the election receipt and the associated premium is effective on the first day of the month following election receipt.

440202. Children (Including Children of a Common-Law Marriage)

A. The Child Is An Eligible Beneficiary. The child is an eligible beneficiary only if the child is:

1. Unmarried; and

a. Under age 18 (including a child serving on active duty in the Uniformed Services);

b. At least 18 but under 22 and pursuing a full-time course of study in a recognized educational institution; or

c. Incapable of self-support because of physical or mental incapacity, which existed before the 18th birthday or was incurred before age 22 while pursuing a full-time course of study.

2. A child of the member, including:

a. A child determined by paternity test or a court of competent jurisdiction to be a child of the member. Documentation will be required to substantiate a claim.

b. An adopted child.

c. A stepchild, foster child, or recognized natural child, if that stepchild, foster child, or recognized natural child lived with the retiree in a regular parent-child relationship.

B. Special Eligibility Rules for Child Seeking Full-Time Course of Study. A child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year and while regularly pursuing such a course of study or training, is considered to have become 22 years of age on the 1st day of July after that birthday. Child eligibility terminates for school nonattendance. If the child resumes school attendance, then eligibility is reinstated. See Volume 7B, Chapter 46.

C. Special Eligibility Rules for Foster Child. A foster child must have resided with the retiree at time of death, received over one-half of his or her support from the retiree, and not be cared for under a social agency contract.

D. Relatives or Grandchildren. A relative of the member (such as a grandchild) may qualify as an eligible child beneficiary if a foster parent/foster child relationship exists. Adoption of a grandchild is not required for the member to designate that child as an eligible child beneficiary.

E. Child of Former Spouse. A child of the member and the former spouse is an eligible child beneficiary, if the member elects former spouse and child coverage. A change to former spouse and child coverage may only be made if the former spouse coverage was provided under the spouse category.

F. Active Duty. A child of a member who died on active duty, is an eligible beneficiary provided: there is no eligible former spouse established by court order under paragraph 460202 and there is no eligible surviving spouse, or if the Service Secretary has determined the annuity is payable to the child(ren) in lieu of the surviving spouse. See Volume 7B, Chapter 46.

G. Termination by Marriage. Child eligibility terminates by marriage of the child, regardless of whether the child is an incapacitated child entering into a valid marriage with another incapacitated individual. The termination of a child's marriage by death or divorce does not serve as a basis for reinstating child coverage, regardless of age or school attendance. An annulment of the child's marriage, however, which renders the marriage void or invalid, or by a judicial decree by a court of competent jurisdiction declaring the marriage void, may serve as a basis for reinstating child coverage.

440203. Spouse and Children

Eligibility requirements are as shown in paragraphs 440201 and 440202.

A. Generally. The spouse is the primary beneficiary with coverage passing to the children if the spouse remarries before age 55, dies, or otherwise becomes ineligible. If the

spouse again becomes eligible due to a remarriage ending in death or divorce, the annuity to the spouse resumes.

B. Death on Active Duty. If the annuity is payable because the member dies on active duty and there is no eligible spouse, the annuity shall be paid to any dependent children. In the case of a surviving spouse and children, the service secretary may pay the annuity to the member's dependent children in lieu of an annuity to the spouse.

440204. Former Spouse or Former Spouse and Child

A former spouse is an eligible beneficiary if:

A. The former spouse is the member's former spouse when the member became eligible to participate in the Plan and the member elected the former spouse as beneficiary or the former spouse submits a valid deemed election. See Volume 7B, Chapter 43, paragraph 430503.

B. The former spouse was not the member's former spouse at the time the member became eligible to participate in the Plan, and the prior spouse election is changed to provide coverage for the former spouse or the former spouse submits a valid deemed election pursuant to paragraph Volume 7B, Chapter 43, 430503. A former spouse acquired after the member became eligible to participate in the Plan may only be an eligible beneficiary if married to the member for at least 1 year or the parent of issue of the marriage.

C. If coverage includes child, then the former spouse is the primary beneficiary with coverage passing to the children if the former spouse remarries before age 55, dies, or otherwise becomes ineligible. The child is an eligible beneficiary provided the conditions in subparagraph 440202.A are met and the child resulted from the member-former spouse's marriage.

440205. Natural Person With Insurable Interest

An eligible person is:

A. A person who has a reasonable and lawful expectation of pecuniary benefit from the continued life of the member. This category may include parents, stepparents, grandparents, grandchildren, aunts, uncles, sisters, brothers, half-sisters, half-brothers, dependent or non-dependent child or stepchild, or any other person more nearly related than cousin; or

B. Any individual having a reasonable and lawful basis, founded upon the relationship of parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the retiree. Proof of financial benefit from the continuance of the life of the member is required for persons other than those listed in subparagraph 440205.A.

C. In the case of a member who dies on active duty and no other beneficiary is eligible to receive an annuity, a person who is, as determined by the Secretary concerned, a dependent of that member as defined in ***Title 10, United States Code, section 1072(2)***.

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VOLUME 7B, CHAPTER 45: "SURVIVOR BENEFIT PLAN PREMIUMS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

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The previous version dated September 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
450503	Edited to add "coverage is" for better readability.	Add
450504	Edited to include "under the following circumstances" for clarity.	Add
450804	Information is no longer applicable. Paragraph 450805 is changed to 450804.	Delete

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CHAPTER 45

SURVIVOR BENEFIT PLAN PREMIUMS

4501 GENERAL

450101. Premium

The premium for Survivor Benefit Plan (SBP) coverage is based on the type of coverage (spouse and/or children, former spouse or former spouse and children, or natural person with an insurable interest) and the base amount, maximum or reduced, as elected by or on behalf of the member. The SBP premium increases at the same time and by the percentage as do increases for retired or retainer pay.

450102. Premium Collection

Members electing SBP coverage shall pay a premium for such coverage. Premiums are collected either through reduction of retired pay or direct remittance.

450103. Premiums Not Specified

All premiums not specified in this chapter are calculated by the Department of Defense (DoD) Actuary using assumptions (as to mortality and economic conditions) approved by the DoD Board of Actuaries and the Director of Military Compensation.

4502 BASIC SPOUSE/FORMER SPOUSE PREMIUM CALCULATION

450201. Initial Premium Calculation

There are two methods for calculating the initial premium for the standard SBP annuity coverage for a spouse or former spouse. These methods are:

A. An amount equal to 6.5 percent of the base amount, and

B. An amount equal to 2.5 percent of a "threshold amount" plus 10 percent of the difference between the base amount and the threshold amount. The threshold amount is adjusted at the same time and by the same percentage as the average increase in basic pay. See paragraph 450206. The original threshold amount of $300 has been increased by the same percentage increase as basic pay since October 1, 1985.

450202. Initial Premium Calculation Before March 1, 1990

For a person who became a member of the uniformed services before March 1, 1990, the initial premium for spouse or former spouse coverage was computed on a standard cost formula of 2.5 percent of the threshold amount, plus 10 percent of the base amount in excess of the threshold amount. The threshold amount is increased as set out in paragraph 450206.

450203. Premium Formula Percentage

Effective March 1, 1990, the initial SBP premium formula for spouse or former spouse coverage became 6.5 percent of the base amount.

450204. More Favorable Method

A person who became a member before March 1, 1990 or who is entitled to disability or non-regular (e.g. reserve) retirement, is entitled to whichever method is more favorable.

450205. Flat Rate Reduction Formula

If the individual first became a member of a Uniformed Service before March 1, 1990, is providing spouse coverage, and the SBP premium exceeds 6.5 percent of the base amount, the SBP premium was recomputed effective March 1, 1990, on the flat-rate reduction formula of 6.5 percent.

450206. Threshold Amount Increase

The threshold amount is increased by:

A. The same percentage as the average increase in basic pay effective on or after October 1, 1985. The increase occurs at the same time. This applies to a member whose retired pay is computed on the basic pay rate in effect or after the effective date of such increase in basic pay; or

B. The same percentage as a cost of living allowance (COLA) applied to the member's retired pay on or after October 1, 1985, if the member first participates in the SBP after the effective date of the COLA increase and after the effective date of the basic pay rates on which the member's retired pay is computed. This is in addition to the increase in subparagraph 450206.A. and the increase occurs at the same time as the COLA increase.

450207. Children Coverage Charge

If the SBP coverage is for spouse and child, former spouse and child, or child only, a formula must be applied against the base amount (or base amount times 55 percent before April 1983) to determine the charge for coverage of the children. The age of the youngest child is used to determine the premium. If there is an incapacitated child over 18 years of age and there also is a competent child over age 18 but younger than the incapacitated child, then use age 17 to determine the premium. The premium can be determined from the SBP Factor Tables or Defense Finance and Accounting Service (DFAS) procedural guidance.

4503 COMPUTATION OF PREMIUM

450301. Spouse Only or Former Spouse Only

See Table 45-1, rule 1.

450302. Spouse and Child, Former Spouse and Child, or Children Only

See Table 45-1, rules 2 and 3. The steps to be used in computing the premium are:

A. Determine the age of member, spouse, and child for spouse and child coverage. Determine the age of member, former spouse, and child for former spouse and child coverage. Determine the age of member and child for child coverage.

B. Determine the cost factor from the appropriate SBP Factor Table which resides in the Defense Retired and Annuitant Pay System.

C. Multiply base amount by the factor to determine the child premium. Add the child premium to the spouse (or former spouse) premium. Examples of computing the premium:

Example 1: A member retires on July 1, 2010, with 20 years of active service. The gross retired pay is $1,000. The member elects maximum coverage for spouse and children. Birth dates are: member-February 2, 1971; spouse-September 2, 1975; child-May 1, 2001.

Step 1. Compute ages. Six months or more is considered a full year.

Member	100701	Spouse	100701	Child	100701
	710202		750902		010501
	390429		340929		90200
	(39)		(35)		(9)

Step 2. Using the SBP Factor Table to locate the combination of a member age 39, spouse age 35, and child age 9. The resulting factor is .00026.

Step 3. Determine total premium:

Spouse premium:

(Flat-rate formula)	$1,000.00	
	x.065	
	$ 65.00	$65.00
Child premium:	$1,000.00	
	x .00026	
	$ .26	+$ .26
Total Premium:		$65.26

Example 2: The spouse in Example 1 becomes an ineligible beneficiary on March 3, 2011. Coverage changes to child only. (If the former spouse becomes an ineligible beneficiary, then coverage changes to child.)

Step 1. Recompute the ages for member and child.

Member	110304	Child	110304
	710202		010501
	400102		91003
	(40)		(10)

Step 2. Use the SBP Factor Table to locate the combination of a member age 40 and child age 10. The resulting factor is .0022.

Step 3. Determine total premium: $1,000 x .0022 = $2.20

Example 3a: The member elects spouse and child coverage (Example 1). The spouse becomes an ineligible beneficiary and coverage changes to child only (Example 2). The member remarries on May 14, 2011. The birth date for the new spouse is October 12, 1975. Coverage reverts to spouse and child on May 14, 2001 unless the member elects not to resume spouse coverage. The new premium for spouse and child is effective on June 1, 2011 (Table 45-3, rule 9 and note 8).

Step 1. Recompute ages for member, spouse, and child.

Member	110514	Spouse	110514	Child	110514
	610202		751012		010501
	500312		350702		100013
	(50)		(36)		(10)

Step 2. Use the SBP Factor Table to locate the combination of a member age 50, spouse age 36, and child age 10. The resulting factor is .00043.

Step 3. Determine the total premium:

Spouse premium:

(Flat-rate formula)	$1,005.00	
	x .065	
	$ 65.33	$ 65.33
Child premium:	$1,005.00	
	x .00043	
	$ .43	+ $ .43
Total Premium		$ 65.76

Example 3b: The member elects spouse and child coverage (Example 1). The spouse becomes an ineligible beneficiary and coverage changes to child only (Example 2). The member remarries on May 14, 2011. The birth date for the new spouse is October 12, 1975. Coverage would have resumed for the spouse and child on May 14, 2011, the first anniversary of the marriage; however, the spouse becomes the parent of issue by that marriage before the first anniversary. Coverage changes to spouse and child on the date the child is born of that marriage. The new premium is effective the first day of the month following the birth (Table 45-3, rule 9 and note 8). Assume that the child is born March 27, 2011.

Step 1. Recompute ages for member, spouse, and child.

Member	110327	Spouse	110327	Child	110327
	610202		751012		110327
	500125		350515		000000
	(50)		(36)		(00)

Step 2. Use the SBP Factor Table to locate the combination of a member age 50, spouse age 36, and child age 0. The resulting factor is .00171

Step 3. Determine total premium:

Spouse premium:

(Flat-rate formula)	$1,005.00	
	x .065	
	$ 65.33	$ 65.33
Child premium:	$1,005.00	
	x .00171	
	$1.72	+ $1.72
Total Premium		$ 67.05

Example 4: Same facts as Example 1. The member divorces on April 15, 2011, and coverage changes to child only. See Example 2 for recomputation. The member elects coverage for former spouse and child and the election is received on June 2, 2011. Coverage for former spouse and child is effective on June 2, 2011 and the premium for the former spouse and the child is effective July 1, 2011. Recompute ages on the date the election is received.

Step 1. Recompute ages.

Member	110602	Former	110602	Child	110602
	710202	Spouse	750902		000501
	400400		350900		100101
	(40)		(36)		(10)

Step 2. Use the SBP Factor Table to locate the combination of a member age 40, spouse age 36, and child age 10. The resulting factor is .00022.

Step 3. Determine the premium as in Example 1.

450303. Natural Person With an Insurable Interest.

In some cases, the Insurable Interest category may include former spouse. The premium formula for the Insurable Interest category is 10 percent of retired pay plus 5 percent for each full five years the individual designated is younger than the member. See Table 45-1, Rule 4.

4504 EFFECTIVE DATE OF PREMIUM

See Table 45-2 or 45-3 as applicable.

4505 SUSPENSION, CHANGE, AND TERMINATION OF PREMIUM

450501. No Eligible Beneficiary

Suspend premiums for spouse or former spouse coverage when there is no longer an eligible beneficiary. Suspend premiums for child coverage when there is no eligible child beneficiary.

450502. School Nonattendance

If the SBP premium was adjusted or discontinued based on school nonattendance of the child beneficiary, the premium is adjusted retroactively to the first day of the month after the child resumed school attendance.

*450503. Premium Changes

The premium changes when:

A. Coverage is for spouse and children (or former spouse and children) and the last dependent child is no longer an eligible beneficiary. The premium for coverage is changed to spouse (or former spouse) only (See Table 45-3, rule 8); or

B. Coverage is for spouse only and the spouse is no longer eligible. Within 1 year after member's remarriage, the member may:

1. Resume coverage;

2. Elect not to resume spouse coverage;

3. Increase the base amount up to and including full retired pay for spouse or spouse and child coverage (See Table 45-3, rule 6.); or

C. Coverage is for spouse and children and the spouse is no longer eligible or the coverage is for former spouse and children and the former spouse is no longer eligible. See Table 45-3, Rule 7, for computation for the child premium. Within 1 year of a remarriage, the member with suspended spouse coverage has the same options as in subparagraph 450503.B. There is no time limitation for an election change to spouse coverage by a member with suspended former spouse coverage (See Table 45-3, Rule 9); or

D. Coverage is for spouse at the time of the member's retirement (or before March 21, 1974 for a pre-September 21, 1972 retiree), and the member subsequently divorces and then remarries that former spouse. The premium is effective the first day of the month following the remarriage, unless the remarriage is the first day of the month, then the premium is effective on the date of marriage; or

E. Coverage is for spouse after date of retirement and the member subsequently divorces and then remarries that former spouse. The premium of coverage is resumed the first day of the month following the first anniversary unless the remarriage is the first day of the month, then the premium resumes on the first day of the first anniversary; or

F. Coverage is for spouse or spouse and child and is changed to former spouse under paragraph 430603. Beginning on the first day of the month after receipt by the Secretary of the Military Department concerned of the change in election, the premium will be calculated as provided in Table 45-3, rule 10.

*450504. Premium Termination

Terminate the SBP premium for a natural person with an insurable interest under the following circumstances:

A. When the beneficiary dies;

B. When the member terminates coverage for the natural person with an insurable interest; or

C. On the date a spouse or child acquired after retirement becomes the eligible beneficiary if the member elected coverage for such spouse or child. The SBP premium is terminated as of the date shown in Table 45-4, Suspension and Termination of Premium. See section 4307 for more information on termination procedures.

450505. Voluntary Termination

If a member voluntarily discontinues SBP participation under paragraph 430701, then the premium terminates on the effective date of the election which is the first day of the month following the date of the receipt of the request. Any premium deducted for periods on or after such effective date shall be refunded and the member notified of the final action concerning termination of coverage.

450506. Paid Up Premiums

Premiums for SBP participation are permanently paid up (no further reductions to retired pay or remittances) when a member attains age 70 and has had 360 months of premium payments. See section 4508 for more information.

450507. Other Suspension and Termination Situations

See Table 45-4 for other suspension and termination of premium situations.

450508. Cost of Living Adjustment

SBP premiums normally increase at the same time, and by the same percentage, that retired pay increases by cost-of-living adjustment. When the payment of increased retired pay resulting from a cost-of-living adjustment is delayed, the increase to SBP premiums will occur at the same time the retired pay is increased rather than the effective date of the cost-of-living increase (or the date that the retired pay would have increased if the member were currently in receipt of retired pay).

4506 PAYMENT OF PREMIUM

450601. Payments

A member who receives enough retired pay to cover the premiums for SBP has those premiums withheld from his or her retired pay. Voluntary allotments may be discontinued to satisfy the premiums for SBP coverage. See Chapter 19 of this volume for more information. Do not treat the reduction in retired pay for the premium of SBP coverage as a collection for accounting purposes.

450602. Civil Service Waiver

A. For any period in which the member is not receiving retired pay because of non-entitlement to or waiver of such pay or the pay received is not enough to cover the total cost of coverage, the member must remit the amount due to the DFAS-Cleveland Site. Deposits are due on the effective date of coverage. For example, member retires June 1; the first payment is due June 1, for the period June 1-30. A member who waives full retired pay for Veterans Administration compensation may pay the premium by direct remittance or by deduction from the compensation payments.

B. If the member waives participation in the military survivor benefit program and elects participation in the civil service survivor benefit plan, and the civil service waiver later becomes ineffective for any period for any reason, previous participation in the military survivor benefit program is resumed and military SBP premium is due from the member.

450603. Emergency Officer's Retired List (EORL)

A member on the EORL may pay premiums by direct remittance or by deduction from EORL payments.

450604. Active Duty Recall

If a member is recalled to active duty for more than 30 days after a break in service, the member does not pay the premium while on active duty.

450605. Active Judicial Duty

The member remains a SBP participant while on active judicial duty and is required to pay the SBP premiums while military retired pay is suspended.

4507 DELINQUENT SBP PREMIUMS

Interest at the rate of 6 percent compounded annually is levied against delinquent SBP premiums. Any delinquent Retired Serviceman's Family Protection Plan (RSFPP) premiums existing on date of conversion to SBP continue with interest, until paid. Upon the death of a retiree, any delinquency, plus interest, is collected from the annuitant's benefits before payment of any annuity.

4508 PAID UP SBP PREMIUMS AFTER 30 YEARS AND AGE 70

450801. Coverage In Effect October 2008

Effective with the retired pay entitlement and SBP coverage in effect for the month of October 2008, SBP premium reductions will no longer be made if the member is a qualified SBP participant described in 450802. Deposits made by an SBP participant during a period when the participant is not entitled to retired pay qualify as premium reductions.

450802. Birthday Month

A member is a qualified participant for purposes of paid up SBP coverage if the retired member is age 70 or older whose retired pay has been reduced for SBP coverage for 360 months or more. If the member's 70th birthday occurs later than the 360th month for which the member paid SBP premiums, no SBP premiums will be made for that month regardless of the day on which the member becomes age 70.

450803. Effective Date

The first payment that can be affected is the payment for the period of retired pay entitlement beginning October 1, 2008 (due November 3, 2008).

*450804. Buy-In Premium

A member who elected or changed SBP coverage during the open enrollment period March 1, 1999, through February 29, 2000, was charged a one time, buy-in premium in addition to the prospective monthly premium. The buy-in premium was due and payable in a lump sum payment at the time the member filed the election. A member who paid the lump sum, buy-in premium receives credit toward the 360 months as if the member's retired pay had been reduced monthly for SBP premiums.

4509 TAXABILITY OF PREMIUMS

For federal income tax purposes, premiums for SBP coverage are excluded from taxable income when they are deducted from the member's retired pay. A member whose pay is subject to tax reporting will, while in a pay status, receive the tax benefit through a reduction in the taxable income reported to the Internal Revenue Service. No reduction against the taxable income can be given for interest paid on the delinquent premiums.

4510 INCOME EXCLUSION

The member will receive an income exclusion for the amount of direct remittance for coverage premiums upon returning to a pay status. The appropriate DFAS site will exclude the amount of the direct remittance from the taxable income on Internal Revenue Service Form 1099R, "Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc." See paragraph 450602 for payment of premiums during non-receipt of retired pay.

4511 TOTALLY DISABLED MEMBERS.

Premiums and coverage for a spouse, child, or spouse and child of a totally disabled member, who elected to discontinue participation, end on the effective date. An election shall be effective as of the first day of the first month following the month in which the Secretary concerned receives the election. The member may revoke the request to discontinue participation within the 30-day period following submission of such request to the Secretary concerned.

Table 45-1. Computation of SBP Premium On Establishment

COMPUTATION OF SBP PREMIUM ON ESTABLISHMENT		
RULE	**A**	**B**
	If beneficiary is	**then the formula is**
1	spouse or former spouse (spouse category)	6.5 percent of the base amount (note 1) or 2.5 percent of the threshold amount (note 2), as adjusted, plus 10 percent of the remaining base amount. If gross retired pay is less than the threshold amount, then use 2.5 percent of gross retired pay.
2	spouse (former spouse-spouse category) and children (notes 3 and 4)	spouse (former spouse) premium determined under rule 1, plus an additional premium for children computed by applying the factor from the SBP Factor Table against the base amount. See section 4503 for examples.
3	children only (notes 3 and 4)	to apply the factor shown in the SBP Factor Table, based on the ages of the member and youngest dependent child, against the base amount. See section 4503 for example.
4	natural person with an insurable interest or former spouse (insurable interest category)	10 percent of the member's gross retired pay if the age of the beneficiary is equal to or greater than member's age. If the beneficiary's age is less than member's age, the formula is 10 percent of the member's gross retired pay, plus an additional 5 percent of the gross retired pay for each full 5 years that the beneficiary is younger than member. Six months or more is not counted as an additional year. Total premium may not exceed 40 percent of gross retired pay.

NOTES:

1. Members who first became a member of a Uniformed Service on or after March 1, 1990, and receive a regular retirement will have their spouse premium computed under the flat rate formula of 6.5 percent of the base amount. The following members are entitled to spouse premium computation under the formula that provides the lesser premium:
   a. A member who is entitled to retired pay based on disability;
   b. A member who is entitled to retired pay based on a non-Regular service retirement; or
   c. A member who first became a member of a Uniformed Service before March 1, 1990.
2. The threshold amount is subject to indexing equal to the percentage increases for active duty basic pay rates.
3. Do not recalculate premiums when a child different from the child first established as the youngest child becomes the youngest eligible child.
4. Dependent Child - use the age of the youngest child. Exception: Use age 17 for an incapacitated child over 18 years of age when there is a competent child also over 18, but younger than the incapacitated child.

Table 45-2. Effective Date of Premium - Initial Election

EFFECTIVE DATE OF PREMIUM - INITIAL ELECTION					
	A	**B**			
		then the effective date of premium is first day of the month following			
RULE	**If on the date of election (pre-September 21, 1972 retiree) or date of retirement (post-September 21, 1972 retiree), the member has**	**retirement**	**election by the Secretary of the Military Department concerned**	**receipt of the election**	**the first anniversary of the marriage**
1	spouse, spouse and children, children only, or natural person with insurable interest (NIP) (pre-September 21, 1972 retiree)			**X**	
2	spouse, spouse and children, children only, or NIP (post-September 21, 1972 retiree)	**X**			
3	no dependents, later marries (note 1)				**X** (note 4)
4	no dependents, later acquires dependent children (note 1)			**X** (note 2)	
5	no dependents, later marries and acquires dependent children (note 1)			**X** (note 3)	**X** (note 5)
6	been declared mentally incompetent (Secretary may make election)		**X**		
7	former spouse (post-September 7, 1982 retiree) or former spouse and children (post-February 28, 1986 retiree)	**X** (note 6)			

NOTES:

1. Member must elect within 1 year of marriage or acquiring dependent children.
2. Compute the child premium using the ages of the member and the youngest child as of date of receipt of the election.
3. The child only premium is established and continues until the first of the month following the first anniversary of the marriage. Compute child only premium using the ages of the member and youngest child on date of receipt of the election. When spouse becomes an eligible beneficiary, child only coverage is then changed to spouse and children coverage and compute the new premium using the ages of the member, spouse, and the youngest child on the date the spouse becomes an eligible spouse beneficiary.
4. If the first anniversary is on the first day of the month, then the premium is changed for that month.
5. If a child is born of that marriage before the first anniversary, then the premium for spouse and child coverage is effective the first of the month following the birth of the child. If the birth or anniversary is the first day of the month, then the premium is charged for that month.
6. The effective date of the premium for an election for a former spouse election made from September 8, 1982 through January 31, 1983 is February 1, 1983.

Table 45-3. Effective Date For Change of Premium

EFFECTIVE DATE FOR CHANGE OF PREMIUM

RULE	A	B			
		then the effective date of premium is first day of the month			
	If on the date of election (pre-September 21, 1972 retiree) or date of retirement (post-September 21, 1972 retiree), the member has	**following receipt of election**	**following family status change**	**following first anniver-sary of (re)marraige**	**after loss of eligibility or October 1, 1976, whichever is later**
1	spouse, no child, later acquires children (notes 1 and 2)	**X**			
2	no spouse, child only, later acquires spouse (notes 1, 7 and 8)			**X**	
3	natural person with insurable interest (NIP) (or former spouse), later marries (notes, 1, 7, 8 and 11)				
4	NIP (or former spouse), later acquires child (notes, 1, 3, 8 and 11)	**X**			
5	NIP (or former spouse), later acquires spouse and child (notes 1, 4, 7, 8 and 11)	**X** (child)		**X** (spouse)	
6	spouse, loses spouse, remarries (notes 1, 7, 8 and 9)			**X**	
7	spouse and child (or former spouse and child), loses spouse (or former spouse), premium is recomputed for child (notes 5 and 9)				
8	spouse and child (or former spouse and child), loses child (note 6)		**X**		
9	spouse and child (or former spouse and child), loses spouse (or former spouse), premium recomputed for child, member later marries (notes 1, 4, 7, 8 and 11)			**X**	
10	spouse and/or child, acquires former spouse, changes coverage to former spouse or former spouse and child (note 10)	**X**			
11	election for former spouse deemed by Secretary concerned	premium and coverage on the later of: (a) member's retirement date; (b) the first day member could have voluntarily made such an election; or (c) the first day of month after the effective date of court order involved.			

Table 45-3. Effective Date For Change of Premium (Continued)

EFFECTIVE DATE FOR CHANGE OF PREMIUM					
	A	B			
		then the effective date of premium is first day of the month			
RULE	If on the date of election (pre-September 21, 1972 retiree) or date of retirement (post-September 21, 1972 retiree), the member has	following receipt of election	following family status change	following first anniver-sary of (re)marraige	after loss of eligibility or October 1, 1976, whichever is later
12	been declared mentally incompetent but later adjudged competent may, within 180 days, change a Secretarial election	X			

NOTES:

1. Member must elect within 1 year of (re)marriage or acquiring the dependent child or children. If the election change is from former spouse coverage to spouse coverage, then there is no time limitation on the election period. If the member elects to change from former spouse to spouse coverage after 1 year of remarriage, then the coverage is effective on the date of election receipt and the associated premium is effective on the first day of the month after election receipt.
2. Compute premium for additional child using ages of member, spouse, and youngest child as of date of receipt of election.
3. Compute premium for child using ages of member and youngest child as of date of receipt of election.
4. Child only premium is effective until the first of the month following the first anniversary of the (re)marriage. Compute child only premium using ages of member and youngest child on the date of receipt of the election or on the day after the date spouse eligibility is lost (rules 5 and 8). When spouse becomes an eligible beneficiary, child only coverage is changed to spouse and child coverage and compute child premium using ages of member, spouse, and youngest child on date spouse becomes an eligible spouse beneficiary.
5. Compute child only premium using ages of member and youngest child as of the first date following the date the spouse (or former spouse) became an ineligible beneficiary or October 1, 1976, whichever is later. If eligibility was lost the first day of the month, then the child only premium begins the following month.
6. If member gives exact date of loss of last dependent child, then the change in premium is effective the first of the month following date provided. If exact date is not given, then use first day of the month after receipt of notification.
7. The premium for spouse coverage is effective on the first day of the month following the birth of the child of that marriage if earlier than first anniversary of the marriage.
8. If birth or anniversary is the first day of the month, then the premium is effective that month.
9. Before enactment of ***Public Law 94-496***, October 14, 1976, the deduction for spouse premium continued past the date spouse became an ineligible beneficiary.
10. Member must make election within 1 year of the date of a decree of divorce, dissolution, or annulment of marriage to spouse. Election for former spouse only may not be effective before September 24, 1983 (earliest day for premium is October 1, 1983). Election for former spouse and child may not be effective before March 1, 1986 (earliest date for premium is March 1, 1986).
11. An election to terminate coverage for a NIP premium must be done in accordance with Volume 7B subparagraph 430701.B; an election to terminate coverage for a former spouse must be done in accordance with subparagraph 430701.B election to terminate coverage for a spouse or spouse and child must be done in accordance with paragraphs 430701 and 430702.

Table 45-4. Suspension and Termination of Premium

SUSPENSION AND TERMINATION OF PREMIUM				
RULE	**A**	**B**	**C**	**D**
	If a member	**then the premium is**	**with an effective date**	**and member is**
1	is deceased	terminated	on the date of the member's death	
2	is recalled to active duty for more than 30 days	suspended	the day before entry on active duty	not required to remit premium for coverage while on active duty.
3	waives retired pay for a civil service retirement		date of waiver as furnished by member	providing coverage elected under civil service retirement.
4	is removed from the Temporary Disability Retired List (TDRL) and retired pay is terminated (note 1)	terminated	date of removal from TDRL	not entitled to a refund of prior premiums.
5	elected for children and the last dependent child is no longer an eligible beneficiary (note 2)		first of the month after loss of eligibility (notes 3 and 4)	due a refund from first of month after loss of eligibility (note 5).
6	who has been declared mentally incompetent is restored to competency and, within 180 days, revokes election made on his or her behalf		first of month after receipt of election	not due a refund for period of coverage.
7	elected for spouse (or former spouse) and spouse (or former spouse) becomes an ineligible beneficiary	suspended	first day of month after that in which spouse became an ineligible beneficiary	due a refund from October 1, 1976 or first of month after ineligibility, whichever is later.
8	elected coverage for a natural interest person (or former spouse in insurable interest category) who dies before the member	terminated	last day of month in which beneficiary dies	
9	elected coverage for a natural interest person (not a former spouse) and member dis-continues participation from the Plan (see Chapter 56, paragraph 560305 for the RCSBP participant)		first day of month after receipt of request	
10	discontinues SBP participation on the second anniversary		first day of month after receipt of request	

Table 45-4. Suspension and Termination of Premium (Continued)

SUSPENSION AND TERMINATION OF PREMIUM				
RULE	**A**	**B**	**C**	**D**
	If a member	**then the premium is**	**with an effective date**	**and member is**
11	is age 70 and has paid 360 monthly premiums	terminated	on the later of: (a) the premium for October 2008; (b) first day of the month after the 360th monthly premium; or, (c) the first day of the month in which the member reaches age 70	

NOTES:

1. If the member returns to active duty and is subsequently retired, a new election must be made. Any election in effect while on TDRL is void.
2. A child is no longer an eligible beneficiary when he or she dies, marries, is between age 18 and 22 and not attending school, or has reached age 22 (see note 3).
3. A student whose 22nd birthday occurs before July 1 or after August 31 of any calendar year is considered age 22 on July 1 after that birthday and the premium is discontinued.
4. When the birthday is the first day of the month, the premium terminates the first day of that month.
5. If the member gives exact date of loss of last dependent child, cost is terminated the first of the next month. If exact date is not given, use first day of month after receipt of notification.

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4506 - PAYMENT OF PREMIUM

450601	DoDI 1332.42, June 23, 2009

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4507 - DELINQUENT SBP PREMIUMS

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	57 Comp Gen 847
Note 6	Public Law 97-252, September 8, 1982

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	59 Comp Gen 569
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VOLUME 7B, CHAPTER 46: "SURVIVOR BENEFIT PLAN (SBP) – ANNUITIES"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 December 2009 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
460103	Clarified that any person receiving funds on behalf of annuitant can be requested to provide an accounting of expenditures, and that the requirement to maintain the records is not limited to those holding the status of Representative Payee.	Update
460201	Clarified active duty death Survivor Benefit Plan benefits.	Update
460301	Changed coverage entitlement from RCSBP to SBP.	Update
460303	Included points for drills and other time towards Reserve Component retirement.	Add
461403.C.2.	Edited retroactive SBP annuity payments paid in a lump sum for clarity.	Update
Bibliography	Cited reference for paragraph 460303.	Add

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CHAPTER 46

SURVIVOR BENEFIT PLAN (SBP) ANNUITIES

4601 ANNUITY AMOUNT

460101. General

A. The Survivor Benefit Plan (SBP) provides a monthly annuity of 55 percent of the annuity base amount, cost-of-living adjusted, to the eligible spouse or children. The monthly annuity for a natural person with an insurable interest is 55 percent of the amount of the gross retired pay after cost of participation is subtracted.

B. If a former spouse election was effective prior to March 1, 1986, then the annuity was provided under the insurable interest category. If a former spouse election was effective March 1, 1986 or later, or coverage was changed to spouse category with the former spouse's concurrence, then the annuity is provided under the spouse category.

C. Effective October 1, 2005, the phased-elimination of the two-tier system began. After April 1, 2008, the SBP annuity for a spouse or former spouse was no longer reduced at age 62.

460102. Eligible Annuitants

A. Spouse Only. See Table 46-1. The SBP annuity for a spouse may be reduced by any Dependency and Indemnity Compensation (DIC) if the annuity is payable on behalf of the same member. See section 4604.

B. Children Only. If there is more than one eligible child, then the annuity is paid in equal shares. The annuity for children is not subject to DIC offset.

C. Spouse and Child or Former Spouse and Child. The annuity is paid to the spouse or former spouse as long as eligibility exists. If the surviving spouse or former spouse dies, remarries before age 55, or otherwise loses eligibility, then the annuity is paid to the child annuitants. An election for former spouse and child includes only the children that resulted from the member/former spouse marriage. The annuity amount for the spouse or former spouse is shown on Table 46-l. The annuity for children is divided in equal shares. If the spouse is not married to the member for one year prior to the member's death, then spouse qualifies as the eligible annuitant on the birth of a posthumous child resulting from the member's marriage.

D. Natural Person With an Insurable Interest. The annuity is payable only to the natural person with an insurable interest as designated by, or on behalf of, the member. The annuity amount is 55 percent of the member's gross retired pay less cost at the time of member's death.

*460103. Payment of Annuity

A. Payments in General. The SBP annuity is paid monthly to the eligible annuitant. The SBP payment is effective the first day after the death of the member unless death occurs on the 30th day of a 31-day month. In that case, the annuity starts on the first day of the next month. Annuity payments end effective the last day of the month before the month in which the annuitant becomes ineligible.

1. Payments subject to offset:

a. When the payment of premiums is in arrears, no annuity maybe paid until that debt with interest (6 percent compounded annually) has been recovered. See 461301.C.

b. Debts to the United States or any of its instrumentalities incurred by the annuitant may be offset from the annuity.

2. Debts of a deceased member, other than for delinquent premiums, are not the responsibility of the annuitant and may not be offset involuntarily against the annuity.

3. The annuity is neither assignable nor subject to execution, levy, attachment, or garnishment (except for alimony or child support).

4. If the Secretary of the Military Department concerned determines that a participating member is presumed dead, then annuity accrues from the first day after retired or retainer pay was suspended or would have been suspended had the member been in receipt of pay on the basis that the member is missing.

5. Do not mail checks to an annuitant living in currency-blocked countries. See Appendix A for a list of blocked countries.

B. Third Parties Payees

1. Trustees in Bankruptcy. The annuity may be paid on behalf on an annuitant to a trustee in bankruptcy pursuant to the order of a bankruptcy court in a proceeding under ***Chapter 13*** of the Bankruptcy Code since such proceeding is voluntary.

2. Incapacitated Annuitants. An annuity may be paid to a third party on behalf of an incapacitated annuitant only if the third party has been appointed as guardian, custodian, or other fiduciary pursuant to a state court order or has been designated a representative payee under subparagraph 460103.C. Otherwise, the annuity may be paid only to the annuitant unless the annuitant has been determined to be incompetent of managing his or her own affairs by a state court, physician, or psychologist. If the annuity cannot be paid directly to the annuitant or to a third party, then amounts will remain unpaid and credited on account until the annuitant is determined to be competent or until a third party has been properly appointed to receive the annuity on behalf of the annuitant. The annuity payment will still be treated as

income to the annuitant. Regardless of whether the Representative Payee is a trust, an Internal Revenue Service (IRS) Form 1099 (Miscellaneous Income) will be issued in the annuitant's name. See paragraph 461401 of this chapter.

3. Power of Attorney. An eligible survivor who is physically or mentally incapacitated (but who has not been determined to be mentally incompetent by a state court, physician, or psychologist) may accept assistance from a person holding a power of attorney in completing (including the signature element) and filing the annuity application form. Benefit payments based on an annuity application signed by the person holding the power of attorney must be made payable directly to the annuitant.

4. Minor Child Annuitants. An annuity for a minor child is paid to the legal guardian or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child. An annuity may be paid directly to the child when the child is considered to be of majority age under the law in the state of residence. The child then is considered an adult for annuity purposes and a custodian or legal fiduciary is not required. See Appendix H for age of majority by state.

5. Surety Bonds. In cases where it appears necessary to protect the annuitant, the Secretary concerned may require a person receiving payments on behalf of the annuitant to provide a surety bond in an amount sufficient to protect the interests of the annuitant. The payee may pay for such bond(s) out of the SBP annuity. This is part of the periodic financial accounting by the payee. The Secretary concerned will determine the amount necessary in surety bond(s) based on the amount of the SBP annuity payable. A surety bond ordinarily will not be required if the a payee is a close family member or a government or financial institution.

6. Accounting. Any person receiving payment on behalf of an annuitant, except as stated below, shall be required to maintain and, upon request by the Secretary concerned, provide a periodic accounting of expenditures and investments of amounts paid to the payee. If the payee is a close family member or a government or financial institution, then a periodic accounting will not be required, but may be requested. In situations where a periodic accounting is required, it ordinarily will be submitted annually, unless the Secretary concerned determines that a more frequent submission is required.

a. Final financial reporting will be required upon the loss of a beneficiary's eligibility, a change of representative payee, or the determination later that an annuitant is competent to manage financial affairs.

b. Major expenditures (i.e., those in excess of $1,000 or the value of the annuity for 1 year, whichever is less) from the payee's bank account for the annuitant require prior written approval by the Secretary concerned.

c. If the Secretary concerned has evidence to suggest that the annuity funds have been or are being misused by the payee, then annuity may be suspended. An

investigation will be conducted to determine if a new payee should be appointed or if payments may be resumed to the payee.

C. Representative Payee. The SBP annuity due a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed may be paid to a representative payee who, in the judgment of the Secretary of the Military Department concerned is responsible for the care of the annuitant. The representative payee is required to spend or invest the amount paid on behalf of the annuitant solely for the benefit of the annuitant. The representative payee must certify that SBP payments received on the annuitant's behalf are used for the annuitant's benefit.

1. An annuitant is determined to be incompetent if the Secretary concerned receives an actual determination of incompetency made either by a state court or by a physician or psychologist. A representative payee will not be established solely on the basis of a letter request from a third party that an annuitant is incapable of handling financial affairs. The annuitant will be notified of actions being taken to make a determination of incompetency and will be provided an opportunity to review the evidence being considered. The annuitant also will have the opportunity to submit additional evidence before a determination is made.

2. If a court order provides for payment of a fee to the representative payee, or if the Secretary concerned determines that payment of a fee is necessary in order to obtain the fiduciary services of a representative payee, then a monthly fee will be allowed. In such circumstances, a fee of 4 percent of the monthly SBP annuity will be allowed, unless a court order dictates a lesser fee. In the case of a spouse or former spouse annuitant, the fee will be no more than 4 percent of the adjusted annuity-gross annuity less any DIC offset. Any court order that provides for a fee in excess of 4 percent shall be limited to 4 percent. The representative payee will be notified of the fee percentage allowed. The fee is not a separate payment to be mailed to the representative payee, but can be withheld by the representative payee from the monthly annuity payment. The fee is part of the periodic financial accounting by the representative payee.

3. The selection of the representative payee will be made on the basis of the individual annuitant's circumstances. Generally, the order of preference for appointing a representative payee is the:

a. Spouse.

b. Son or daughter or legally adopted son or daughter.

c. Brother or sister.

d. Parents.

e. Head of Federal or state institution.

f. Trustee of a private trust.

g. Any other individual whose appointment appears to be in the best interest of the annuitant.

NOTE: If more than one person or institution requests to be named the representative payee of the annuitant, then the Secretary of the Military Department concerned shall determine which applicant is a more appropriate payee.

4. In addition to SBP annuity payments (including payments to Minimum Income Widows covered under section 4615 of this chapter), annuity payments under Uniformed Services Contingency Option Act Retired Serviceman Family Protection Plan (RSFPP), and Reserve Component SBP also may be made to a representative payee.

5. The representative payee will be required to submit Reports of Existence and Certificates of Continued Eligibility as specified in section 4611 or 4612 of this chapter.

6. An annuity paid to a person on behalf of an annuitant in accordance with these provisions discharges the obligation of the United States for payment to the annuitant of the amount of the annuity paid.

D. Rounding. Monthly annuities, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

E. Cost of Living Adjustments.

1. Normally, SBP annuities increase at the same time and by the same percentage that retired pay increases. Exception: When the payment of increased retired pay due to a cost-of-living adjustment is delayed by law, the increased annuity due to a cost-of-living adjustment is not delayed. The cost-of-living adjustment applies to the monthly gross annuity amount before any reductions, such as DIC.

2. See subparagraph 461502.B. regarding cost-of-living adjustments for the minimum income widow annuity.

460104. Provisional Annuity Payments

A. In cases involving delayed receipt of an annuity application, the Director, Retired and Annuitant Pay Operations, may authorize provisional annuity payments for 2 consecutive months, provided that all of the following conditions have been met:

1. The Military Service verifies that the member is deceased.

2. The annuitant has been contacted.

3. The SBP election confirms the beneficiary's identity and eligibility.

4. The Military Service verifies school attendance for dependent child annuitants age 18 to 22.

B. Upon receipt of the annuity application, there will be an adjustment for the difference between the actual annuity entitlement due and the provisional annuity payments made.

C. Annuity payments will be suspended if a completed annuity application is not received within 60 days of the first provisional payment.

*4602 DEATH OF MEMBER ON ACTIVE DUTY

460201. Active Duty Deaths

A. SBP benefits under this section may be payable as provided in section 4601 of this volume for:

1. A member who dies while on active duty after: 1) becoming eligible to receive retired pay; 2) qualifying for retired pay, except that the member has not applied for or been granted that pay; or 3) completing 20 years of service but before the member is eligible to retire as a commissioned officer, because the member has not completed 10 years of active commissioned or service; or

2. A member who dies on active in the line of duty on or after September 10, 2001. Active duty includes members on active duty for annual training. Reserve members on active duty are included whether or not their orders specify a period of more than 30 days. Limited benefits may be payable under this section when the death is not in the line of duty in the case of a member who is eligible to receive retired pay prior to the date of death.

B. Death in the Line of Duty. If the member was on active duty at the time of death and the death is in the line of duty, then the death qualifies for SBP benefits under this section.

C. Death is Not in the Line of Duty.

1. If the member was on active duty and retirement eligible at the time of death, as described in paragraph 460201 and the death is not in the line of duty, then the SBP base amount is equal to the retired pay as if the member were retired for length of service under applicable law of the respective service of the deceased member.

2. If the member was not on active duty, or was on active duty but not eligible for retired pay and the death is not in the line of duty, then the member's death does not qualify for SBP benefits.

460202. Qualified Annuitants

The annuity payment will be made based on the following priority:

A. Former Spouse Based on the Court Order. The annuity is payable to a former spouse if the member is required by a court order or spousal agreement or has made an election to provide such coverage. If there are multiple court orders for former spouse elections, then the court order with the earliest date will take precedence.

B. Current Spouse. The annuity is payable to a surviving spouse unless the annuity is payable to a former spouse.

C. Children. The annuity is payable to the dependent children of the member when:

1. There is no eligible former spouse and either there is no eligible surviving spouse or the surviving spouse later dies; or

2. For a member who dies on or after October 7, 2001, the Secretary of the military department concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children instead of paying an annuity to the surviving spouse.

D. Insurable Interest Deemed Election. If no annuity is payable under subparagraphs A., B., or C. of this paragraph, the Secretary concerned may pay an annuity to a natural person with an insurable interest in the member, if the person is a dependent of the member as defined in ***10 U.S.C. 1072(2).***

460203. Annuity Amount

The annuity is computed with a base amount equal to the amount of retired pay that would have been paid to the member had the member been retired on the date of death, as follows:

A. Qualified Death in the Line of Duty. The SBP base amount is equal to the retired pay as if the member retired with total (100 percent) disability which is equal to 75 percent of the appropriate retired pay base. The annuity is then computed at 55 percent of the SBP base amount. For members of the Reserve Components who die while serving on active duty, the retired pay base will be computed as if the member had been entitled to basic pay for the 36 months preceding retirement or the entire period the member was a member of a uniformed service (if less than 36 months), regardless of whether the member served the entire period on active duty.

B. Qualified Death Not in the Line of Duty. The SBP base amount will be computed as if the member retired for length of service based on the final basic pay or high-36 average as applicable. However, for members who elected to receive the Career Status Bonus

(see Volume 7A, section 6601), the SBP base will be computed using the REDUX method with the prescribed reduced cost-of-living adjustment. The annuity is computed at 55 percent of the SBP base amount.

C. Insurable Interest Deemed Election. If an annuity is payable pursuant to subparagraph 460202.D., the SBP base amount is equal to the retired pay computed as if the member retired with total (100 percent) disability, which is equal to 75 percent of the appropriate retired pay base, less the cost of participation. The annuity is then computed at 55 percent of the SBP base amount.

460204. Line-of-Duty Determination

A. Purpose. For the purpose of determining eligibility for SBP benefits, a member's death will generally be considered to have occurred in the line of duty unless the death:

1. Occurred while the member was not serving on active duty;

2. Was the result of the member's own intentional misconduct or willful negligence; or

3. Occurred during a period of unauthorized absence.

B. Investigation to Determine the Cause of Death. The military services will conduct an investigation and make a written finding as to whether a member's death was in the line of duty while the member was on active duty. The written finding must describe the circumstances under which the member died, and it must also address whether the death was caused by the member's own intentional misconduct or willful negligence, or whether the death occurred during a period of unauthorized absence.

460205. Responsibilities

A. Military Services. The Military Services must review the death of each member who died on active duty to ascertain whether the death was in the line of duty and whether there are any qualified survivors entitled to SBP annuity. The Military Services will inform DFAS of their line-of-duty determinations using the DD Form 1300, "Report of Casualty"; Block 10 of the DD Form 261, "Report of Investigation Line of Duty and Misconduct Status"; or any other form authorized under individual Service regulations. All line-of-duty determinations, however, must be supported by a written finding which describes the circumstances of death that support the line-of-duty determination.

B. Defense Finance and Accounting Service (DFAS). DFAS does not require a copy of the written finding, only an official communication from the Service to indicate the Service's determination that the death is in the line of duty, i.e., "YES" or "NO." Once DFAS receives the determination, DFAS will compute and pay SBP annuities to qualified survivors for qualified deaths.

*4603 INACTIVE-DUTY TRAINING DEATH

460301. Entitlement

A Reserve Component member who dies from injuries or illness incurred or aggravated while performing inactive-duty training and the death is determined to have occurred in the line of duty is entitled to coverage under the SBP program.

A. Death in the Line of Duty. Qualified survivors of a member who is not retirement eligible and dies from injuries or illness incurred or aggravated while performing inactive-duty training and the death is determined to be in the line of duty, may be eligible for SBP benefits.

B. Death Not in the Line of Duty. The death of a Reserve Component member who is not retirement eligible and whose death is determined to have occurred "not in the line of duty" does not qualify under this section.

460302. Qualified Annuitants

The annuity payment will be made based on the following priority:

A. Former Spouse by Court Order. The annuity is payable to the former spouse if the member was required under a court order or spousal agreement to provide an annuity to the former spouse upon becoming eligible to participate in the RCSBP or if the member has made an election to provide an annuity to the former spouse.

B. Current Spouse. The annuity is payable to the current surviving spouse unless the annuity is payable to the former spouse.

C. Children. Children of the member when the former spouse is not eligible and either there is no surviving spouse or the surviving spouse later dies. The children are not qualified annuitants if a surviving spouse loses entitlement to the annuity for a reason other than death, see section 4401 of this volume.

460303. Annuity Amount

The annuity payable for a death that occurred while performing inactive-duty training under this section shall be the amount equal to 55 percent of the retired pay to which the member would have been entitled based on the member's years of service at the time of death, computed as for a Reserve Component retirement which also includes points for drills and other time.

460304. Line-of-Duty Determination

For the purpose of determining eligibility for SBP benefits under this section, a service member's death will be generally considered to be in the line of duty unless:

A. The death occurred while the member was not serving on inactive-duty training;

B. The death was the result of the member's own intentional misconduct or willful negligence; or

C. The death occurred from injuries or illness incurred or aggravated during a period of unauthorized absence.

460305. Responsibilities

The Military Services will make a determination and a written finding as to whether a member's death occurred in the line of duty from injuries or illness incurred or aggravated while performing inactive-duty. A written finding must describe the circumstances under which the member died, and it must also address whether the death was caused by the member's own intentional misconduct or willful negligence. Once DFAS receives the determination, DFAS will compute and pay the annuity to qualified survivors.

4604 DEPENDENCY AND INDEMINITY COMPENSATION (DIC) OFFSETS AND SPECIAL SURVIVOR INDEMNITY ALLOWANCE (SSIA)

460401. When Required

The gross SBP annuity payable to a surviving spouse must be offset by an award of DIC, unless the eligible surviving spouse remarries after age 57, and thereby, retains entitlement to DIC. A surviving spouse who receives DIC due to remarriage after age 57 becomes entitled to the full SBP annuity unreduced by DIC, as well as the full DIC entitlement.

460402. DIC Offset

The Department of Veterans Affairs (VA) determines entitlement to and the amount of the DIC award. DIC rates are listed in Appendix L. DIC rates were based on pay grade of member until January 1, 1993. Effective January 1, 1993, DIC is payable at a flat rate, with the cost-of-living adjusted. The survivors of members who died before January 1, 1993 continue to receive DIC rates based on pay grade, if it exceeds the flat rate. The award is effective the first day of the month in which the retiree dies. The DIC payment begins on the first day of the month after the effective date of the award. Except as provided in paragraph 460402.C., the SBP annuity is reduced by the amount of the DIC as of the date on which the DIC payment begins. The DIC offset, if applicable, equals the actual DIC payment the spouse receives, and it increases each time DIC rates increase. For offset purposes, the DIC entitlement does not include any amount attributable to child entitlement or aid and attendance. Payment of the SBP annuity is not withheld or delayed pending verification of the DIC award if the annuitant signs a statement authorizing the VA to collect any overpayment that results from the overlap of the DIC and SBP payments.

A. <u>Premium Refund Due to DIC Award</u>

1. Partial Refund. When an annuity is reduced due to DIC entitlement, a refund of SBP premiums is made based on the difference between the premiums actually paid and the premiums that would have been needed to provide the annuity payable after the DIC reduction. If DIC entitlement is lost due to remarriage of the surviving spouse after age 55, but prior to age 57, then SBP may be reinstated. See subparagraph 460402.C.

2. Full Refund. When DIC is equal to or greater than the annuity, the SBP annuity ends permanently, except under the conditions shown in subparagraph 460402.C. The SBP premium is refunded after any annuity debt is liquidated. If the annuitant dies before a refund of SBP premium is made, then the refund shall be made to the annuitant's beneficiaries in the order of precedence. See Chapter 31, of this volume, for further information.

3. Supplement Survivor Benefit Plan (SSBP). SSBP premiums are not refunded.

B. Sample Computation of Refund. See Tables 46-2, 46-3, and 46-4 for a sample computation of refund.

C. Reinstatement of SBP Annuity Upon Loss of Entitlement to DIC Because of Remarriage Between Ages 55 and 57

1. If the spouse whose SBP annuity entitlement was adjusted under subparagraph 460402.A. subsequently loses entitlement to DIC because of remarriage occurring on or after the beneficiary's 55th birthday, but before age 57, then the annuity is reinstated under conditions specified in subparagraph 460402.C.2 on the effective date of the loss of DIC entitlement. The annuity is adjusted to reflect all authorized cost-of-living adjustments.

2. The surviving spouse who loses entitlement to DIC must repay all amounts refunded under subparagraphs 460402.A.1. and 2., in either a lump sum or in installments. If repayment is in installments, then the installment payments are deducted from the SBP annuity payable. The installment will be 50 percent of the DIC amount or 50 percent of the gross annuity, whichever is less. When annuity is increased by cost-of-living adjustment, the same percentage increase will be applied to the installment deduction. No interest will accrue until the date of the first readjusted annuity payment. Thereafter, interest accumulates on any unpaid balance at the rate established by the Department of Defense (DoD) Board of Actuaries, until the full amount has been repaid. Thus, the remaining debt on the date of each installment deduction will be increased by a factor established by the DoD Board of Actuaries. This is based on the 12th root of 1 plus the current annual interest rate used by the DoD Board of Actuaries to determine the retirement accrual cost. See ***http://actuary.defense.gov/***.

D. Late Award of DIC. When a claim for DIC is not filed within 1 year after the member's death, and the spouse received an SBP annuity, no cost refund is made when DIC is later awarded. The effective date of the reduced annuity is the date that the VA received the claim.

E. Special Survivor Indemnity Allowance (SSIA). A surviving spouse who is receiving DIC and who is not collecting the full amount of SBP due to receipt of DIC may be entitled to a SSIA. SSIA is a separate fixed monthly entitlement, but may not exceed the amount of the annuity in any month that is subject to offset by the DIC. Receipt of the SSIA is conditioned upon the requirements enumerated in the law.

460403. Social Security Offset

Effective April 1, 2008, the Social Security Offset Method was eliminated permanently for all annuitants.

4605 CAUSES OF OVERPAYMENTS

460501. SBP Annuity Overpayments

Generally, SBP annuity overpayments are caused by:

A. Failure to reduce annuity by the amount of DIC.

B. Non-termination of annuity because of ineligibility.

C. Erroneous computation.

D. Insufficient or untimely information.

E. A determination by the Secretary of the Military Department concerned (or designee) that a participating member is alive after the Secretary concerned previously determined that the member was presumed dead.

4606 LIABILITY

The annuitant is liable for debts created from the overpayment of an annuity. The member is liable for any indebtedness created because annuity payments were made based on the presumption of such member's death. The member's indebtedness cannot be considered for waiver under ***10 U.S.C. 2774*** or ***10 U.S.C. 1453***. If the member dies before such payments are fully recovered, then the annuitant may be liable for the indebtedness if such annuitant was the recipient of the annuity payments made under the presumption of death. (See Chapter 28, Table 28-1 for the collection of member's indebtedness.)

4607 LIQUIDATION OF DEBT

460701. Debt Liquidation

Upon discovery of an overpayment, advise the annuitant of the debt and the method in which the overpayment is being, or may be, liquidated. The debt may be liquidated by:

A. The annuitant making direct remittance to the DFAS-Cleveland Site.

B. The annuitant authorizing the VA to reduce DIC and remit the amount collected to the DFAS-Cleveland Site.

C. The DFAS-Cleveland Site reducing later SBP annuity payments.

4608 WAIVER OF INDEBTEDNESS

460801. Request a Waiver of Indebtedness

When applicable, the DFAS-Cleveland Site advises the annuitant of the right to request a waiver of indebtedness. The right to request a waiver does not constitute removal of the responsibility for repayment of the debt. If a waiver request is granted repayment of the debt is not required.

460802. Receipt of Waiver Request

Suspension of collection action may be authorized upon receipt of a waiver request. Refund of an amount withheld before receipt of a request for a waiver is not authorized. When a waiver is granted, any amount collected after the receipt of the waiver request is refunded to the annuitant.

4609 TERMINATION OF ANNUITY

460901. Time of Termination

Entitlement to an SBP annuity terminates effective as of the first day of the month in which eligibility is lost. If a determination is made by the Secretary of the Military Department concerned (or designee) that a participating member is alive after the Secretary concerned previously determined that the member was presumed dead, the annuity is terminated immediately since no entitlement exists.

460902. Reasons for Termination

Terminate the SBP annuity when:

A. DIC equals or exceeds an SBP annuity that is subject to offset. No annuity is paid to children when the SBP annuity is no longer payable due to DIC, although the member had also provided coverage for children.

B. Spouse or former spouse (spouse category) annuitant remarries before age 55 or dies. If the member also provided coverage for children, then the full annuity is payable, in equal shares, to the remaining eligible dependent children effective on the first of the month in which the spouse or former spouse dies or remarries.

C. Child or children annuitants lose eligibility because of:

1. Child's attaining age 18 and not pursuing a full-time course of study.

2. Marriage or death of child annuitant.

3. An incapacitated child over age 18 becomes independently capable of earning amounts sufficient for his or her own particular personal needs through substantial and sustainable gainful employment. This termination is not automatic; an annuitant will be given an opportunity to submit rebutting evidence. This annuity may be reinstated; see paragraph 461002.

4. Termination of student status (child over age 18 and under age 22). If the student reaches age 22 before July 1 or after August 31 of a calendar year, then the child's annuity terminates on the first of July after the 22nd birthday.

5. Reinstatement of spouse or former spouse (spouse category) annuity following divorce or annulment.

D. A natural person with an insurable interest dies. The termination is final. There are no provisions for designating a contingent survivor annuitant.

E. A determination by the Secretary of the Military Department concerned (or designee) that a participating member is alive after the Secretary concerned previously determined that the member was presumed dead.

460903. Death of Annuitant

For the payment of any unpaid annuity amounts, see Chapter 31 of this Volume.

4610 REINSTATEMENT OF ANNUITY

461001. Reinstatement of Spousal Annuity

A. Remarriage Before Age 55 that is Terminated by Death of Spouse. Reinstate the annuity effective the first day of the month in which the death occurs. If annuity entitlement from the terminated marriage exists, then the spouse or former spouse (may not receive both annuities but must elect the one desired. If the spouse or former spouse elects to receive the annuity which had formerly been terminated, then update the annuity by any cost-of-living increases which occurred after termination.

B. Remarriage Terminated by Divorce or Annulment. Reinstate the SBP annuity effective the first day of the month in which the marriage terminates by divorce or annulment. Legal review is appropriate if discrepant information or annotations result in doubt or if divorce or annulment was granted by a court in a foreign country.

C. Loss of DIC Entitlement Because of Remarriage Between Ages 55 and 57. The annuity is reinstated effective as of the date of the loss of the DIC entitlement, adjusted to reflect all cost-of-living adjustments. See subparagraph 460402.C.

461002. Reinstatement of Child Annuity

A. Reinstatement of Annuity to Incapacitated Annuitant. An annuity to an incapacitated child over 18 years of age may be reinstated upon the recurrence of the original disability rendering the annuitant incapable of self-support, or if the annuitant furnishes evidence that, although engaged in substantial and sustainable gainful employment, wages are not sufficient to cover his or her particular personal needs.

B. Child Resumes School Attendance. The child's eligibility for an annuity which is terminated for school nonattendance is reinstated effective the first day of the month that the child resumes school attendance.

C. Child's Marriage Terminated by Annulment. An annulment of a child's marriage which renders the marriage void or invalid, or by a judicial decree by a court of competent jurisdiction declaring the marriage void, would serve as a basis for reinstating a child's eligibility for annuity prospectively from the date of the judicial decree. The termination of a child's marriage by death or divorce does not serve as a basis for reinstatement of annuity eligibility.

4611 CERTIFICATIONS OF ELIGIBILITY

461101. Purpose

The certificate validates continued eligibility of annuitants, whether eligible spouse, former spouse or children. The spouse, former spouse, and child must meet eligibility requirements in section 4203 of this volume.

461102. Frequency of Certification

A. Annually. Each year, the eligible spouse, former spouse custodian, or legal fiduciary for a minor child must submit a certificate or eligibility to the DFAS-Cleveland Site.

B. Biennially. Every 2 years, a medical certification must be submitted to the DFAS-Cleveland Site for an incapacitated child over 18 years of age, unless medical prognosis indicates the disability is permanent.

C. Other. A student between the ages of 18 and 22 must submit evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided.

1. A payment to a student continues during any interval between school years that do not exceed 150 days if the student demonstrates, to the satisfaction of the DFAS-Cleveland Site, that he or she has a bona fide intention of resuming or continuing a full-time course of study or training in a recognized educational institution immediately after that interval.

2. An eligible student annuitant under SBP properly enrolled in a recognized educational institution employing the usual quarter or semester system, who becomes ill or requires non-elective surgery during the school term, retains his or her student status for the rest of that term.

461103. Failure to Furnish Certificate

Annuity payments are suspended if the annuitant, custodian, or legal fiduciary fails to furnish the certificate as required. Payments are restarted only after receiving satisfactory proof of eligibility.

461104. Method of Completing Certifications

The annuitant as identified above may submit the required certification in writing or by electronic signature via MyPay. A valid electronic signature must include the annuitant's Social Security number and personal identification number. If payments are made on behalf of the annuitant, then the annuitant's name must also accompany the electronic signature. An electronic signature is not authorized for medical certifications or intent to attend school.

4612 REPORT OF EXISTENCE (ROE)

461201. Purpose

The ROE fulfills the requirement for:

A. An annuitant who receives payment through foreign postal channels.

NOTE: The ROE is not required when the payment is addressed to a United States Consulate, American Embassy, military attaché, or FPO or APO address.

B. A mentally incompetent annuitant who receives payments through either a court-ordered legal representative or representative payee.

461202. Frequency

An ROE is required on a semiannual basis for an annuitant described in subparagraph 461201. Receipt of the certificate semiannually verifies the annuitant's existence. Under no circumstances may the ROE be signed by other than the annuitant, custodian, or legal fiduciary; however, an electronic signature is authorized via MyPay. A valid electronic signature must include the annuitant's Social Security Number and personal identification number. If payments

are made on behalf of the annuitant, then the annuitant's name must also accompany the electronic signature.

461203. Failure to Return Report of Existence

Annuity payments are suspended if the annuitant, custodian, or legal fiduciary fails to return the ROE as required. Payments are resumed only after receiving satisfactory proof of existence.

4613 SUSPENSION

461301. Reasons for Suspension of Payment

A. Non-receipt of certificate of eligibility or report of existence;

B. Non-receipt of verification of school attendance;

C. An annuitant will not receive annuity payments while there are still premiums owed on the SBP account. Once all premiums that are owed have been recouped, then payment of the annuity will commence/recommence;

D. Adjustment of the annuity due to administrative error.

E. An incapacitated child over age 18 becomes independently capable of earning amounts sufficient for his or her own particular personal needs through substantial and sustainable gainful employment. Payments can be reinstated. See paragraph 461002.

4614 TAXABILITY OF ANNUITIES

461401. Taxability of SBP Annuity Payments

SBP annuity payments are taxable for Federal income tax purposes. See Table 46-3 for exceptions; also see paragraph 461203 for when SBP annuity payments are treated as "designated distributions" for tax withholding guidance purposes. In the case of a representative payee receiving an annuity payment on behalf of an annuitant, the income is attributable to the annuitant and an IRS Form 1099 will be issued in the annuitant's name.

461402. Taxability of SBP Cost Refunds

A refund of SBP costs (i.e., SBP premiums, resulting from an administrative error, correction of records, or awarding of DIC may or may not be taxable income to the member or the annuitant. The taxability of an SBP cost refund depends on the source from which it is made, as discussed in this section (also see Table 46-4). The SBP cost refund:

A. constitutes taxable gross income to the retired member or the annuitant when it includes premium deductions taken from the retired member's taxable retired pay in order to pay for the cost of SBP coverage.

B. does not constitute taxable gross income to the retired member or the annuitant when it is made from the retired member's direct remittance payments (by check) to pay for the cost of SBP coverage, and

C. does not constitute taxable gross income to the retired member or the annuitant when it is made from the retired member's VA disability compensation or by deduction from nontaxable military disability retired pay.

*461403. Federal Income Tax Withholding (FITW)

A. Monthly or Periodic Payments. Monthly or periodic SBP annuity payments are treated as income for FITW purposes. An annuitant, however, may elect no withholding of Federal income tax. In the absence of an annuitant election, or if the annuitant does not otherwise submit a withholding certificate, the DFAS-Cleveland Site will withhold on the basis of "married, three exemptions." The annuitant may use TD Form W-4P (Withholding Certificate for Pension and Annuity Payments) or any substitute form furnished by the payer.

B. Notice Requirements. The DFAS-Cleveland Site must advise the annuitant of the withholding requirement, as well as the right to elect that no tax be withheld, when making the first monthly or periodic payment to the annuitant. Thereafter, the DFAS-Cleveland Site must provide annual notice to the annuitant of the right to elect no withholding, to revoke an election, or to submit a new withholding certificate. An annuitant also may submit a withholding certificate at any time to elect no withholding, revoke an election, or request any rate of withholding.

C. Lump-Sum (One-Time) or Nonperiodic Distribution Payments.

1. SBP Cost Refunds. An SBP cost refund is a refund of premiums rather than a distribution of benefits. As a nonperiodic distribution, an SBP cost refund is subject to FITW at the rate of 10 percent. The annuitant, however, may elect no withholding of FITW. The annuitant has the right to make an FITW election for this refund separately from any election already in operation for all other SBP annuity payments.

2. Other. Retroactive SBP annuity payments paid in a lump sum constitute periodic distributions and are subject to the tax withholding rules of subparagraph 461403.A. Likewise, if the lump sum payment of an SBP annuity is the result of administrative error or delay in the start of an annuity, then the payment is treated as a periodic payment subject to the withholding rules of subparagraph 461403.A.

461404. Income Exclusion

A. Consideration for Contract. The SBP annuitant is entitled to an income exclusion when, upon death of the participant member, the "consideration for contract" has been excluded in whole from the member's gross income. The member's survivor receiving the annuity may exclude from gross income such annuity payments received until the total exclusion equals the portion of the "consideration of contract" not previously excluded from the member's taxable income. The DFAS-Cleveland Site will accomplish the applicable direct reduction in taxable income for the annuitant and report the residual amount as taxable income on the annuitant's IRS Form 1099-R (Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.). Contact the IRS for further assistance.

Example: When a member died, $1,000 of the total "consideration for contract" had not yet been excluded from the member's nondisability retired pay. DFAS would report the taxable annuity less $1,000, and this reported residual amount would be used by the surviving spouse in his or her income-tax computation for the calendar year.

B. Direct-Cost Payments. The tax-free benefit on SBP premiums is not available to members who waived military retired pay to receive disability compensation from the VA (see section 1202 of this volume). Instead, upon the member's death, the annuity paid to the member's survivor will be exempt from Federal income tax until the amount excluded equals the total of the member's direct cost payments.

461405. Amount of Annuity Subject To Federal Estate Tax

The value of the annuity at the time of the member's death may be subject to Federal estate tax if any portion of the cost was paid by direct remittance, or if the value of the annuity exceeds the amount that may be excluded from the gross estate. DFAS may furnish the annuitant the current annuity amount and/or a summary of annual payments, and total cost paid (separate totals for deductions and direct remittances). For a computation of the amount of an annuity that will be subject to the tax, if any, the executor of the member's estate can contact the IRS for further assistance.

461406. State Taxation

The IRS Form 1099-R information is furnished to the appropriate state tax authority regardless of whether SBP annuities are subject to state inheritance or income tax. The method of calculating such tax depends upon the laws of the state concerned.

4615 MINIMUM INCOME WIDOW/SURVIVING SPOUSE

461501. Eligibility Criteria

An annuity under the minimum income widow/surviving spouse provision of the SBP law (see paragraph 420102) is payable to widows receiving a Spanish-American War pension

without regard to income. The annuity is payable to all other surviving spouses who meet all of the following conditions:

A. The surviving spouse is not otherwise entitled to an annuity under other provisions of the SBP or to DIC from the VA.

B. The surviving spouse is eligible for a widow's non-service-connected death pension from the VA.

C. The surviving spouse has annual income from all sources (including amount of RSFPP annuity entitlement, but excluding the amount of VA pension), as determined by the VA, that is less than the annual income rate in Appendix R. If the surviving spouse previously was denied an annuity because of income in excess of income limitations, then entitlement may exist upon notice from the widow or from the VA that his or her current yearly income, as determined by the VA, is less than the income limitation.

D. The surviving spouse is a person who, on September 21, 1972, was – or during the period beginning on September 22, 1972, and ending on March 20, 1974, became – a surviving spouse of a person who was entitled to retired or retainer pay when he or she died. Remarriage by the surviving spouse bars entitlement to an annuity under this provision of law unless the remarriage is terminated by an annulment. If there are questions as to whether an annuity should be reinstated after an annulment, then refer the matter to the appropriate legal office.

NOTE: DD Form 1885 (Survivor Benefit Plan – Minimum Income Claim) and DD Form 1895 (Request for Veterans Administration Pension and Annual Income Information) are used in administering the minimum income widow annuity.

461502. Amount of Annuity

The maximum annuity payable is shown in Appendix R. The VA determines the yearly entitlement and advises DFAS. This amount is prorated by the DFAS-Cleveland Site and is paid on a monthly basis.

A. The annuity of a widow receiving a Spanish-American War pension is reduced by the amount of any RSFPP which may be payable.

B. The amount of the annuity is neither rounded nor increased to reflect retired pay cost-of-living adjustments; however, the annual income rates (Appendix R) shall be increased by the same amount and shall have the same effective date whenever there is an increase in the limitation on annual income for the purposes of eligibility for pension benefits.

C. The annuity is subject to Federal income tax.

D. The annuity is neither assignable nor subject to execution, levy, attachment, or garnishment (except for alimony or child support).

461503. Effective Date of Entitlement

The effective date of entitlement is the date on which the requirements of law are met, subject to the 6-year statute of limitations.

461504. Annuitant, Mentally or Physically Incapacitated

A. If, for any reason, a minimum income surviving spouse is mentally or physically incapable of applying for or negotiating the payment of the annuity, a court-appointed guardian may act on his or her behalf. If no guardian has or will be appointed, then the person having care, custody, and control of the incapacitated annuitant is authorized to act on his or her behalf.

B. An ROE is required when the annuitant receives payments through foreign postal channels, or through a third party if the annuitant is incapacitated. See section 4612 of this chapter.

C. The yearly certificate of continued eligibility is not required.

461505. Changes and Termination

Changes in the amount of the annuity payable or termination of the annuity must be in accordance with the effective date of change or termination as shown by the VA. If termination is due to death of the annuitant, entitlement ceases as of the first day of the month in which death occurs. Any amounts which are due and payable at the time of annuitant's death may, upon receipt of a properly executed and documented claim, be paid to the estate of the surviving spouse.

461506. Reopened Claim

The DFAS-Cleveland Site will reestablish an annuity that has been temporarily suspended because of the excessive income or net worth of the surviving spouse as of the first day of the month in which the surviving spouse meets the income level for an annuity as determined by the VA. Notification of any change in income is the responsibility of the surviving spouse.

461507. Causes of Overpayment

A. The minimum income annuity for the surviving spouse was not timely terminated when his or her annual income exceeded the applicable rates shown in Appendix R.

B. Erroneous computation.

C. Insufficient or untimely information.

461508. Liability

The annuitant is liable for debts caused by overpayment of the annuity. The annuity may not be used as an offset against an indebtedness incurred by the member. The debt may be liquidated by:

A. The annuitant by making direct remittance to the DFAS-Cleveland Site.

B. The annuitant authorizing the VA to reduce the pension and remitting the amount collected to the DFAS-Cleveland Site.

C. The DFAS-Cleveland Site by reducing later annuity payments to minimum income widows.

461509 Waiver of Indebtedness

The request for waiver consideration is handled under the provisions of section 4608 of this volume.

Table 46-1. Annuity for Surviving Spouse or Former Spouse

ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE					
	A	**B**	**C**	**D**	**E**
RULE	**If member dies or is declared dead**	**and**	**and the annuitant**	**then the annuity is (notes 2 and6)**	**and is offset by (note 9)**
1	in a retired status	the member elected to participate in the program	was married to member on date of election or on date of retirement and is married to member at time of member's death (note 1)	55 percent of base amount of coverage on date of member's death	Dependency and Indemnity Compensation (DIC).
2		the member elected to participate in the program	was married to member a minimum of 1 year at time of member's death (note 3)		
3		the member elected to participate in the program	is the parent of a "living issue" of the marriage which occurred after the date of retirement (note 4)		
4		the member became eligible and elected to participate on or after September 8, 1982	is the former spouse of a member when member became eligible or the former spouse that a member acquired after becoming eligible to participate and who had been married to member at least 1 year or is the parent of issue of that marriage (note 4)		
5	on active duty	the member's death was found to be in the line of duty	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay base to which member would have been entitled had they been retired for a 100% disability on the date of death	DIC.

Table 46-1. Annuity for Surviving Spouse or Former Spouse (Continued)

ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE					
	A	**B**	**C**	**D**	**E**
RULE	**If member dies or is declared dead**	**and**	**and the annuitant**	**then the annuity is (notes 2 and 6)**	**And is offset by (note 9)**
6	on active duty and was entitled to retired or retainer pay, (note 7)	the member's death was found to be NOT in the line of duty	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled at date of death based upon the member's years of active service	DIC
7	on active duty and qualified for retired pay but had not yet applied for or been granted such pay or after completing 20 years of active service, but before member is able to retire as a commissioned officer because member has less than 10 years of active commissioned service (note 7)	the member's death was found to be NOT in the line of duty	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled at date of death based upon the member's years of active service, in the case of a member who first became a member before September 8, 1980, use the rate of basic pay in effect for the grade in which serving at time of death, unless, as determined by the Secretary concerned, the member would have been entitled to be retired in a higher grade	DIC,

Table 46-1. Annuity for Surviving Spouse or Former Spouse (Continued)

ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE					
	A	**B**	**C**	**D**	**E**
RULE	**If member dies or is declared dead**	**and**	**and the annuitant**	**then the annuity is (notes 2and 6)**	**and is offset by (note 9)**
8	while eligible to provide a Reserve Component annuity but: (a) before being notified of retirement eligibility, or (b) during the 90-day period beginning when member receives notification of retirement eligibility	the member had not made an RCSBP election	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled on the date of death based upon the member's years of creditable service	DIC.
9	before becoming eligible to provide a Reserve Component annuity	the member's death is in the line of duty from injuries or illness incurred or aggravated while performing inactive-duty training (note 10)	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate		DIC

Table 46-1. Annuity for Surviving Spouse or Former Spouse (Continued)

ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE					
	A	B	C	D	E
RULE	If member dies or is declared dead	and	and the annuitant	then the annuity is (notes 2and 6)	and is offset by (note 9)
10	retired from both military and civil service	the member elected to participate in the program and did not waive military service for civil service purposes	is the spouse or former spouse of a member when member became eligible or the spouse or former spouse that a member acquired after becoming eligible to participate and who had been married to member at least 1 year or is the parent of issue of that marriage (notes 1, 2, 3, and 4)	55 percent of base amount of coverage on date of member's death	DIC.
11	retired from both military and civil service	the member elected to participate in the program and waived military retired pay for civil service purposes, but did not elect survivor coverage at any level under the civil service retirement			

NOTES:

1. For a member married to the same spouse at time of retirement and date of death, the statute does not require that an intervening divorce be followed by 1 year of remarriage immediately before date of death.
2. An annuity ends for a spouse of former spouse if remarried before age 55. If the annuity is terminated because of remarriage, it shall be reinstated if the new marriage ends.
3. Minimum requirement for a marriage is 1 year.
4. "Living issue" means the "issue by that marriage" or a child of such marriage who dies shortly after birth (such child's birth is the criterion, not the duration of the child's life).
5. If member is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to participate in the SBP or if a member has made an election to provide former spouse annuity, then the Secretary of the Military Department concerned may not pay the annuity to the surviving spouse.
6. All SBP monthly annuities if not a multiple of $1, shall be rounded to the next lower multiple of $1.
7. If the "forgotten widow" is entitled to an SBP annuity resulting from a subsequent marriage to a member, then the individual may not receive the two annuities, but must elect in writing which to receive. The annuity for a "forgotten widow" is effective December 1, 1980.
9. An offset for DIC shall be removed if an annuitant remarries subsequent to their 57th birthday.
10. See section 5208 of this volume, for additional information or 10 U.S.C.1448(f).

Table 46-2. Refund of Monthly Premium for SBP Effective January 4, 1994

REFUND OF MONTHLY PREMIUM FOR SBP EFFECTIVE JANUARY 4, 1994 (See note)

The refund of premiums due a spouse or former spouse is determined using the following defined values:

Current Basic Premium (CBP): The actual current premium amount for the basic Survivor Benefit Plan (SBP) spouse coverage elected by the member. This does not include premiums for child coverage, Supplemental SBP (SSBP) premiums, open-enrollment premium additions, or any interest charges.

Current Recalculated Premium (CRP): The implied current premium associated with recalculated SBP basic annuity as reduced due to receipt of Dependency and Indemnity Compensation (DIC). This does not include premiums for child coverage, SSBP premiums, open-enrollment premium additions, or any interest charges.

Total Premiums (TP): The Total Premiums paid by the member for basic SBP. (Lump sum open enrollment buy-in premiums are not refundable). This does not include any premiums for child coverage, SSBP premiums, or interest charges. This amount may be obtained from historical pay files pertaining to the member and/or from a file of total spouse premiums to be produced under the Director of Compensation, ODASD (Military Personnel Policy) by the DoD Actuary and the Defense Manpower Data Center in coordination with the DFAS.

Premium Refund (PR): This is the premium refund amount. The premium refund is determined according to the following formula:

PR = (1 - CRP/CBP) X TP

For example: Member is a retired 0-5, deceased July 1, 1993.
Data is for June 1994.

Retired Pay:	$2,297.00	
Current Basic Premium (CBP):	149.31	
SBP Spouse Annuity: .55 X 2,297 =	1,263.00	
DIC Annuity:	750.00	
Recalculated SBP Annuity	1,263.00 - 750.00 = 513.00	
Implied Base Amount = $513.00/.55	=	932.73
Current Recalculated Premium (CRP)	=	60.63
Total Premiums (TP) from Data Files	=	10,153.08

Premium Refund (PR) is:

PR = (1 - 60.63/149.31) X 10,153.08
= (1 - .4060679) X 10,153.08
= .5939321 X 10,153.08 = 6,030.24

NOTE: Table 46-2 is effective January 4, 1994 for deaths which occurred on or after January 1, 1993.

Table 46-3. Taxability of Survivor Benefit Plan/Retired Serviceman's Family Protection Plan – Nonresident Annuitants Residing Outside the United States

TAXABILITY OF SURVIVOR BENEFIT PLAN/RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN - NONRESIDENT ANNUITANTS RESIDING OUTSIDE THE UNITED STATES				
RULE	**A**	**B**	**C**	**D**
	If the SBP annuitant resides in the country of	**and**	**then the SBP annuity is**	**at the rate of**
1	Australia, Belgium, Cyprus, Egypt, Finland, France, Germany, Iceland, Kazakhstan, Korea, Morocco, Netherlands, New Zealand, Norway, Pakistan, Romania, Sweden, Russia, Trinidad and Tobago, and United Kingdom	is a citizen of the country in which residing	not taxable (note)	
2	China, Estonia, Hungary, India, Ireland, Italy, Latvia, Lithuania, Luxembourg, Mexico, Portugal, Spain, South Africa, Switzerland, Thailand, Turkey, and Venezuela	is a national of the country in which residing		
3		is not a national of the country in which residing	taxable	30 percent.

NOTE: In order to claim entitlement to exemption from taxation based upon a tax convention or Treaty, a nonresident alien annuitant is required to file Treasury Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding).

Table 46-4. Taxability of SBP Cost Refunds

TAXABILITY OF SBP COSTS REFUND			
RULE	**A**	**B**	**C**
		then it is taxable to the	
	If the source of refunded cost is for	**member**	**annuitant**
1	premium deductions from taxable retired pay	yes (note 1)	yes (note 2)
2	premiums paid from VA Disability compensation or premiums deducted from nontaxable military disability retired pay	no (note 3)	no (note 4)
3	premiums paid directly by member	no (note 5)	no (note 6)

NOTES:

1. ***Internal Revenue Code section 122*** caused amounts deducted from military retired pay to fund an SBP annuity to be excluded from income. Had the deducted amount been paid directly to the member instead, it would have been fully taxable. Consequently, refunded costs that were taken from military retired pay constitute gross income to the member.
2. Under ***Internal Revenue Code section 691***, the refund is income in respect of a decedent. The tax status of the refund is the same to the annuitant as it would have been had it been refunded to the member. Since the refund of costs deducted from military retired pay would have been gross income to the member, it is also gross income to the annuitant.
3. VA disability compensation is exempt from taxation, as shown in ***Title 38, United States Code (U.S.C.), section 5301***. Under certain circumstances, military disability retired pay is also nontaxable, as shown in ***26 U.S.C. 104***. If the deducted amount had been paid directly to the member instead, then it would have been exempt from taxation. Consequently, refunded costs that were taken from VA disability compensation or nontaxable military disability retired pay are also exempt from taxation.
4. Under ***Internal Revenue Code section 691***, the refund is income in respect of a decedent. The tax status of the refund is the same to the annuitant as it would have been had it been refunded to the member. Since the refund of costs deducted from VA disability compensation or from nontaxable military disability retired pay would have been excluded from the gross income of the member, it is excluded from the gross income of the annuitant.
5. Amounts paid directly by the member to fund the SBP annuity were subject to tax before they were paid by the member. Direct payments by the member do not result in any tax benefit to the member. Consequently, refunds of premiums that were directly paid by the member constitute a nontaxable return of capital and do not constitute gross income.
6. Since the refund would have been a return of capital in the hands of the decedent (and would not have been includible in the decedent's gross income), it is also a return of capital to the decedent's beneficiary (and is not includible in the gross income of the beneficiary of the decedent).

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460202.C.2.	10 U.S.C 1448(d)(2)(B)
460202.D.	10 U.S.C. 1448(d)(6)(A)
460203	10 U.S.C. 1451(c)
460203.A.	10 U.S.C 1407(c)(3) 10 U.S.C. 1451(c)
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VOLUME 7B, CHAPTER 49: "SURVIVOR BENEFIT PLAN (SBP) COST-OF-LIVING ADJUSTMENT"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 December 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
4901	Added a hyperlinked reference to cost of living adjustments.	Add

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CHAPTER 49

SURVIVOR BENEFIT PLAN (SBP) COST-OF-LIVING ADJUSTMENT

*4901 BASE AMOUNTS

All Survivor Benefit Plan (SBP) base amounts are increased by cost-of-living adjustments (COLA). The adjustment to the base amount is made at the same time and by the same total percentage that retired or retainer pay is increased. See section 540201 for information pertaining to the computation of the Reserve Component Survivor Benefit Plan (RC-SBP) and Chapter 8, Table 8-1 for COLA adjustments.

4902 PREMIUMS

All SBP and RC-SBP premiums are increased by cost-of-living adjustments.

4903 ANNUITIES

490301. Cost of Living Adjustment.

Normally, SBP and RC-SBP annuities increase at the same time and by the same percentage that retired pay increases by cost-of-living adjustment. However, when the payment of increased retired pay due to a cost-of-living adjustment is delayed by law, the increased annuity due to a cost-of-living adjustment is not delayed. The cost-of-living adjustment applies to the monthly gross annuity amount before any reductions, such as Dependency and Indemnity Compensation.

490302. Minimum Income Widow Annuities.

See paragraph 461502, regarding cost-of-living adjustments for minimum income widow annuities.

490303. Rounding.

The monthly amount of an annuity payable, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

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VOLUME 7B, CHAPTER 54: "RESERVE COMPONENT SURVIVOR BENEFIT PLAN (RCSBP)"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 December 2009 is archived

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
540201	Edited the term "base amount" for clarity.	Update
540204	Defined the 90 day period in which a member must complete a RCSBP election.	Add
540205	Combined the definitions of eligible for retired pay and retirement eligible member into one definition.	Update
540206	Included a definition for eligible to participate.	Add
540402	Edited annuity options for clarity.	Update
540502.G.	Consolidated the rules for spousal concurrence.	Update
5414	Added a statement concerning deduction of Dependency Indemnity Compensation.	Update
Table 54-1 and 54-2	No longer relevant and eliminated from this chapter.	Delete
Bibliography	Multiple references moved because of chapter editing.	Update

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CHAPTER 54

RESERVE COMPONENT SURVIVOR BENEFIT PLAN (RCSBP)

5401 PURPOSE

The Reserve Component Survivor Benefit Plan (RCSBP) extends eligibility to the survivor benefit program to Reserve Component members who would otherwise be eligible to receive retired pay except they have not yet reached retirement age. RCSBP allows members to provide an annuity based on their retired pay to qualified survivors.

5402 SPECIALIZED TERMS

*540201. Base Amount

The dollar amount selected by the member upon which the RCSBP premium and the annuity is calculated. A member may elect a full base amount or a reduced base amount. See paragraph 540403 for base amount elections. See paragraph 541301 for base amount computations.

540202. Date of Receipt of Election for RCSBP

The date of the receipt of the election by the member's records custodian, or the date of postmark on the envelope in which the election was received by the records custodian when the member's election intent may be prejudiced.

540203. Date of Retirement

The first day the member is entitled to receive retired pay or the first day the member would have received pay if alive at retirement age.

*540204. The 90-Day Period

The 90-day period in which the member must complete an election for RCSBP. The 90-day period begins on the date that the member receives notification that the member has completed the requisite years of service to be eligible for retired pay at a later age (usually age 60).

*540205. Eligible for Retired Pay

A member becomes eligible for non-regular retired pay upon completion of 20 years of satisfactory service. Often notification is provided by letter referred to as the "20-year letter" because it notifies the member that he has served the requisite years of service to be eligible for retired pay, but is not yet entitled to receive the pay because of his age. See subparagraph 010108. F..

*540206. Eligible to Participate in RCSBP

The date the member receives notice of eligibility for retired pay except for not having reached the age for entitlement to retired pay (usually age 60).

540207. Entitled to Retired Pay

A person who has reached the requisite age for retirement (usually age 60) and is entitled to receive retired pay for non-regular service.

540208. Member

For purposes of this chapter, a member of a Reserve Component.

540209. RCSBP

The Reserve Component Survivor Benefit Plan.

540210. Reserve Components

The following is a listing of the Reserve Components:

A. The Army National Guard of the United States.

B. The Army Reserve.

C. The Navy Reserve.

D. The Marine Corps Reserve.

E. The Air National Guard of the United States.

F. The Air Force Reserve.

G. The Coast Guard Reserve.

540211. Survivor Benefit Plan (SBP)

The SBP for members of the Uniformed Services. NOTE: SBP (see Chapter 42) and RCSBP share many of the same terms. Terms that are not defined specifically in this section are defined in section 4202.

5403 ELIGIBLE BENEFICIARIES

Eligible beneficiaries under the RCSBP include: spouse; child; former spouse; or natural person with an insurable interest. Members eligible to participate in RCSBP may elect coverage

in one of the following coverage categories: spouse; spouse and child; child only; former spouse; former spouse and child; or natural person with an insurable interest.

540301. Spouse (Including the Spouse of a Common-Law Marriage)

The spouse is an eligible beneficiary if:

A. Married to the member on the date that the member became eligible to participate in RCSBP, and was married to the member when the member died.

B. Married to the member for at least 1 year after the date that the member became eligible to participate in RCSBP and;

1. member's election to provide spouse coverage was received within 1 year of the remarriage; and

2. was married to the member when the member died.

Exception: If the member elected former spouse coverage and is electing to change coverage from former spouse to spouse, then subject to the limitations set forth in subparagraph 430701.C., the 1-year time limitation on the election period does not apply.

C. Married to the member after the date that the member became eligible to participate in RCSBP, and married for less than 1 year before member's death, but is a parent of a living child from that marriage, and member's election was received within 1 year of the remarriage.

D. Married to a member who is eligible to provide a Reserve Component annuity and who dies before being notified of eligibility of retired pay for non-Regular service retirement; or during the 90-day period if member had not made an RCSBP election.

540302. Children (Including Children of a Common-Law Marriage)

Children are eligible beneficiaries if they are:

A. Children of a member who elected child coverage when he or she initially became eligible to participate in RCSBP.

B. Children of a member who elected child coverage within 1 year of first acquiring such dependent child(ren) after initially becoming eligible to participate in RCSBP.

C. Children of a member who died after becoming eligible for retired pay, but before being notified of retirement eligibility or during the 90-day period immediately following such notification.

D. Children of a member who elected spouse and child or former spouse and child coverage, if the spouse or former spouse dies, remarries before age 55, or otherwise becomes ineligible. If former spouse coverage is in place, only the child(ren) who resulted from the marriage to the former spouse are eligible beneficiaries.

540303. Former Spouse

The former spouse is an eligible beneficiary if he or she:

A. Is the member's former spouse when the member becomes eligible to participate in RCSBP and is elected beneficiary by the member or is deemed as the beneficiary by the Secretary concerned upon request by the former spouse.

B. Was not the member's former spouse when the member became eligible to participate in RCSBP and a prior spouse election is changed to provide coverage for the former spouse in accordance with subparagraph 540602.C. The former spouse must have been married to member for at least 1 year or be a parent of a child born of the marriage.

C. The former spouse for whom coverage is provided under the insurable interest category for an election made before November 8, 1985, remains an eligible beneficiary following a remarriage, unless the remarriage is to the member who is providing the former spouse coverage.

540304. Natural Person With Insurable Interest

The natural person with an insurable interest is an eligible beneficiary if the member elected:

A. A person who has a reasonable and lawful expectation of pecuniary benefit from the continued life of the member. This may include parents, stepparents, grandparents, grandchildren, aunts, uncles, sisters, brothers, half-sisters, half-brothers, a dependent or non-dependent child or step-child, or any other person more nearly related than a cousin; or

B. Any individual having a reasonable and lawful basis, founded upon the relationship of parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the retiree.

NOTE: Proof of financial benefit from the continuance of the life of the member may be required for other than persons listed in subparagraph 540304.A.

5404 ELECTION TO PARTICIPATE

540401. 90-Day Period

Any member who is notified of his or her completion of the years of service required for retired pay eligibility for non-regular retirement regulations may elect to participate in RCSBP

before the end of the 90-day period. A member who is married or has a dependent child, and who receives notice of eligibility for retired pay, after January 1, 2001, is automatically a participant in RCSBP unless the member elects (with spousal concurrence, if required) not to participate before the end of the 90-day period. See subparagraph 540502.G.

*540402. Annuity Options

A member electing to participate must designate either an immediate, election, a deferred election, or indicate a decision to delay election until reach retirement age. These are described as Options A, B, or C.

A. Option A. The member defers a survivor annuity election or declines coverage until retirement age. There is no coverage for the years between becoming eligible for retirement and reaching retirement entitlement age. If the member dies before reaching retirement age, then no survivor annuity is payable. At retirement age, regardless if that age is before age 60, the member may elect to participate in SBP as any other member becoming entitled to retired pay. If a member chooses Option A, then spousal concurrence is required. See subparagraph 540502.G.

B. Option B. The member elects to provide a deferred survivor annuity that begins on the date that would have been the member's 60th birthday, or on the day after the member's death, whichever is later. If a member chooses Option B, then spousal concurrence is required. See subparagraph 540502.G.

C. Option C. The member elects to provide an immediate survivor annuity beginning on the day after the member's death, whether before or after reaching retirement age.

540403. Base Amount

A member who receives a 20-year notification of eligibility and who elects to participate in RCSBP must elect to cover:

A. One hundred percent of retired pay; or

B. A percentage of retired pay which is less than 100 percent, but which is greater than or equal to $300 when computed against the amount of retired pay which would be payable as of the effective date of the election; or

C. A given dollar amount which is greater than or equal to $300, but less than 100 percent of retired pay.

D. If a member's full retired pay, computed as of the effective date of the election, is less than $300, then he or she must elect to cover 100 percent of retired pay. If the member elects to cover a dollar amount which is greater than 100 percent of his or her retired pay, as computed on the effective date of the election, then the election will be considered to be for 100 percent of retired pay.

E. Any dollar election is converted to a percentage of retired pay as of the effective date of the election. A member making a dollar election should be advised that his or her election will be converted to a percentage of retired pay as would be payable if he or she were of retirement age on the date the RCSBP election becomes effective. The base amount is that same percentage of retired pay regardless of the changes in the retired pay that may occur for example, as a result of pay rate increases, additional points accumulated, promotion or longevity step increases.

540404. Eligible Beneficiary

Any Reserve member who does not have an eligible beneficiary when becoming eligible to participate in the RCSBP, who later marries or acquires a dependent child, may elect to participate in the RCSBP, if the election is completed within 1 year of acquiring a spouse or dependent child. See Paragraph 540601 for specific rules.

540405. Natural Person With Insurable Interest

Any Reserve member who is not married and does not have a dependent child, may elect to provide RCSBP coverage for a natural person with an insurable interest, except a member who is unmarried but who has one dependent child may provide coverage for that child under the insurable interest provision.

5405 ELECTION DATA

540501. RCSBP Election Certificate

Department of Defense (DD) Form ***2656-5***, "Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate," is required for making an RCSBP election, and is also required if the member defers the election under Option A in subparagraph 540402.A.

540502. Contents

The contents of the election document should show:

A. Identification. The member's name, Social Security number, date of birth, and date of retirement (if known).

B. Coverage. If participating, the member's elected coverage for:

1. Spouse and/or children;

2. Former spouse or former spouse and children; or

3. Natural person with an insurable interest (at maximum level of coverage only).

C. Base Amount. If participating, the member's elected coverage amount or percentage.

D. Annuity Options. If participating, the member's election must contain an election for Option B, or Option C. See paragraph 540402.

E. Beneficiary. If participating, the member's designated beneficiary. Show the name, birth date, and Social Security number for each beneficiary named. If coverage includes spouse, then the member must furnish the date of marriage. When the beneficiary is a natural person with an insurable interest, the address and relationship must be shown. For the natural person with an insurable interest, the member must provide a signed statement to show proof of financial benefit if the person designated is more distantly related than cousin.

F. Member's Signature. The member must sign and date the election. In the event the member is unable to complete his signature and instead makes his mark (such as an "X") then two disinterested persons must witness the election form. An addendum to DD Form 2656-5 will suffice in such situations. NOTE: An election made on behalf of the member through a power of attorney is not valid. Such an election is not binding and is without force or effect of law.

* G. Spousal Concurrence. Spousal concurrence in certain elections is a requirement. A spouse's signature must appear on the DD Form 2656-5, the spouse's signature must be notarized, and the spouse must sign after the member has signed the form.

1. A retirement eligible Reserve member who elects RCSBP spouse coverage for less than maximum coverage when the member becomes eligible to participate must obtain the concurrence of the spouse in writing. With respect to members who receive notification of retired pay eligibility under ***10 U.S.C., chapter 1223*** after January 1, 2001, a retirement eligible Reserve member must obtain the concurrence of the spouse in writing before declining coverage (Option A), electing deferred coverage (Option B), electing spouse coverage at less than the maximum level, or electing coverage for a dependent child but not for the spouse.

2. If former spouse coverage is elected or deemed, then the spousal concurrence is not required; however, the spouse must be notified of the former spouse coverage.

3. If a member marries during the 90-day period, spousal concurrence is not required, but the spouse must be notified of the member's election.

H. Former Spouse Elections.

1. If the member elects former spouse coverage the election must include information setting forth whether the election was made pursuant to the requirements of a court order, or a voluntary, written agreement previously entered into by the member as a part of, or incidental to, a proceeding of divorce, dissolution, or annulment, and, if so, whether such agreement was incorporated, ratified, or approved by a court order. The preferred method for a member's former spouse election is the completion of the ***DD Form 2656-1***, "Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage."

2. In order for a former spouse to deem an election, the former spouse must, within 1 year of the date of the court order involved, complete and send a ***DD Form 2656-10***, "Survivor Benefit Plan (SBP)/Reserve Component (RC) SBP Request for Deemed Election," and a copy of the court order, regular on its face, which requires the former spouse SBP election, or which incorporates, ratifies, or approves the voluntary, written agreement of such person or a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable state law. A deemed election will fail unless both the DD Form 2656-10 and a copy of the court order or written agreement are received in accordance with the applicable instructions in the form.

5406 CHANGES IN ELECTION AND COVERAGE

540601. Later-Acquired Spouse and/or Child

This election must be received within 1 year of the event.

A. If a member has no eligible beneficiary at the end of the 90-day period, the member may later elect for an eligible class of beneficiary, if the election is completed within 1 year of acquiring a spouse or dependent child.

B. If a member with spouse or spouse and child coverage loses the spouse beneficiary through death or divorce, the member may, upon remarriage, increase the level of coverage up to and including full retired pay, or elect not to resume spouse coverage, if the member takes no action, spouse coverage will automatically resume upon the one-year anniversary of the remarriage.

C. The member may not add child coverage by virtue of this marriage if child coverage was not previously elected.

D. The level of RCSBP coverage may not be reduced nor may child coverage be eliminated.

E. If the member elects not to resume spouse coverage or provides coverage at less than the maximum level, then the spouse must be notified.

F. If a member has former spouse or former spouse and child coverage, he or she may later elect RCSBP coverage for the newly acquired spouse and/or child subject to the requirements set forth in subparagraph 430702.B..

G. If member has former spouse coverage, an election for a newly acquired child must be made within one year of acquiring the child.

H. If a member has insurable interest coverage, then he or she may elect coverage for the newly acquired spouse and/or child if the election is completed within 1 year of the marriage or acquisition of the dependent child and the insurable interest coverage shall be terminated.

540602. Former Spouse or Former Spouse and Child Elections

A. General Rules

1. A former spouse election prevents an annuity to the member's spouse and child (other than a child beneficiary under a former spouse and child election).

2. If the member is married at the time of the former spouse election, the spouse must be notified of the member's election for the former spouse.

3. A member may change the former spouse election to a spouse election upon remarriage, subject to the requirements set forth in subparagraph 430701.C..

4. The provisions for deemed former spouse elections shown in paragraph 430302 under SBP apply to RCSBP deemed former spouse elections.

B. Former Spouse Elections when the Member Becomes Eligible to Participate.

1. A member who has a former spouse and dependent child when becoming eligible to participate may elect former spouse or former spouse and child coverage provided the child is the result of the member-former spouse marriage.

2. If there is no court order or voluntary written agreement requiring the member to elect former spouse coverage in place at the time the member makes his election, the former spouse's ability to obtain former spouse coverage at a later date could be affected.

C. Former Spouse Elections After the Member Becomes Eligible to Participate But Before the Member Meets Age Requirements.

1. A member who elected spouse or spouse and child coverage when becoming eligible to participate in the RCSBP, may within 1 year of the date of the decree of divorce, dissolution, or annulment of that marriage, change that election to provide the RCSBP annuity to the former spouse or the former spouse and child.

2. An election of former spouse coverage may be deemed to have been elected for the former spouse under the following conditions:

a. The Secretary concerned may deem an election when a member is ordered by a court or voluntarily enters into a written agreement, incidental to a proceeding of divorce, dissolution, or annulment, to elect former spouse SBP coverage, and the agreement has been incorporated in, or ratified or approved by the court, and the member fails or refuses to make the election.

b. The former spouse or the former spouse's attorney may request, that the Secretary concerned deem an election for former spouse coverage within 1 year of the date of the relevant court order.

540603. Natural Person with Insurable Interest

An election for a natural person with insurable interest may be made only when there is no eligible spouse or dependent child(ren). See 540405 for exceptions. A member must elect gross retired pay as the base amount under an election for a natural person with an insurable interest.

5407 IRREVOCABLE ELECTIONS AND DISCONTINUED PARTICIPATION

540701. 90-Day Period

Elections filed during the 90-day period generally are irrevocable unless revoked before the expiration of the 90-day period.

540702. Exceptions

Exceptions to the general rule on irrevocability occur under the following circumstances:

A. The member discontinues participation as a totally disabled member as described in paragraph 430704.

B. The mentally incapacitated member is later determined to be mentally competent and revokes or changes the RCSBP election within 180 days after such determination of judgment. See subparagraph 430401.F.

C. The member elected less than maximum coverage without spousal concurrence and the member fails to establish to the Secretary of the Military Department concerned (or designee) that spousal concurrence was not required, either because the spouse's whereabouts cannot be determined or other exceptional circumstances prevent obtaining the spouse's consent.

D. The Secretary concerned revokes an election when necessary to correct an administrative error. Revocation or correction based on administrative error is a Secretarial prerogative and, except when procured by fraud, is final and conclusive on all officers of the United States.

E. The beneficiary election may be changed to provide former spouse coverage or to remove former spouse coverage as shown in sections 4307 and 5406 of this chapter.

F. The member voluntarily terminates RCSBP coverage for a natural person with an insurable interest who is not a former spouse.

G. A member voluntarily discontinues RCSBP participation upon the second anniversary of the date of commencement of retired pay under paragraph 430801.

540703. Changed Retirement Eligibility

If a member elects RCSBP coverage and subsequently becomes eligible for retirement under another law, thereby losing eligibility, then the RCSBP election remains effective until the member actually retires. A member may then make a new election as any other retiring member.

5408 PREMIUMS

The cost of providing RCSBP coverage under the immediate or deferred annuity option is not subsidized by the Government, but is shared by members and beneficiaries who potentially will benefit from the coverage. The cost to the retiree is in the form of an additional deduction from his or her retired pay beyond the standard SBP cost. The RCSBP, unlike SBP, requires a reduction in the survivor annuity. That reduction, begins when the survivor begins to receive an annuity. The premium increases at the same time and by the same percentage that retired pay increases by cost-of-living adjustments.

5409 COST FACTOR TABLES

540901. RCSBP Factor Tables

The Department of Defense Office of the Actuary provides RCSBP factor tables to reflect military-specific death rates, to include remarriage and divorce rates and to incorporate dynamic actuarial assumptions. The tables are built on a “years younger or older than member” concept. The ages at the nearest birthday to date of election receipt were used. When ages expressed in years are the same, the table is determined by comparing months and days.

540902. RCSBP Premium

The RCSBP premium is the SBP premium for the same class(es) of beneficiary plus an actuarial charge (add-on premium) for the RCSBP deferred or immediate annuity option.

5410 CALCULATION OF PREMIUM

541001. Premium Description

The RCSBP premium consists of an SBP premium and an RCSBP or Reserve add-on premium. The SBP premium is computed as described in Chapter 45. The Reserve add-on premium depends on the type of beneficiary option elected, the annuity type elected, and the difference in age between the member and spouse or former spouse.

541002. Coverage Amount

A. The member must elect a given dollar amount or a percentage of retired pay as the base amount. Any dollar election is converted to a percentage of gross retired pay as of the effective date of election to guarantee full indexing in proportion to member's retired pay.

Example:	
Member's age at election =	52
Member's elected monthly base amount =	$300.00
Member's estimated current monthly retired pay =	$1000.00
Ratio =	300/1000 = .3
Eight years later:	
Member's monthly retired pay at age 60 =	$2000
Member's base amount at age 60 =	.3 x $2000 = $600.00

B. If the given dollar amount exceeds 100 percent of the member's retired pay on the effective date of election, then the base amount is 100 percent of the monthly retired pay. If the given dollar amount is less than 100 percent of gross retired pay but greater than $300 when computed against the retired pay, then use the ratio against the gross retired pay entitlement at age 60, assuming member has met age and service requirements. To obtain a comprehensive estimate of retired pay calculations, premiums, and annuity payments go to: ***http://actuary.defense.gov/***.

541003. RCSBP Participant Terminates Natural Insurable Interest Coverage

An RCSBP participant who voluntarily terminates coverage for a natural person with an insurable interest (not a former spouse) will pay the Reserve add-on premium for the lifetime of the member; however, if the member terminates the coverage before age 60, then the add-on premium is prorated. Multiply the original (add-on) factor by the number of full months during which the member had coverage, dividing the result by the number of full months the member would have had coverage if coverage had not terminated before age 60. The result, rounded to 4 decimal places, shall serve as the member's prorated (add-on) factor.

Revised add-on factor	=	Original RCSBP factor	x	No. of months member had pre-age 60 coverage	÷	No. of months member would have had pre-age 60 coverage

5411 INITIAL PREMIUM AND EFFECTIVE DATE

541101. Beginning Date

If a member has eligible beneficiaries, then the RCSBP premium begins on the first day of the month after the member meets the age and service requirements for non-regular retirement even if the member meets those requirements before age 60. The payment of premiums will be required regardless if the member chose Option B or Option C from paragraph 540402. If the member meets the age and service requirements on the first day of the month, then the premium is

effective that month. If the member specifies a retirement date which is after the date the member meets age and service requirements, or if the member delays application for retirement, then the premium is retroactive to the date described in the previous sentence(s). Exception: Child beneficiary – If the member elected child-only coverage, then the Reserve add-on premium portion of the RCSBP premium begins on the first day of the month after the member meets the age and service requirements, regardless of whether any child is currently an eligible beneficiary.

541102. Member's Death

If a member who elected RCSBP dies before the age and service requirements are met, then the Reserve add-on premium for the pre-age 60 coverage begins with the immediate or deferred annuity as an actuarial reduction of that annuity.

541103. Coverage Change

In some instances, a member may change the type of coverage before premiums begin. The initial premium for election changes is effective on the first day of the month after the member meets age and service requirements (or, if the member meets age and service requirements on the first day of the month, the premium is effective that month). Such elections include:

A. A member has no spouse beneficiary and acquires a spouse beneficiary effective before the member meets age and service requirements.

B. A member has child coverage and later acquires a spouse beneficiary before the date member meets age and service requirements.

C. A member has no child beneficiary and later elects child coverage within 1 year of acquiring a child which is before the member meets age and service requirements.

D. A member has former spouse or former spouse and child and requests change to spouse or spouse and child coverage effective before the member meets age and service requirements.

E. A member has no coverage or coverage is changed to former spouse under a deemed election by the Secretary concerned.

F. A member has insurable interest coverage and acquires a spouse and/or child before the date member meets age and service requirements.

5412 SUSPENSION, TERMINATION, REINSTATEMENT, AND CHANGE OF PREMIUM

541201. RCSBP Portion

This section describes only those situations where the RCSBP portion of the total premium may be suspended, terminated, or reinstated. See section 4505 for information regarding the suspensions, termination or reinstatement of the SBP portion of the premium.

541202. RCSBP Premium Charged

The RCSBP premium shall be charged for all months, up to 360 months, even though the member may elect to discontinue coverage:

A. In the case of a spouse, former spouse, or insurable interest coverage, until the earlier of:

1. The first day of the month in which a spouse or former spouse is no longer eligible due to death, divorce, annulment, or remarriage before age 55, as applicable.

2. The first day of the month in which the insurable interest person dies.

3. The first day of the month following the month in which the member's retired pay has been reduced for a total of 360 months.

B. In the case where the spouse coverage was suspended due to an ineligible spouse, the RCSBP premium would normally be reinstated when the member acquires a new eligible spouse. However, as there is no RCSBP factor for a member beyond age 60, only the SBP portion of the premium will be assessed.

C. In the case of child only coverage until the member's retired pay has been reduced for a total of 360 months even though there may no longer be an eligible child beneficiary. If the member acquires a new youngest child the original RCSBP factor will remain.

5413 ANNUITY AMOUNT

541301. General

A. RCSBP Annuity. The amount of RCSBP annuity payable to a surviving spouse or former spouse beneficiary is computed in the same manner as the SBP (see Chapter 46) except that the base annuity amount is 55 percent of the difference between the base amount and the cost of the Reserve Component add-on premium. The monthly annuity for a dependent child is computed on the base annuity amount less the Reserve add-on premium, multiplied by 55 percent. The monthly annuity for a natural person with an insurable interest or a former spouse (insurable interest category) is computed as 55 percent of the difference between the member's retired pay and the sum of the premium reduction and cost of the Reserve Component add-on premium. Add-on premiums are determined by the DoD Actuary. See section 5411 of this chapter. Monthly RCSBP annuities, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

1. Immediate Annuity Option (Option C) . If the member dies before attaining the eligibility age applicable to that member to begin receiving retired pay and elected the immediate annuity option, then the initial annuity amount is payable beginning immediately following death and is computed on the basis of what the member's retired pay would have been

on the date of the member's death using the basic pay rates on that date. Note: If a member retires before age 60 pursuant to ***10 U.S.C. 12731***, and subsequently dies before what would have been his 60th birthday, the initial annuity amount is payable beginning immediately following death.

2. Deferred Annuity Option (Option B). If the member dies before attaining the eligibility age applicable to that member to begin receiving retired pay and elected the deferred annuity option, then the initial annuity amount is payable beginning the first day of the month following the date the member would have reached age 60 and is computed on the basis of the retired pay the member would have received upon reaching age 60. Note: If a member retires before age 60 pursuant to ***10 U.S.C. 12731***, and subsequently dies before what would have been his 60th birthday, the annuity will not be payable until beginning the first day of the month following the date the member would have reached age 60.

B. Age 62 Offset. Prior to March 31, 2008, a spouse or former spouse incurred a reduction of RCSBP at age 62 as a result of entitlement to Social Security benefits. Beginning on April 1, 2008, the age 62 offset was eliminated.

541302. Eligible Annuitants and Amounts

A. Spouse or Former Spouse. See Table 46-1. The RCSBP annuity may be less than 55 percent, depending on the Reserve add-on premium which is deducted in determining the annuity amount. Generally, the RCSBP annuity for a spouse is reduced by a Dependency and Indemnity Compensation (DIC) award payable on behalf of the same deceased retired member. However, should a surviving spouse remarry after reaching age 57, the RCSBP annuity will be paid in full, without offset for DIC, effective on the first day of the month of such remarriage.

B. Children Only. If there is more than one eligible child, then the annuity is paid in equal shares. The annuity for children is not subject to DIC offset.

C. Spouse and Child or Former Spouse and Child. The annuity is paid to the spouse or former spouse, as long as eligibility exists. If the surviving spouse or former spouse loses eligibility due to death or remarriage before age 55, or otherwise become ineligible, then the annuity is paid to the child annuitants. A former spouse and child election includes only the children of the member's marriage to the former spouse. If the member elects coverage for the spouse and children and the spouse has not been married to the member for 1 year when the member dies, spouse can qualify as the eligible annuitant on the birth date of a posthumous child of the marriage.

D. Natural Person with an Insurable Interest. The annuity is payable only to the natural person with an insurable interest as designated by or on behalf of the member. The benefits may not be transferred to another person.

541303. Payment of Annuity

See paragraph 460103. The provisions in subparagraph 460103.C for making annuity payments to representative payees also apply to the RCSBP program.

5414 OFFSETS TO THE ANNUITY

* See paragraphs 460401 through 460403 of Chapter 46, for DIC offsets paid to a surviving spouse by the Department of Veteran Affairs. NOTE: The information in Chapter 46, excluding the minimum-income annuitant material, applies to the RCSBP annuitant.

5415 TAXABILITY OF ANNUITY

The provisions of Chapter 46 regarding the taxability of annuities also apply to annuities under RCSBP.

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540201	10 U.S.C. 1447(6)(B)
540208	10 U.S.C. 101(c)
540209	10 U.S.C. chapter 1223

5403 – ELIGIBLE PARTICIPANTS

	10 U.S.C. 1450

5403 – ELIGIBLE BENEFICIARIES

540301.A	MS Comp Gen B-195349, January 10, 1980 DOHA Claims Case No. 96070219 (1997) MS Comp Gen B-229248, December 19, 1989
540301.B	10 U.S.C. 1447(7),(8) 10 U.S.C. 1448(a)(5)
540301.C	10 U.S.C. 1447(7),(8)
540302	10 U.S.C. 1448 (a)(5) 10 U.S.C. 1448 (a)(2)(B) 10 U.S.C. 1450(f)(1)
540303.A.	10 U.S.C. 1448 (b)(2)
540303.B.	10 U.S.C. 1448 (b)(3)
540303.C.	10 U.S.C. 1448, note
540304	10 U.S.C. 1448, 1450, 1447(7)

5404 – ELECTION TO PARTICIPATE

540401	10 U.S.C. 1448(a)(2)(B) Public Law 106-398, section 655, October
540402	DoDI 1332.42, para. 6.b., June 23, 2009
540403	10 U.S.C. 1447(6)(B)

540404	10 U.S.C. 1448(a)(5)
540405	10 U.S.C. 1448(b) CompGen, B-179465, July 19, 1974

5405 – ELECTION DATA

540501	DoDI 1332.42, June 23, 2009
540502.D	10 U.S.C. 1448
540502.G	10 U.S.C. 1448(a)(3) DoDI 1332.42, para. 5, June 23, 2009 Public Law 106-398, section 655, October 30, 2000

5406 – CHANGES IN ELECTION AND COVERAGE

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540602	10 U.S.C. 1450(f)(2)
540604	10 U.S.C. chapter 1223

5407 – IRREVOCABLE ELECTIONS AND DISCONTINUED PARTICIPATION

540607.B	10 U.S.C. 1449
540607.D	10 U.S.C. 1454
540607.G	10 U.S.C. 1448(b)(1)(B)

5408 – PREMIUMS

	10 U.S.C. 1451, 1452 DoDI 1332.42, para 11.a.(2), 13.b.(3) June 23, 2009 10 U.S.C. 1452(h)

5409 – COST FACTOR TABLES

540901	DoDI 1332.42, para 13 June 23, 2009

5410 – CALCULATION OF PREMIUM

541001	10 U.S.C. 1452, 1451 Public Law 101-189, November 29, 1989, Section 1402

541003	Public Law 101-189, November 29, 1989
541004	DoDI 1332.42, 13.h June 23, 2009

5411 – INITIAL PREMIUM AND EFFECTIVE DATE

DoDI 1332.42 June 23, 2009

5412 – SUSPENSION, TERMINATION, REINSTATEMENT AND CHANGE OF PREMIUM

541202	DoDI 1332.42, June 23, 2009 10 U.S.C. 1452(a) 10 U.S.C. 1450(b) 10 U.S.C. 1448(b)

5413 – ANNUITY AMOUNT

541301	DoDI 1332.42, paragraph 11 June 23, 2009 10 U.S.C. 1451(f)
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10 U.S.C. 1450(c)
10 U.S.C. 1450(e)

VOLUME 7B, CHAPTER 59: "VICTIMS OF ABUSE – RETIREMENT-ELIGIBLE MEMBERS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 December 2009 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter is being updated with hyperlinks and formatted to comply with current administrative instructions.	Update
All	Expanded and rearranged chapter for clarity.	Update
590101	Moved first sentence from original subparagraph 590301.B to new paragraph 590101.	Update
590102.A, C, D, and E	Added four new definitions to the definition paragraph which was once section 5901.	Add
590201.A	Updated this paragraph by removing description of "court order" since it was added to the definition paragraph and renumbered from original subparagraph 590301.A.	Update
590201.B	Added subparagraph for eligible dependent child.	Add
590202.B	Added subparagraph on court ordered child support for eligible dependent child.	
5904	Changed title for section from Method of Payment to Conditions for Payment.	Update
590401	Expanded the original paragraph (590501) for clarity.	Update
590401.H	Updated subparagraph according to 10 U.S.C. 1408(h)(8).	Update
590403	Added sentence on the Survivor Benefit Plan entitlement to address recent inquiries of this nature.	Add

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CHAPTER 59

VICTIMS OF ABUSE - RETIREMENT-ELIGIBLE MEMBERS

5901 BACKGROUND

*590101. Authority

A member or former member, while a member of the Armed Forces and after becoming eligible to be retired from the Armed Forces on the basis of years of service, may have his or her eligibility to receive retired pay terminated as a result of misconduct involving abuse of the spouse or dependent child. Public Law 102-484, dated October 23, 1992, authorized various benefits for the spouses, former spouses, and dependent child(ren) of retirement-eligible members who lose eligibility for retired pay as a result of misconduct involving abuse of dependents. Generally, the spouses and former spouses are provided the same rights and benefits that they would have had if there had been no abuse and the member had retired under normal circumstances.

590102 Definitions

The following definitions apply to this chapter unless otherwise noted.

* A. Court Order. A court order is a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in the Social Security Act, Title 42, United States Code, section 653(p) (***42 U.S.C. 653(p)***), which:

1. Is issued in accordance with the laws of the jurisdiction of that court;

2. Provides for payment of child support (as defined in ***42 U.S.C. 659(i)(2)***); payment of alimony (as defined in 42 U.S.C. 659(i)(3)); or division of property, including division of community property; and

3. In the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

B. Dependent child. Dependent child means an unmarried legitimate child, including an adopted child or stepchild of the member or former member who is:

1. Under 18 years of age;

2. Incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

3. Enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for these purposes, under 23 years of age and dependent on the member or former member for over one-half of the child's support.

* C. Disposable Retired Pay. The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which:

1. Are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

2. Are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under Titles 5 or 38 of the U.S.C.;

3. In the case of a member entitled to retired pay under Chapter 61, Title 10, of the U.S.C. are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

4. Are deducted because of an election under Chapter 73, Title 10, of the U.S.C. to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

* D. Spouse or Former Spouse. The term spouse or former spouse means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

* E. Retired Pay. The term retired pay includes retainer pay.

5902 ELIGIBILITY

590201. Eligibility

The following individuals are eligible for payments by Defense Finance and Accounting Service (DFAS):

A. Spouse or Former Spouse. The spouse or former spouse to whom payments are to be made was married to the member for a period of 10 years or more, during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay; and

1. Was the victim of the abuse and was married to the member or former member at the time of that abuse; or

2. Is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

* B. Dependent Child. A dependent child is considered eligible, if the other parent of the child died as a result of the misconduct that resulted in the termination of the member's retired pay.

*590202. Court Order

A. The court order must specifically provide for the payment of an amount, expressed in dollars or as a percentage, from the disposable retired pay of a member to the spouse or former spouse of that member. The court order must satisfy the requirements of ***10 U.S.C. 1408(a)(2)***.

* B. If a court order provides for the payment of child support from the disposable retired pay of that member or former member to an eligible dependent child of the member or former member, then the Secretary of the Military Department concerned (or designee), beginning upon effective service of such court order, shall ensure payment of such amount is made to the dependent child.

590203. Court-Martial

If a member of the Armed Forces has been sentenced by a court-martial to receive a punishment that will terminate the member's eligibility to receive retired pay, then the member's eligibility to receive retired pay as determined by the Secretary of the Military Department concerned (or designee) is considered terminated effective upon the approval of the court-martial sentence.

5903 APPLICATION FOR PAYMENT

An eligible spouse or former spouse must apply for payment from the supporting DFAS site in the same manner as an application for former spouse payments from retired pay, set out in Chapter 29, section 2904.

*5904 CONDITIONS FOR PAYMENT

*590401. Payment

A. Upon the request of a court or an eligible spouse or former spouse, or an eligible dependent child, of a member or former member of the Armed Forces in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary of the Military Department concerned (or designee) shall determine and certify the amount of the monthly retired pay (including any cost-of-living increases to retired pay through

the date of certification) that the member or former member would have been entitled to receive as of the date of the certification if:

1. The member or former member's eligibility for retired pay had not been terminated as a result of misconduct involving abuse of a spouse or dependent child; and

2. In the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

B. When certifying retired pay of a member separated for misconduct involving abuse of a dependent, the Secretary of the Military Department concerned (or designee) shall ignore reductions in grade and forfeitures of pay or retired pay resulting from the administrative separation or court-martial for the misconduct.

C. The amount certified by the Secretary of the Military Department concerned (or designee) shall be deemed to be the disposable retired pay of the member for the purposes of this provision. The total amount payable under this provision may not exceed 50 percent of such disposable retired pay.

D. A court order may provide that, whenever retired pay is increased under ***10 U.S.C. 1401a*** (or any other provision of law), the amount payable under the court order to the spouse or former spouse of a member or former member shall be increased at the same time and by the percent by which retired pay would have increased if the member or former member were receiving retired pay.

E. Payments shall not be made more frequently than once a month, and the Secretary of the Military Department concerned (or designee) shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

F. The effective date for computing retired pay shall be the date that the sentence terminating eligibility for retired pay is approved by the appropriate official.

G. Payments made to an eligible spouse on the basis of being the natural or adopted parent of a dependent child who was the victim of abuse shall not cease solely because the dependent child is no longer considered a dependent child; that is, payment requires only that the child was dependent at the time of the abuse, and not necessarily at the time of payment.

* H. Payments shall be made from funds in the Department of Defense Military Retirement Fund or, in the case of the Coast Guard, out of funds appropriated to the Department of Homeland Security for payment of retired pay for the Coast Guard.

590402. Termination of Payment

A. Payments from the disposable retired pay of a member shall terminate pursuant to the terms of the applicable court order, but not later than the date of the death of the

member or former member or the date of death of the spouse or former spouse to whom payments are being made, whichever occurs first.

B. If a former spouse who is receiving payments under these conditions marries again after the payments begin, then his or her eligibility to receive further payments terminates on the date of the marriage. In the event of termination of that marriage by death, annulment, or divorce, payments resume as of the first day of the month in which the marriage is terminated. The monthly amount shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

C. If the punishment that results in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in termination of eligibility, then benefits to the eligible dependent under this chapter that are based on the punishment so vacated, set aside, or mitigated shall cease. Such benefits cease effective on the first day of the first month after the month the Secretary of the Military Department concerned (or designee) notifies the recipient in writing that benefits cease. The recipient may not be required to repay the benefits received before that effective date, excluding any erroneous payments.

590403. Other Entitlements

* A. A spouse or former spouse, while receiving payments under this chapter, shall be entitled to receive medical and dental care, commissary and exchange privileges, and any other benefits a spouse or former spouse of a retired member may be entitled in the manner as if the member or former member were entitled to retired pay. This entitlement includes the right to the Survivor Benefit Plan, so long as the spouse or former spouse is an eligible beneficiary pursuant to ***10 U.S.C. 1448***.

B. A dependent child, who was a member of the household of the member or former member at the time of the misconduct, is entitled to receive medical and dental care, commissary and exchange privileges, and any other benefits as though the member or former member were entitled to retired pay.

590404. Accrual of Payments

No payments under this chapter shall accrue for periods before October 23, 1992.

590405. Taxability

Tax liability for payments under this chapter is the responsibility of the spouse or former spouse who receives the payments.

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CHAPTER 59 – VICTIMS OF ABUSE – RETIREMENT-ELIGIBLE MEMBERS

5901 – BACKGROUND 10 U.S.C. 1408

5902 – ELIGIBILITY

10 U.S.C. 1408(h)

5904 – CONDITIONS FOR PAYMENT

10 U.S.C. 1408
10 U.S.C. 1408(h)(9)(A)
10 U.S.C. 1408 (h)(9)(C)

VOLUME 7B, CHAPTER 60: "VICTIMS OF ABUSE – NONRETIREMENT ELIGIBLE MEMBERS (Transitional Compensation)"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 February 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter with hyperlinks and formatted to comply with current administrative instructions.	Update
All	Expanded and rearranged Table of Contents and chapter for clarity.	Update
600101	Expanded the overview of transitional compensation.	Update
600103.A	Expanded definition of "Dependent-Abuse Offense" per statute.	Update
600103.C.1 600103.C.2	Deleted former subparagraphs 600103.C.1 and 2 per Public Law 108-136, sec. 572(b)(1), Nov. 24, 2003.	Delete
600203	Provided additional information and hyperlink for submitting the transitional compensation application.	Update
600301	Added paragraph Recipients of Payments.	Add
600303.A 600303.B 600303.C	Changed the Dependency and Indemnity Compensation (DIC) Cost-of-Living Adjustment Rates are changed Effective December 1, 2011, the.	Update
600402	Added paragraph on Commissary and Exchange benefits per statute.	Add
600403	Added paragraph on Medical and Dental Care per statute.	Add
Bibliography	Referenced Public Law 112-53, November 9, 2011 for DIC rates, updated references for paragraphs 600402 and 600403.	Update

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CHAPTER 60

VICTIMS OF ABUSE – NONRETIREMENT ELIGIBLE MEMBERS (Transitional Compensation)

6001 GENERAL PROVISIONS

*600101. General

This chapter covers transitional compensation that may be payable to abused dependents or former dependents of nonretirement eligible members of the Armed Forces for a period of not less than 12 and not more than 36 months. Transitional Compensation is a congressionally authorized program pursuant to Title 10, United States Code, section 1059 (***10 U.S.C. 1059***) which provides temporary monetary payments and benefits to dependent family members of service members or former service members who are separated from the military due to dependent-abuse offenses. For information on benefits for spouses and former spouses of retirement-eligible members who lose eligibility for retired pay as a result of misconduct involving abuse of dependents, see Chapter 59.

600102. Scope

A. Transitional compensation provisions apply to members who, on or after November 30, 1993, separate from active duty under a court-martial sentence resulting from a dependent-abuse offense; who separate from active duty for administrative reasons if the basis for separation includes a dependent-abuse offense; or who are sentenced to forfeiture of all pay and allowances by a court-martial which has convicted the member of a dependent-abuse offense.

B. Transitional compensation is payable to dependents who qualify on or after December 1, 1993, for periods on or after December 1, 1993. In cases where a spouse or former spouse is receiving payments and there is an eligible dependent child or children not residing in the same household as the spouse, former spouse, or member, transitional compensation is payable to the dependent children for periods on or after November 1, 1998.

600103. Definitions

*A. Dependent-Abuse Offense. A dependent-abuse offense is conduct by a member of the Armed Forces while on active duty for more than 30 days that involves the abuse of the spouse or dependent child of the member; and is a criminal offense defined by ***10 U.S.C. 801-940*** or other criminal code applicable to the jurisdiction where the act of abuse is committed. Crimes that may qualify as dependent-abuse offenses are ones such as sexual assault, rape, sodomy, assault, battery, murder, and manslaughter. This is not an exhaustive or exclusive listing of dependent-abuse offenses.

B. Punitive and Other Adverse Actions. Punitive and other adverse actions are actions in which a member of the Armed Forces on active duty more than 30 days and who, after November 30, 1993 is:

1. Convicted of a dependent-abuse offense and whose conviction results in separation from active duty under a court-martial sentence or forfeiture of all pay and allowances under a court-martial sentence; or

2. Administratively separated, voluntarily or involuntarily, from active duty under applicable Military Service regulations if the basis for separation includes a dependent-abuse offense.

C. Cohabitation. It is considered cohabitation when the spouse, former spouse, or dependent child is residing in the same household as the former member after punitive or other adverse action is executed against the member or former member according to subparagraph 600103.B.

D. Dependent Child. A dependent child is an unmarried child, including an adopted child or a stepchild, who is residing with the member at the time of the dependent–abuse offense, which results in the separation of the former member, and who is:

1. Under age 18;

2. Age 18 or older and incapable of self-support because of a mental or physical incapacity that existed before age 18 and who is (or, at the time a punitive or other adverse action was carried out in the case of the former member as described in subparagraph 600103.B, was) dependent on the former member for over one-half of the child's support; or

3. Age 18 or older, but less than age 23, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or, at the time a punitive or other adverse action was carried out in the case of the former member as described in subparagraph 600103.B, was) dependent on the former member for over one-half of the child's support.

E. Spouse or Former Spouse. The term spouse or former spouse refers to the husband or wife, or former husband or wife, respectively, of the member or former member at the time of the commission of the dependent-abuse offense resulting in separation from military service.

*6002 ELIGIBILITY FOR TRANSITIONAL COMPENSATION

600201. Eligibility for Transitional Compensation Payment

The dependents of a member or former member who separates on or after November 30, 1993 and the basis for the separation includes a dependent-abuse offense, are eligible for transitional compensation payments. Payments begin on or after December 1, 1993 for eligible dependents. If a recipient is incapable of handling his or her affairs, then payments are made only to a court-appointed guardian. In the case of a dependent child under 18 years of age, payments are made only to a court-appointed guardian or a natural parent (who is not a spouse of the member) if the natural parent has legal custody of the dependent child.

A. Spouse or Former Spouse. In the case of a separation from active duty under punitive or other adverse action, payments are made to the person who was the member's spouse at the time of the offense. The spouse or former spouse does not have to be the victim in order to receive transitional compensation.

B. Dependent Child. Effective November 1, 1998, a dependent child of the member who does not reside in the same household as the member's spouse or former spouse may be paid transitional compensation benefits. Payments may be made to such dependent child as prescribed in paragraph 600301. A dependent child's eligibility is determined as of the date on which the member is convicted of the dependent-abuse offense or the date on which the member is administratively separated. Prior to November 1, 1998, there was no provision mentioned for the member's dependent children who resided in the same household as the eligible spouse or former spouse.

600202. Exceptional Eligibility Authority

A. The Secretary concerned may authorize eligibility for transitional compensation benefits for dependents and former dependents of a former member of the Armed Forces for cases in which the dependents are not otherwise eligible for such benefits, if the Secretary concerned determines that:

1. The former member engaged in conduct that is a dependent-abuse offense, as defined in subparagraph 600103.A; and

2. The former member was separated from active duty, as described in subparagraph 600102.B, on or after November 24, 2003.

B. Benefits authorized to be provided under this section shall be provided in the same manner as if the former member were an individual separated as described in subparagraph 600103.B, except that the Secretary concerned shall make adjustments to the commencement and duration of payment provisions of paragraph 600301 as the Secretary considers necessary in light of the circumstances, in order to provide benefits substantially equivalent to those provided in the case of an individual separated, as described in subparagraph 600103.B.

C. Exceptional eligibility authority by the Secretary concerned may not be delegated.

*600203. Application

An individual requests transitional compensation through a Military Service representative. The Military Service representative may:

A. Approve payment;

B. Assist applicant in filling out the Department of Defense ***(DD) Form 2698***, Application for Transitional Compensation;

C. Have the applicant submit a Standard Form 1199A (Direct Deposit Sign-up Form), completed by the applicant and the financial institution or a voided check/deposit slip with a written authorization for direct deposit of payments; and

D. Provide the Operation and Maintenance (O&M) fund citation, and forward the application and information for direct deposit to Defense Finance and Accounting Service (DFAS) at:

Defense Finance and Accounting Service
Attn: VOA
P.O. Box 998011
Cleveland, OH 44199-8011

Facsimile Numbers: DSN: 580-6470
Commercial Number: (216) 522-6470

*6003 PAYMENT

*600301. Recipients of Payments

Transitional compensation shall be paid as follows:

A. If the member or former member was married at the time of the dependent-abuse, then compensation shall be paid to the spouse or former spouse to whom the member or former member was married to at that time, including an amount for each, if any, dependent child of the member or former member described in subparagraph 600103.B, provided the child resides in the same household as the spouse or former spouse.

B. If a spouse or former spouse has forfeited his or her entitlement for reasons described in paragraph 600305, then compensation shall be paid to each eligible dependent child who does not reside in the household of the member or the ineligible spouse or former spouse.

C. If there is no eligible spouse or former spouse, then such compensation shall be paid to the dependent children of the member or former member described in subparagraph 600103.B.

600302. Commencement and Duration of Payment

A. In the case of a member convicted by a court-martial of a dependent-abuse offense, payments begin:

1. As of the date that the court-martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad-conduct discharge, or forfeiture of all pay and allowances; or

2. If there is a pretrial agreement that provides for disapproval or suspension of the dismissal, dishonorable discharge, bad-conduct discharge, or forfeiture of all pay and allowances, as of the date the court-martial sentence was approved by the person acting under ***10 U.S.C. 860(c)***, then, if the sentence as approved, includes an unsuspended dismissal, dishonorable discharge, bad-conduct discharge, or forfeiture of all pay and allowances; and

B. In the case of a member being administratively separated based on a dependent-abuse offense, as of the date that the separation action was initiated by the commander under regulations of the Secretary concerned.

C. Payments are made for a period of not less than 12 months and not more than 36 months, based on policies established by the Secretary concerned.

600303. Amount of Payment

*A. A spouse or former spouse receives transitional compensation at the same rate as monthly Dependency and Indemnity Compensation (DIC) under ***38 U.S.C. 1311(a)(1)***.

DIC Rate	Effective Date
$769	December 1, 1993
790	December 1, 1994
810	December 1, 1995
833	December 1, 1996
850	December 1, 1997
861	December 1, 1998
881	December 1, 1999
911	December 1, 2000
935	December 1, 2001
948	December 1, 2002
967	December 1, 2003
993	December 1, 2004
1,033	December 1, 2005
1,067	December 1, 2006
1,091	December 1, 2007
1,154	December 1, 2008
1,195	December 1, 2011

NOTE: The DIC rates for 2009 and 2010 remained the same as the December 1, 2008 rate.

*B. If the spouse or former spouse has custody of a dependent child or children of the member who resides in the same household as that spouse or former spouse, then transitional

compensation is increased for each child by an amount equal to the monthly DIC amount payable for dependent children under ***38 U.S.C. 1311(b)***.

DIC Rate	Effective Date
$150	October 1, 1993
200	October 1, 1994
205	December 1, 1995
211	December 1, 1996
215	December 1, 1997
217	December 1, 1998
222	December 1, 1999
229	December 1, 2000
234	December 1, 2001
237	December 1, 2002
241	December 1, 2003
247	December 1, 2004
257	December 1, 2005
265	December 1, 2006
271	December 1, 2007
286	December 1, 2008
*296	December 1, 2011

NOTE: The DIC rates for 2009 and 2010 remained the same as the December 1, 2008 rate.

*C. If transitional compensation is payable to a dependent child under subparagraph 600102.B, then payments are made in equal shares in an amount equal to the monthly DIC amount payable for dependent children under ***38 U.S.C. 1313***.

DIC Child Rate

Effective	1 Child	2 Children	3 Children	Over 3
December 1, 1993	$327	$471	$610	$610 plus $120 for each child over 3
December 1, 1994	$336	$484	$627	$627 plus $123 for each child over 3
December 1, 1995	$344	$496	$643	$643 plus $126 for each child over 3
December 1, 1996	$354	$510	$662	$662 plus $130 for each child over 3
December 1, 1997	$361	$520	$675	$675 plus $132 for each child over 3
December 1, 1998	$365	$526	$683	$683 plus $133 for each child over 3
December 1, 1999	$373	$538	$699	$699 plus $136 for each child over 3
December 1, 2000	$386	$556	$723	$723 plus $140 for each child over 3
December 1, 2001	$397	$571	$742	$742 plus $143 for each child over 3
December 1, 2002	$402	$578	$752	$752 plus $145 for each child over 3
December 1, 2003	$410	$590	$767	$767 plus $148 for each child over 3
December 1, 2004	$421	$605	$787	$787 plus $151 for each child over 3
December 1, 2005	$438	$629	$819	$819 plus $157 for each child over 3
December 1, 2006	$452	$649	$846	$846 plus $162 for each child over 3

Effective	1 Child	2 Children	3 Children	Over 3
December 1, 2007	$462	$663	$865	$865 plus $165 for each child over 3
December 1, 2008	$488	$701	$915	$915 plus $174 for each child over 3
*December 1, 2011	$505	$726	$947	$947 plus $180 for each child over 3

NOTE: The DIC rates for 2009 and 2010 remained the same as the December 1, 2008 rate.

D. Payments will be prorated for months when payments start or stop in the middle of a month (e.g., if the former spouse receiving transitional compensation remarries, then compensation terminates effective as of the date of the marriage).

E. When paying multiple children and the payment amount does not divide equally, the youngest child shall receive the odd cent(s).

F. Transitional compensation payments will stop effective the date of death of the recipient. Arrears of compensation will not be paid.

G. Advance payment of transitional compensation benefits is not authorized.

600304. Effect of Continuation of Military Pay

In the case of payment of transitional compensation by reason of a total forfeiture of pay and allowances pursuant to a sentence of a court-martial, payment of transitional compensation shall not be made for any period for which an order, in whole or in part:

A. Suspends that part of a sentence that includes forfeiture of the member's pay and allowance; or

B. Otherwise results in continuation of the member's pay and allowances.

600305. Forfeiture Provisions

A. The transitional compensation payable to the spouse or former spouse is forfeited as a result of:

1. Cohabitation. If after a punitive or other adverse action has been executed and the former member resides in the same household as the spouse or former spouse or child who is receiving transitional compensation, then compensation terminates as of the date the former member begins residing in the household. Any compensation paid before the member resides in the household shall not be recouped. Once terminated for cohabitation, the payments do not resume.

2. Remarriage. If the former spouse receiving compensation remarries, then compensation terminates effective as of the date of the former spouse's remarriage. Payments do not resume if the marriage is terminated.

3. Active Participation. If the victim was a dependent child, and the spouse has been found by competent authority designated by the Secretary concerned to have been an active participant in the conduct constituting the criminal offense, or to have actively aided or abetted the member in such conduct against that dependent child, then the spouse may not be paid transitional compensation.

B. Annual Certification. The spouse or former spouse certifies annually to the DFAS-Cleveland Site that he or she has not remarried and has not been cohabiting with the offender. The form to be used is a Certificate of Eligibility (COE).

1. The spouse or former spouse must notify the DFAS-Cleveland Site within 30 days of the date of remarriage or the date the member begins residing in the same household as the spouse, former spouse, or dependent child.

2. The parent or court-approved guardian will certify annually that the dependent child or children are not residing with the offender or ineligible spouse via the COE process. If the COE is not received within 60 days of the date of the COE, then payments will be suspended until verification of eligibility is received.

600306. Termination of Payments

Transitional compensation is not payable when a member's court-martial sentence, which includes a dismissal, dishonorable discharge, or bad-conduct discharge, is remitted, set aside, or mitigated to a lesser punishment that does not include such punishment, or the administrative separation is disapproved. Any payment of transitional compensation that has started shall stop effective the first day of the month after the Secretary concerned notifies the recipient in writing that payment shall cease for such reason. The recipient is not required to repay transitional compensation received before the effective date of termination, excluding erroneous payments.

600307. Taxability

Transitional compensation payments are considered benefits that are excludable from taxation and should not be reported on Internal Revenue Service Form 1099R, (Distribution from Pensions, Annuities, Retirement of Profit Sharing Plans, Individual Retirement Accounts, Insurance Contracts, etc.)

*6004 OTHER BENEFITS

*600401. Coordination of Benefits

A spouse or former spouse may not receive both payments of transitional compensation under ***10 U.S.C 1059*** and payments under ***10 U.S.C. 1408(h)*** of benefits for spouses and former spouses of retirement-eligible members who lost eligibility for retired pay as a result of misconduct involving abuse of dependents (see ***Chapter 59***). If a spouse or former spouse has been awarded a court order providing for payments of compensation pursuant to ***10 U.S.C. 1408(h)(1)***, is also eligible for payments of transitional compensation under ***10 U.S.C 1059***, then the spouse or

former spouse shall elect which benefit to receive. If a spouse or former spouse begins receiving transitional compensation payments and later is determined to be eligible for and receives payments under ***10 U.S.C. 1408(h)***, then any amounts of transitional compensation received must be recouped.

*600402. Commissary and Exchange Benefits

A. A dependent or former dependent entitled to payment of monthly transitional compensation shall, while receiving payments in accordance with ***10 U.S.C. 1059***, be entitled to use commissary and exchange stores to the same extent and in the same manner as a dependent of a member of the Armed Forces on active duty for a period of more than 30 days.

B. If a dependent or former dependent is eligible or entitled to use commissary and exchange stores under another provision of law, then the eligibility or entitlement of that dependent or former dependent to use commissary and exchange stores shall be determined under the other provision of law rather than under this paragraph.

*600403. Medical and Dental Care

A. Eligible dependents may, while receiving transitional compensation, receive dental and medical care, including mental health services, through military facilities as TRICARE beneficiaries. Pursuant to the approval of the Secretary of the Military Department concerned eligible dependents of a member or former member as described in subparagraph 600103.B are entitled to medical and or dental care for problems associated with the abuse.

B. The Secretary concerned may furnish medical care in facilities of the uniformed services to the dependent for the treatment of any adverse health condition resulting from such dependent's knowledge of the abuse, or any injury or illness suffered by the abused person as a result of such abuse.

C. Medical and dental care furnished to a dependent of a former member of the uniformed services in facilities of the uniformed services shall be limited to the health care prescribed by ***10 U.S.C 1077***; and subject to the availability of space, facilities, and the capabilities of the medical and dental staff.

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600103.D	10 U.S.C. 1059(k)(2)

*6002 ELIGIBILITY FOR TRANSITIONAL COMPENSATION

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*6003 PAYMENT

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*600402	10 U.S.C. 1059(j)
*600403	10 U.S.C. 1076(e)

VOLUME 7B, CHAPTER 61: "ANNUITIES FOR CERTAIN MILITARY SURVIVING SPOUSES (ACMSS)"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 June 2012 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
Table 61-1	Updates Annuities for Certain Military Surviving Spouses (ACMSS) amounts, effective December 1, 2012.	Update
Bibliography	Updates memorandums listed.	Update

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CHAPTER 61

ANNUITIES FOR CERTAIN MILITARY SURVIVING SPOUSES (ACMSS)

6101 GENERAL

The authority for ACMSS payments has been in effect since November 18, 1997. An annuity shall be paid to the qualified surviving spouse of each member of the uniformed services who:

A. Became eligible for retired or retainer pay before September 21, 1972, died before March 21, 1974, and was entitled to retired or retainer pay on the date of death; or

B. Was a member of a Reserve Component of the Armed Forces and died before October 1, 1978, and at the time of his death would have been entitled to retired pay under ***Title 10, United States Code (U.S.C.), chapter 67*** (as in effect before December 1, 1994), but for the fact that he was under 60 years of age.

6102 ANNUITY APPLICATION

An annuity application is required before payment will be made. A Department of Defense ***(DD) Form 2769*** ("Application for Annuity Certain Military Surviving Spouses"), should be submitted to the Military Service concerned. The Military Service reviews the claim and determines whether the applicant is qualified for an ACMSS annuity. If information is unavailable from existing records, such as the Defense Enrollment Eligibility Reporting System (DEERS), then the applicant may be required to submit the following documentation to the Military Service: certified copies of the member's death certificate and/or marriage certificate; DD Form 214 ("Certificate of Release or Discharge From Active Duty"); retirement order; retired pay statement; or any additional information needed to substantiate the claim. The Military Service notifies the applicant on the disposition of the claim within 60 days. The Military Service forwards approved claims to the Defense Finance and Accounting Service (DFAS)-Cleveland Site for payment.

6103 DEFINITION OF A QUALIFIED SURVIVING SPOUSE AND DECEASED RETIRED MEMBER

610301 Qualified Surviving Spouse.

A qualified surviving spouse is defined as a spouse who:

A. Was married to a deceased retired member of a Uniformed Service described in paragraph 610302 at the time of such member's death and has never been remarried, or;

B. Was married to the member at the time the member became eligible for retired pay, or had been married to the member for at least 1 year before the date of death, or was

the parent of a child born of such marriage.

610302 Deceased Retired Member.

A deceased retired member is one who:

A. Became entitled to retired pay or retainer pay before September 21, 1972, died before March 21, 1974, and was entitled to retired or retainer pay on the date of death; or

B. Died before October 1, 1978 and at the time of death would have been entitled to retired pay under ***Title 10, United States Code (U.S.C.), chapter 67*** (10 U.S.C. 1331, et seq.) (as in effect before December 1, 1994), except for the fact that the member was under 60 years of age. The ACMSS under this subparagraph is payable for the months beginning after September 30, 1999.

6104 PAYMENT OF ANNUITY

610401 Payment Effective Date.

Upon receipt of a validated claim endorsed by the Military Service, DFAS-Cleveland Site shall begin payment to a qualified surviving spouse within 30 days. The monthly payments begin effective December 1, 1997, except where entitlement is under subparagraph 610302.B, in which case entitlement begins effective October 1, 1999.

610402 Representative Payee.

ACMSS payments due to a mentally incompetent or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed may be paid to a representative payee, the same as the Survivor Benefit Plan (SBP). See Chapter 46, paragraph 460103.

610403 Report of Existence (ROE) and Certificate of Continued Eligibility (COE).

The procedures for ROE and COE on SBP annuity payments also apply to ACMSS payments. See Chapter 46.

610404 Debt Collection.

Overpayments of annuity are subject to the same collection action as SBP. See Chapter 46 of this volume.

610405 Taxability.

The taxability of ACMSS payments is similar to SBP annuity. See Chapter 46.

610406 Death of Annuitant.

The annuity terminates the first day of the month in which the annuitant dies.

610407 Arrears of Annuity.

Any amounts which are due and payable at the time of the annuitant's death may be paid in accordance with the provisions of Chapter 31, paragraph 310103. The unpaid annuity will only be paid upon receipt of a properly executed and documented claim, approved by the Secretary of the Military Department concerned (or designee).

610408 Remarriage.

The annuity terminates the first day of the month in which the annuitant remarries.

6105 ANNUITY AMOUNT AND OFFSET

610501 Amount.

The annuity to a qualified surviving spouse was initially established at $165 per month. The amount is subject to the same cost-of-living adjustments and at the same time as military retired pay increases. The first cost-of-living adjustment was effective December 1, 1997, as shown on Table 61-1. The provision for rounding monthly SBP annuity is not applicable.

610502 Offset.

The amount of annuity to which a surviving spouse is entitled under this section for any period shall be reduced (but not below zero) by any amount paid to the surviving spouse for the same period under any of the following:

A. SBP; Retired Serviceman's Family Protection Plan; and Reserve Component SBP, or;

B. Minimum Income Widow's benefit, or;

C. Dependency and Indemnity Compensation.

6106 FUNDING

Annuities must be funded by the approving Military Service from operation and maintenance funds for the fiscal year in which the payment is made.

*Table 61-1. ACMSS ANNUITY AMOUNT

Date of Increase	Percent	Amount
November 1, 1997		$165.00
December 1, 1997	2.1	$168.47
December 1, 1998	1.3	$170.66
December 1, 1999	2.4	$174.76
December 1, 2000	3.6	$181.05
December 1, 2001	2.6	$185.76
December 1, 2002	1.4	$188.36
December 1, 2003	2.1	$192.32
December 1, 2004	2.7	$197.51
December 1, 2005	4.1	$205.61
December 1, 2006	3.3	$212.40
December 1, 2007	2.3	$217.29
December 1, 2008	5.8	$229.89
December 1, 2009	0	$229.89
December 1, 2010	0	$229.89
December 1, 2011	3.6	$238.17
December 1, 2012	1.7	$242.22

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Public Law 106-65, section 656, October 5, 1999
Public Law 107-314, section 634, December 2, 2002

6102 Annuity Application

10 U.S.C. 1448

6103 Definition of a Qualified Surviving Spouse and Deceased Retired Member

10 U.S.C. 1448

610302. B Public Law 106-65, section 656, October 5, 1999
Public Law 107-314, section 634, December 2, 2002

6105 Annuity Amount and Offset

610501 10 U.S.C. 1401a
10 U.S.C. 1451
610502.A. 10 U.S.C. 1431
610502.B. Public Law 92-425, section 4, September 21, 1972
610502.C. 38 U.S.C. 1311(a)

Table 61-1 Public Law 105-85, Section 644, November 18, 1997
OUSD (P&R) Memo, December 8, 2003
OUSD (P&R) Memo, December 2, 2004
OUSD (P&R) Memo, November 26, 2005
OUSD (P&R) Memo, November 8, 2006
OUSD (P&R) Memo, November 9, 2007
OUSD (P&R) Memo, October 29, 2008
OUSD (P&R) Memo, November 17, 2009
OUSD (P&R) Memo, November 12, 2010
OUSD (P&R) Memo, November 22, 2011
* OUSD (P&R) Memo, November 8, 2012

VOLUME 7B, CHAPTER 63: "COMBAT RELATED SPECIAL COMPENSATION (CRSC)"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 March 2013 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and reformatted to comply with current administrative instructions.	Update
630101	Deleted last sentence in paragraph to include subparagraphs. This information is found in section 6304, Preliminary Criteria.	Delete
630104	Rephrased for clarity.	Update
6302	Renumbered to 6306 to provide a follow-up on the criteria to determine whether a disability is combat-related.	Update
6303 through 6306	Renumbered to 6302 to 6305, respectively.	Update
630702	Rephrased for clarity.	Update
630803	Renamed paragraph title to "CRSC Payment Reduction for 10 U.S.C., Chapter 61 Disability Retirees" for clarity. Updated paragraph to clarify the computation of Combat Related Special Compensation (CRSC) for Chapter 61 disability retirees. Public Law (PL) 112-239, section 643 amends 10 U.S.C. 1413a.(b).(3).	Update
Bibliography	Added PL 112-239, section 643, January 2, 2013, along with 10 U.S.C. 1413a.	Add

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CHAPTER 63

COMBAT-RELATED SPECIAL COMPENSATION (CRSC)

6301 GENERAL

630101. Background

Combat-Related Special Compensation (CRSC) was established effective May 31, 2003, to provide special compensation to members of the uniformed services who have retired pay reduced by reason of receiving U.S. Department of Veterans Affairs (VA) disability compensation where a portion of such VA disability compensation is the result of disabilities that are combat-related as determined by the Military Department.

630102. Effective Date

The CRSC program became effective May 31, 2003. For a member who qualifies on that date, compensation accrues beginning in June 2003. For an eligible member whose disability percentage is less than 60 percent, compensation is effective January 1, 2004. For an eligible member who is retired under ***10 United States Code (U.S.C.), Chapter 61*** with less than 20 years of active duty or with less than sufficient service and age to qualify for retirement under ***10 U.S.C. 12731***, compensation is effective January 1, 2008. Payments are made on the first day of the first month following the month in which the compensation accrued, provided the member is receiving VA disability compensation for a disability that has been determined to be combat-related by the Military Department. No CRSC is payable for any month prior to June 2003. For a member who did not meet the qualifications on June 1, 2003, January 1, 2004, or January 1, 2008, but who later meets the qualifications, entitlement accrues the first day of the following month.

630103. Funding and Payment

CRSC is not military retired pay. It is a monthly entitlement that is to be paid only in whole-month increments. Prior to October 1, 2003, CRSC was payable from funds appropriated for pay and allowances payable by the Secretary of the Military Department concerned (or designee) for that fiscal year. Effective October 1, 2003, the source of funding is the Department of Defense (DoD) Military Retirement Fund.

*630104. Relationship to Other Provisions

A. Uniformed Services Former Spouse's Protection Act (USFSPA). CRSC is not retired pay, and it is not subject to the provisions of ***10 U.S.C. 1408*** relating to payment of retired or retainer pay in compliance with court orders.

B. Survivor Benefit Plan. CRSC is not retired pay and is also not subject to any survivor benefit provisions under ***10 U.S.C., chapter 73***.

C. Debt Collection. CRSC is subject to a Treasury offset to recover a debt owed to the United States as well as to garnishment for child support or alimony. In addition, debts due the government may be collected from CRSC, including overpayments of retired pay or erroneous payments of CRSC, by means of an administrative offset. An administrative offset of CRSC to collect a debt due the government is subject to the due process requirements of ***31 U.S.C. 3716*** and ***31 Code of Federal Regulations, part 901***. Claims for overpayments of CRSC may be considered for waiver in accordance with ***10 U.S.C. 2774***. Finally, CRSC payments are not subject to Chapter 13 Bankruptcy Court orders to pay a Chapter 13 Trustee.

630105. Tax Consideration

CRSC payments are considered tax exempt from Federal income tax under provisions of ***26 U.S.C. 104***.

*6302 ENTITLEMENT

630201. Monthly Entitlement

CRSC is a monthly entitlement and is to be paid only in whole-month increments. A member must file an application with the Military Department from which the member retired to determine entitlement. A retiree is entitled to CRSC for each month during which, for the entire month, the member:

A. Has applied for and elected CRSC under these provisions (section 6303),

B. Meets Preliminary CRSC Criteria (section 6304), and

C. Meets Final CRSC Criteria (section 6305) (that is, has a combat-related disability or disabilities).

630202. Expanded Eligibility in 2008

As of January 1, 2008, section 641 of the National Defense Authorization Act (NDAA) Fiscal Year (FY) 08, ***Public Law 110-181***, provided special rules for CRSC-eligible retirees with fewer than 20 years of service, to include members who have waived their retired pay in order to receive VA disability compensation. This expanded authority includes both 10 U.S.C., Chapter 61 (10 U.S.C. 1201-1222) disability retirees and Temporary Early Retirement Authority (TERA) retirees. However, a uniformed services Reserve Component retiree who receives retired pay for early retirement with physical disabilities under ***10 U.S.C. 12731b*** is specifically excluded from entitlement to CRSC by ***10 U.S.C. 1413a(c)(1)***.

*6303 APPLICATION AND ELECTION

630301. Application and Election

A member may not be paid CRSC unless he or she has applied for and elected to receive compensation under the CRSC program by filing an application on Department of Defense (DD) Form 2860, Claim For Combat-Related Special Compensation (CRSC), with the Military Department from which he or she retired. A member may submit an application for CRSC at any time and, if otherwise qualified for CRSC, compensation will be paid for any month after May 2003 for which all conditions of eligibility were met.

630302. Election of CRSC or Concurrent Retirement and Disability Payments (CRDP)

The law states that a member eligible for both CRSC, under 10 U.S.C. 1413a, and CRDP, under ***10 U.S.C. 1414***, may not receive both, but must elect which compensation to receive. Defense Finance and Accounting Service (DFAS)-Cleveland Site will advise the member which of the two payments is being paid pursuant to such election. Also, DFAS-Cleveland Site will provide further notice in the event the amounts payable under either program results in a situation where a change in this election would result in greater compensation. The member will have one opportunity annually to reverse the current election. This will allow the member to assess the impact of annual adjustments to retired pay, VA disability compensation, CRSC, and CRDP. DFAS-Cleveland Site will advise members of their options and the procedures to effect such elections. See also Section 6405 for more information.

*6304 PRELIMINARY CRITERIA

A retired member of the Uniformed Services must satisfy the following applicable conditions to meet the Preliminary Criteria to receive CRSC.

630401. Years of Service Requirement

A. On or after January 1, 2004, a retired member must have had 20 or more years of service for the purpose of computing retired pay.

B. January 1, 2004 through December 31, 2007. Beginning January 1, 2004 and prior to January 1, 2008 a retired member must have had 20 or more years of service for the purpose of computing retired pay or have been entitled to Reserve Component retired pay under 10 U.S.C. 12731 (other than by reason of section 12731b) to be eligible for CRSC.

C. Before January 1, 2008. For the purposes of both subparagraphs A and B the following apply:

1. Years of Service for Percentage Multiplier. The 20 years of service required for computing retired pay may be inferred from the retired pay multiplier. Thus, a member who retired for years of service (not for disability under 10 U.S.C., Chapter 61) who

has a retired pay multiplier of not less than 50 percent, or a member retired under the Military Retirement Reform Act of 1986 (referred to as REDUX) who is still under age 62 with a retired pay multiplier of not less than 40 percent, may be presumed to have at least 20 years of service for retired pay computation purposes. A member who retired under 10 U.S.C., Chapter 61 should be evaluated in terms of what the multiplier would be if the member had not retired for disability. See subparagraph C.4.

2. Temporary Early Retirement Authority (TERA). A member retired under the provisions of section 4403 of ***Public Law 102-484***, October 23, 1992, as amended, and by section 504 of ***Public Law 112-81***, December 31, 2011 (commonly known as the TERA program) is generally not eligible unless the member is credited with sufficient service for a 50 percent multiplier or has been recalled to active duty long enough to accumulate 20 years or more of service in the Uniformed Services for the purpose of computing retired pay. Service in Public and Community Service positions under the provisions of section 4403 of Public Law 102-484, October 23, 1992 creditable for re-computation of retired pay at age 62 does not count for these purposes. A TERA retiree who has a retired pay increase of 10 percent granted on the basis of extraordinary heroism is not eligible under these provisions if the retired pay multiplier would otherwise be less than 50 percent.

3. Retired Reservist. Prior to January 1, 2004, a retired reservist had to have at least 7,200 points to be eligible for CRSC. Effective January 1, 2004, a retired Reservist with retired pay computed under 10 U.S.C. 12731 is eligible for CRSC unless retired for disability under 10 U.S.C. 12731b with more than 15 but less than 20 years as required under 10 U.S.C. 12731(a)(2). Specifically, those retired under the Reserve TERA provisions, as prescribed in ***10 U.S.C. 12731a***, who served fewer than 20 years, but were considered to meet the criteria of 10 U.S.C. 12731(a)(2) are eligible under these provisions.

4. Chapter 61 Disability Retirees. CRSC is payable to otherwise qualifying applicants receiving retired pay based on the DoD-assigned percentage of disability under 10 U.S.C., Chapter 61. For such members, the CRSC payment is subject to reduction as explained in paragraph 630803.

D. On or After January 1, 2008. A retired member who meets the criteria of paragraphs 630402 through 630404 satisfies the preliminary criteria to receive CRSC, without regard to having 20 or more years of creditable service for computing retired pay.

1. Chapter 61 Disability Retirees. A member retired for disability under 10 U.S.C., Chapter 61**,** with less than 20 years of service is eligible to receive CRSC, subject to reduction under subparagraph 630803.B.

* 2. TERA. A member retired under the provisions of section 4403 of Public Law 102-484, October 23, 1992, as amended, and by section 504 of Public Law 112-81, December 31, 2011 (commonly known as the TERA program) is entitled to CRSC. The monthly amount of CRSC payable to qualifying TERA retirees shall not be reduced under the special rules for CRSC-entitled disability retirees with less than 20 years of service which are applicable only to Chapter 61 retirees.

630402. Retired Status

A member must be in a retired status (i.e., on the retired rolls), or have been transferred to the Fleet Reserve or Fleet Marine Corps Reserve. A member who is recalled to, or retained on, active duty is not in a retired status and therefore is not entitled to CRSC for such period of active duty.

630403. Entitled to Retired Pay

A. A member must be entitled to retired pay, notwithstanding that such retired pay may be reduced due to receipt of VA disability compensation.

B. A member who waives retired pay in order to credit military service for the purposes of establishing eligibility for a civil service retirement, or for any reason other than to receive disability compensation from the VA, is not eligible to receive CRSC payments. A member who combines his military time with his civil service time for the sole purpose of enhancing his civil service retirement may be eligible for CRSC, if the member is still eligible to receive military retired pay. Members should consult the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) Handbook for Personnel and Payroll Offices for further information on eligibility. See also ***https://www.opm.gov/retire/pubs/handbook/hod.htm***.

C. A reservist who is not yet age 60, and therefore not entitled to retired pay, is not eligible to receive CRSC payments.

630404. Qualifying Disability Ratings (Percentages)

A. A member must be entitled to compensation for service-connected disabilities under ***Title 38, U.S.C.***, as rated by VA. The rating must be awarded prior to the member's date of death.

B. Disability ratings by the Secretary of the Military Department concerned (or designee), as of the date on which the member retired, may be used to help make determinations of whether the member meets Preliminary CRSC Criteria. The actual computation of the amount of CRSC payable to an eligible retiree is based solely on VA disability determinations and the amount of VA compensation paid, without regard to any disability that is not combat-related. Military retirement decisions may be used to determine whether such disabilities are combat-related.

*6305 FINAL CRITERIA

In order for the member to be entitled to CRSC, the member must meet all four Preliminary CRSC Criteria (as prescribed in paragraphs 630401 through 630404), and the appropriate Service must determine that the member has a combat-related disability or disabilities, as defined by 630501 and 630502, that are compensated by the VA.

630501. Purple Heart Disability

A. Purple Heart Disability is a disability with an assigned medical diagnosis code from the VA Schedule for Rating Disability (VASRD) that was attributed to injuries for which the member was awarded a Purple Heart.

B. If the member meets the Preliminary CRSC Criteria and has been awarded a Purple Heart, then the Military Department must determine which disabilities of the member, if any, are attributed to Purple Heart injuries. If the member was not awarded a Purple Heart, then no such determination will be made.

C. Determination that a disability is a Purple Heart Disability requires documentary information that there is a sufficient causal relationship between the disability and injury for which a Purple Heart was awarded to conclude that the disability is attributable to such injury. Such a disability will be classified as a Purple Heart Disability and will also be included in any other CRSC determinations based on combat-related disabilities. With respect to an application of a retiree who meets Preliminary CRSC Criteria and who was awarded the Purple Heart, the Military Department will record whether or not each disability rated by the VA is or is not attributable to an injury for which the member was awarded the Purple Heart.

630502. Other Combat-Related Disabilities

A combat-related disability is a disability with an assigned medical diagnosis code from VASRD that was incurred. The Military Departments will determine whether a disability is combat-related based on the following criteria:

A. As a direct result of armed conflict,

B. While engaged in hazardous service,

C. In the performance of duty under conditions simulating war, or

D. Through an instrumentality of war.

The Department shall record for each disability determined to be combat-related which of the circumstances provided above qualifies the disability as combat-related. A determination of combat-relatedness (see section 6306) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made on the basis of the program criteria.

*6306 DETERMINATIONS OF COMBAT-RELATEDNESS

The following criteria, terms, definitions, and explanations will apply to making combat-related determinations in the CRSC Program.

630601. Direct Result of Armed Conflict

A. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination it is not sufficient to only state the fact that a member incurred the disability during a period of war, or in an area of armed conflict or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting liability.

B. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

C. Armed conflict may also include such situations as incidents involving a member while interned as a prisoner of war or while detained against his or her will in custody of a hostile or belligerent force, or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

630602. While Engaged in Hazardous Service

Hazardous service is service that includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty. A finding that a disability is the result of such hazardous service requires that the injury or disease be the direct result of actions taken in the performance of such service. Travel to and from such service, or actions incidental to a normal duty status not considered hazardous, are not included.

630603. In the Performance of Duty Under Conditions Simulating War

In general, performance of duty under conditions simulating war covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics, jogging, formation running, or supervised sport activities.

630604. Instrumentality of War

A. There must be a direct causal relationship between the instrumentality of war and the disability. It is not required that a member's disability be incurred during an actual period of war. The disability must be incurred incident to a hazard or risk of the service.

B. An instrumentality of war is a vehicle, vessel, or device designed primarily for Military Service and intended for use in such Service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for Military Service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to Military Service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

C. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or materiel.

D. For example, if a member is on a field exercise, and is engaged in a sporting activity and falls and strikes an armored vehicle, then the injury will not be considered to result from the instrumentality of war (armored vehicle) because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the member, then the injury would be considered the result of an instrumentality of war.

6307 SPECIAL MONTHLY COMPENSATION (SMC)

630701. General

Special Monthly Compensation (SMC), under ***38 U.S.C. 1114***, is payable for service-connected disabilities caused by each anatomical loss or loss of use of specific organs or parts of the body. SMC is payable in addition to the basic rate of compensation otherwise payable on the basis of degree of disability, provided that the combined rate of compensation does not exceed the monthly rate set forth in 38 U.S.C. 1114(k).

*630702. Special Determination

Each Military Department will make a special determination regarding whether a member entitled to CRSC who also receives SMC from the VA under 38 U.S.C. 1114(k) through (s) could receive increased CRSC as a result of a SMC determination. The Military Department will first determine whether all their VA-compensated disabilities have been determined to be combat-related disabilities under the CRSC program. For members with VA-compensated disabilities that are both combat-related and not combat-related, the Military Department will classify each award of SMC as either Combat-Related Special Monthly Compensation (CR-SMC) or not (Non-CR-SMC), consistent with the corresponding determination of the diagnostic codes on which the SMC is based. DFAS-Cleveland Site will be notified of all such determinations. DFAS-Cleveland Site will include any CR-SMC in CRSC computations.

630703. Grades Not Requiring SMC Determinations

The Military Department need not make a combat-related determination for any member who would not receive added compensation even if SMC was determined to be combat-related. Any SMC on such member will be passed to DFAS as "undetermined combat-relatedness."

6308 CRSC AMOUNT

The monthly amount of CRSC is equal to the full monthly amount prescribed in paragraph 630801, reduced as prescribed in paragraph 630802 and limited in accordance with paragraph 630803.

630801. Gross Monthly Amount

The monthly amount of disability compensation the member would be paid by the VA under the provisions of Title 38, U.S.C. if compensated solely for the disabilities determined to be attributable to an injury for which the member received the Purple Heart or determined to be otherwise combat-related. See section 6305. Applicable compensation is set forth in ***38 U.S.C., chapter 11***.

Example: A member with a spouse and two children has qualifying combat-related disabilities rated at 100 percent by the VA. The member's current monthly VA benefit amount is $3,264 – the prescribed rate for a 100 percent disability for a veteran with a spouse and two children as of December 1, 2012. The gross monthly amount for CRSC purposes is based on this full rate and not just the veteran-alone amounts as applied to CRSC for periods on or after January 1, 2004.

A. Compensation of Dependents. Additional compensation for dependents is to be included as part of any applicable CRSC compensation. DFAS will use the same dependency rates for the combat-related compensation as VA uses to determine the member's full disability compensation. For example, if a member is compensated by VA at the 100 percent disability rate for a veteran with spouse and one child and the combat-related percentage is 60 percent, then the gross CRSC will be determined as the 60 percent rate for a veteran with a spouse and one child. The rates of such compensation are set forth in ***38 U.S.C. 1115***.

B. Special Monthly Compensation (SMC). The amount of SMC will be considered as part of gross CRSC compensation only if the SMC is paid on the basis of disabilities determined by the Military Department to be combat-related. See section 6307.

C. Retired Members Considered Unemployable. DFAS shall coordinate with VA to ascertain whether a member is compensated by VA under 38 U.S.C. 1114(j) by virtue of a rating of Individual Unemployability (IU) on the basis of being unemployable under the provisions of ***38 CFR 4.16*** or ***4.18***, for any member whose current combined combat-related disability percentage is 60 percent or greater. Such member shall be given a combined gross CRSC disability, which is rated as total or 100 percent.

630802. Adjusted Amount

The CRSC payment may not exceed the current reduction in retired pay applicable to the retiree under ***38 U.S.C. 5304*** and ***5305***. Thus, CRSC is not payable if there is no reduction because the member is not receiving any monthly disability compensation from VA, or because the member is not receiving retired pay (such as a reserve member before reaching retirement age at 60 or other reduced retirement age) or for other reasons (such as a member who waives military retired pay in order to credit military service for a civil service retirement). The amount of a member's CRSC entitlement will be adjusted to be the lesser of the gross CRSC from paragraph 630801 or the reduction to the retired pay entitlement.

Example: The member, described in 630801 is retired after 22 years of service with a high-three pay base of $3,000, resulting in retired pay of $1,650 monthly (55 percent of $3,000). The potential retired pay of $1,650 is reduced to $0 by receipt of the VA disability compensation. Thus the adjusted amount of CRSC is the $1,650 reduction in retired pay since it is less than the gross amount of $3,264 determined in the example in paragraph 630801.

*630803. CRSC Payment Reduction for 10 U.S.C., Chapter 61 Disability Retirees

The adjusted monthly amount specified in paragraph 630802 will be reduced according to the provisions of subparagraph 630803.A or 630803.B, whichever is applicable.

A. Reduction for periods prior to January 1, 2013

1. Chapter 61 Disability Retirees With 20 or More Years of Service. Members retired for disability under 10 U.S.C., Chapter 61 with 20 or more years of creditable service computed under section ***10 U.S.C. 1208*** will have the maximum CRSC payment reduced by the amount, if any, by which the amount of the member's gross retired pay under Chapter 61 exceeds the applicable retired pay to which the member would otherwise have been entitled under any other provisions of law. A retiree who accepted the Career Status Bonus will have the reduced amount calculated based on retired pay that would otherwise have been computed under ***10 U.S.C. 1409(b)(2)***.

Example: The member described in 630802, who would have received $1,650 in retired pay had he retired for his years of service, was retired under 10 U.S.C., Chapter 61 with a disability rated at 60 percent. Thus, the member receives retired pay of $1,800 monthly (60 percent of $3,000). However, in this case, the member has a combined VA rating of 100 percent, but combat-related disabilities rated at 60 percent. The member's current monthly VA benefit amount is $3,264, of which $1,365 is combat-related. The member has a total offset of retired pay. The maximum CRSC entitlement under paragraphs 630801 and 630802 is $1,365. The maximum CRSC entitlement will be reduced by the difference in the Chapter 61 retirement and the longevity retirement amounts, or $150 ($1,800 less $1,650). This reduction reflects the amount by which the member's disability retired pay exceeds his or her longevity retired pay. The member's CRSC benefit of $1,365 is reduced by $150 to $1,215. In this case, the member will receive $3,264 from the VA and $1,215 in CRSC from DoD.

2. Chapter 61 Disability Retirees With Fewer Than 20 Years of Service. Members retired for disability under 10 U.S.C., Chapter 61 with less than 20 years of creditable service computed under 10 U.S.C. 1208 and who initially qualify for CRSC on or after January 1, 2008, will have the maximum CRSC payment reduced by the amount, if any, by which the amount of the member's gross retired pay under Chapter 61 exceeds the amount that is equal to 2½ percent of the member's years of creditable service multiplied by the member's retired pay base under ***10 U.S.C. 1406(b)(1)*** or ***10 U.S.C. 1407***, whichever is applicable to the member.

NOTE: A retired reserve member, retired under the provisions of 10 U.S.C., Chapter 61 is entitled to CRSC. The gross amount of CRSC determined under paragraph 630801 will be adjusted as required under paragraph 630802 and then further reduced under this paragraph. For Reserve Component members with less than 20 years of service as determined under ***10 U.S.C. 12733***, reduce the adjusted CRSC amount by the amount, if any, by which the disability retired pay exceeds the amount equal to 2½ percent times the years of creditable service determined under 10 U.S.C. 12733 multiplied by the member's applicable retired pay base. For Reserve Component members with 20 or more years of service as determined under 10 U.S.C. 12733, reduce the adjusted CRSC amount by the amount, if any, by which the disability retried pay exceeds the retired pay for the member would be entitled if the member were 60 years old.

B. Reductions for periods on or after January 1, 2013.

1. Chapter 61 Disability Retirees With 20 or More Years of Service. Members retired for disability under 10 U.S.C., Chapter 61 with 20 or more years of creditable service computed under section 10 U.S.C. 1208 will have the maximum CRSC payment restricted to the amount, which when combined with any remaining retired pay after VA offset, will not exceed the applicable retired pay to which the member would otherwise have been entitled under any other provisions of law. A retiree who accepted the Career Status Bonus will have the reduced amount calculated based on retired pay that would otherwise have been computed under 10 U.S.C. 1409(b)(2).

Example: The same member, as described in 630802, was retired under 10 U.S.C., Chapter 61 with a disability rated at 60 percent. Thus, the member receives retired pay of $1,800 monthly (60 percent of $3,000). However, in this case, the member has a combined VA rating of 100 percent, but combat-related disabilities rated at 60 percent. The member's current monthly VA benefit amount is $3,264, of which $1,365 is combat-related. The member has a total offset of retired pay. Since there is no residual retired pay after offset of the full VA benefit amount, the member's CRSC entitlement of $1,365, is fully payable as it does not exceed the applicable retired pay to which the member would otherwise have been entitled under any other provisions of law. In this case, the member will receive $3,264 from the VA and $1,365 in CRSC from DoD.

2. Chapter 61 Disability Retirees With Fewer Than 20 Years of Service. Members retired for disability, under 10 U.S.C., Chapter 61, with less than 20 years of creditable service computed under 10 U.S.C. 1208, and who is qualified for CRSC, on or after

January 1, 2013, will have the maximum CRSC payment restrictions. The CRSC payment amount, which when combined with any remaining retired pay after VA offset, will not exceed the amount that is equal to 2½ percent of the member's years of creditable service multiplied by the member's retired pay base under 10 U.S.C. 1406(b)(1) or 10 U.S.C. 1407, whichever is applicable to the member.

NOTE: A retired reserve member, retired under the provisions of 10 U.S.C., Chapter 61 is entitled to CRSC. The gross amount of CRSC determined under paragraph 630801 will be adjusted as required under paragraph 630802. For Reserve Component members with less than 20 years of service as determined under 10 U.S.C. 12733, the CRSC amount when combined with the amount of retired pay payable to the retiree after reduction for the full VA disability compensation, if any, may not exceed the disability retired pay amount that is equal to 2½ percent times the years of creditable service determined under 10 U.S.C. 12733 multiplied by the member's applicable retired pay base. For Reserve Component members with 20 or more years of service as determined under 10 U.S.C. 12733, the CRSC amount when combined with the amount of retired pay payable to the retiree after reduction for the full VA disability compensation, if any, may not exceed the disability retired pay to which the member would be entitled if the member were 60 years old.

C. Chapter 61 Disability Retiree Out-Year Deductions. In all cases, once established (based on date the member was first placed on either the Permanent or Temporary Disability Retirement List), the CRSC reduction amount will be increased by each increase in the retired pay cost of living allowance. It will not be re-computed using current pay tables unless the member otherwise qualifies for re-computation of retired pay by reason of recall to duty or correction of official records.

6309 COMBINED DISABILITY RATING PERCENTAGE

630901. The VA Combined Ratings Table

This table is used to combine multiple disability ratings as set forth in ***38 CFR 4.25***. The table is based on the consideration of an individual's efficiency, as affected by the most disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability (70 percent of 40 percent), leaving 28 percent efficiency altogether. The individual is thus 72 percent disabled.

630902. Multiple Combined Disability Ratings

When two or more disabilities are combined, use the formula below to determine the combined rating of multiple disabilities:

A. Subtract each disability percent from 100 percent to obtain the remaining efficiency,

B. Multiply the remaining efficiencies together,

C. Subtract the result from 100 percent, and

D. Round to the nearest 10 percent (round upward for 5 percent and up, down for 4 percent and below) to determine the combined disability rating.

Example 1: Consider a retiree having three disabilities from VA, rated 50 percent, 40 percent, and 30 percent. If added together, then the total would be 120 percent. Instead, the member's combined rating is determined as follows:

1. The three disabilities leave efficiencies of 50 percent, 60 percent, and 70 percent respectively;

2. Multiply the three efficiencies together:

.50 x .60 x .70 = .21 or 21 percent;

3. The disability is 100 percent less 21 percent = 79 percent;

4. Adjust the result upward to a combined disability rating of 80 percent.

Example 2: Now consider what happens if the Military Department determines that only the 40 percent and 30 percent disabilities are combat-related, then the member's combined disability rating for CRSC would be:

1. The two disabilities of 40 percent and 30 percent leave efficiencies of 60 percent and 70 percent.

2. Multiply the two efficiencies together:

.60 x .70 = .42 or 42 percent;

3. The disability is 100 percent less 42 percent = 58 percent;

4. Adjust the result upward to a combined disability rating of 60 percent.

630903. VA Retroactive Increase.

When VA makes a retroactive increase in a member's VA disability compensation pertinent to a member's combat-related disabilities under CRSC, DFAS and VA will exchange data to determine the additional retroactive amount that the member is entitled to receive as the result of CRSC. DFAS will compute the additional entitlement and advise VA in order for VA to pay the member the appropriate additional authorized VA disability compensation. Any

increase affecting CRSC qualified disabilities in the current month requires that CRSC be re-computed.

6310 REVIEW PROCESS

631001. Basis for Determination

A. Determinations of whether a disability is combat-related will be based on the preponderance of available documentary information where quality of information is more important than quantity. All relevant documentary information is to be weighed in relation to known facts and circumstances, and determinations will be made on the basis of credible, objective documentary information in the records as distinguished from personal opinion, speculation, or conjecture.

B. The burden of proof that a disability is combat-related rests with the applicant, who is required to provide copies of documents in his or her possession to the best of his or her ability. A record submitted by a member may be used in support of his or her application if that record appears regular on its face and is consistent with Military Service documents and procedures in use at the time, based on the best information available. Military Departments may compile a list of typical documents used in various time periods. If necessary, the Military Departments, under agreement with VA may request copies of certain documents (i.e., DD 214 "Certificate of Release or Discharge From Active Duty", medical records, final VA ratings) from VA to support CRSC determinations.

631002. Processing of Applications

Each Military Department will receive and process applications submitted by members retired from that Military Department on ***DD Form 2860***, Claim For Combat-Related Special Compensation (CRSC). Applications will be reviewed, and an application will be approved only if the applicant satisfies both Preliminary and Final CRSC criteria. An application must be received by the military department prior to the member's death in order to be considered. An application for CRSC submitted by member's survivors will not be considered. DFAS-Cleveland Site will be notified of each approved application for payment.

A. Initial Review. Each Service Department will review the member's application to determine if the member meets the Preliminary criteria in section 6305. If a member does not satisfy each of the Preliminary CRSC Criteria, then the application will be denied and no further consideration is necessary. The member may reapply at such time as his or her ratings satisfy the specified thresholds and meet all four Preliminary CRSC Criteria in section 6305.

B. Final Review. If the member meets all four Preliminary Criteria in section 6305, then the Military Department will determine whether the member's disabilities are qualifying combat-related disabilities, as prescribed in section 6306. The Military Department shall record each disability determined to be combat-related with assigned medical diagnosis

code from VASRD. The Military Department will forward the approved claims with VASRD codes categorized as either combat or Purple Heart to the DFAS-Cleveland Site for payment.

631003. Denial and Appeals

When a Military Department denies a CRSC application, they will provide a letter to the member specifying the reasons(s) for the denial. The Military Department will inform the member that he or she may seek reconsideration by submitting additional, clarifying, or new documentary information to the Military Department in support of his or her claim. The Military Department will review the additional or new information and will inform the member of the results of the review. The Military Department will also inform the member that CRSC is subject to the same appeals and correction processes applicable to military pay and allowances, including application to the appropriate Board for Correction of Military Records (BCMR) under the provisions of ***10 U.S.C. 1552***. The Military Department will provide the member a ***DD Form 149***, Application for Correction of Military Records, and the address of the BCMR, including its Web site. In considering an application where the issue of whether a disability is combat-related for the purposes of CRSC, BCMR will seek an advisory opinion from the Director of Compensation, Office of the Deputy Under Secretary of Defense (Military Personnel Policy), and comply with the requirements of ***10 U.S.C. 1556***. BCMR will provide the Director of Compensation a copy of any final decision concerning any application involving a determination as to whether a disability is combat-related.

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630404	38 U.S.C.

6307 – SPECIAL MONTHLY COMPENSATION

630701	38 U.S.C. 1114 38 U.S.C. 1114(k)
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6308 – CRSC Amount

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630801.A	38 U.S.C. 1115
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6309 – COMBINED DISABILITY RATING PERCENTAGE

630901	38 C.F.R. 4.25

6310 – REVIEW PROCESS

631003	10 U.S.C. 1552 10 U.S.C. 1556

VOLUME 7B, CHAPTER 64: "CONCURRENT RETIREMENT AND DISABILITY PAYMENT (CRDP)"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 September 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and reformatted to comply with current administrative instructions.	Update
All	Added titles for all paragraphs.	Add
640205	Rephrased and expanded verbiage to clarify the eligibility to CRDP when military service time is combined with civil service time. When military service time is used with civil service time to establish eligibility to civil service retirement, member is not eligible to receive CRDP; however, if it is used for the sole purpose of enhancing civil service retirement, member may be eligible for CRDP.	Update
6403	Provided inquiry method to be used when members believe they are entitled to CRDP but not receiving it. The submission of a written inquiry to DFAS for eligibility of CRDP would document and establish date submitted for statute of limitation.	Update
640402.E	Rephrased verbiage to clarify "retired pay" refers to "restored retired pay" which is CRDP.	Update
Bibliography	Added references to paragraph 640205 and 640403.	Add

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CHAPTER 64

CONCURRENT RETIREMENT AND DISABILITY PAYMENT (CRDP)

6401 GENERAL

Effective January 1, 2004, eligible military retirees are entitled to concurrent receipt of both military retired pay and Department of Veterans Affairs (VA) disability compensation. The Concurrent Retirement and Disability Payment (CRDP) program provides for a 10-year phase-out of the offset to military retired pay due to receipt of VA disability compensation. The CRDP program provides a restoration of monthly retired pay calculated on the circumstances of each entitled individual.

6402 ELIGIBILITY

640201. Qualified Retiree

A qualified retiree must be a member or former member of the Uniformed Services who is entitled for any month to both retired pay and VA disability compensation that is based on a qualifying service-connected disability.

640202. Qualifying Service-Connected Disability

A qualifying service-connected disability is a service-connected disability (or combination of service-connected disabilities) that VA rates at 50 percent or higher.

640203. Physical Disability Retirement

Members retired for physical disability who have less than 20 years of service creditable for the purposes of computing retired pay are not eligible for CRDP, unless they have 20 years of service for determining entitlement to non-regular (reserve) retired pay and are otherwise eligible for such reserve retired pay.

640204. Non-regular Retired Pay

Members eligible for retirement for non-regular service are not eligible to receive CRDP until they reach retirement age and have applied for and have become entitled to receive retired pay.

*640205. Military Retired Pay Waived

A member who waives retired pay in order to credit military service for the purpose establishing eligibility for a civil service retirement, or for any reason other than to receive disability compensation from VA, is not eligible to receive CRDP payments. A member who combines his military time with his civil service time for the sole purpose of enhancing his civil service retirement may be eligible for CRDP. Members who are in receipt of a civil service

retirement and believe they may be eligible for CRDP should consult the Civil Service Retirement System and Federal Employees Retirement System Handbook for Personnel and Payroll Offices for further information on eligibility. See also ***http://www.opm.gov/retire/pubs/handbook/hod.htm***.

*6403 APPLICATION

A member is not required to submit an application to receive CRDP payments. The Defense Finance and Accounting Service (DFAS) will establish procedures to ensure that qualified retirees receive CRDP to which they are entitled as specified in Appendix G. Members who believe they are entitled to CRDP but are not receiving it should submit a written inquiry to DFAS to ascertain the reason they are not currently receiving CRDP. The claim should be sent to DFAS, U.S. Military Retirement Pay, P.O. Box 7130, London, KY 40742-7130.

6404 MONTHLY PAYMENT AMOUNT

Subject to the provisions of paragraphs 640401 and 640402, of this chapter, the monthly amount of retired pay restored under CRDP will be the amount of the offset imposed by receipt of VA disability compensation.

640401. Special Rule for Disability Retirement

Members retired for disability under ***10 United States Code (U.S.C.), Chapter 61, Sections 1201 through 1222*** remain subject to the offset required under ***38 U.S.C. 5304*** and ***5305*** for any retired pay they receive that is in excess of the amount of retired pay to which they would be entitled under any other provision of law based on service in the uniformed services, had they not retired for disability. Since retired pay in excess of the amount calculated for years in service is still subject to offset under the CRDP program, a member with an amount of retired pay remaining after offset of VA disability compensation that is greater than the amount calculated for years of service, is not eligible for any increase in payment of retired pay under the CRDP program.

*640402. Phase-in Period

During the phase-in period of January 1, 2004 through December 31, 2013, payments are limited to the amounts determined as described in subparagraph 640402.A-E. Effective January 1, 2014, qualified retirees will receive full concurrent payments of both retired pay and VA disability compensation subject only to the restriction in paragraph 640401.

A. Restored retired pay computed under CRDP will be determined monthly. The values that determine the amount of retired pay to be restored are dynamic and may change from one month to another depending on a number of factors that cause retired pay and VA disability compensation payments to change. Therefore, CRDP will be recomputed for any month of the phase-in period in which changes to retired pay or VA disability compensation occur.

B. The formula for computing retired pay under the CRDP program during the phase-in period is:

(GRP - CBO) + ((CBO - 2004 Base) × Phase-in %) + 2004 Base

Where:

GRP = Gross Retired Pay before any offset for VA Disability Compensation.
CBO = Current Baseline Offset which is the lesser of ARP and VADC.
ARP = Applicable Retired Pay which is that portion earned for years of service.
VADC = VA Disability Compensation is the monthly disability compensation received.
VADP = VA Disability Percentage as currently assigned by VA.
Phase-in % = the cumulative percentage for a specific calendar year during the phase-in.
2004 Base = the value assigned by law for a specific VA Disability Percentage.

C. The 2004 CRDP base rates are as follows:

VADP	2004 CRDP Base
100%	$750
90%	$500
80%	$350
70%	$250
60%	$125
50%	$100

D. The phase-in percentage rates for calendar years 2004 to 2013 are as follows:

Calendar Year	Phase-in Percentage
2004	00.00%
2005	10.00%
2006	28.00%
2007	49.60%
2008	69.76%
2009	84.88%
2010	93.95%
2011	98.18%
2012	99.64%
2013	99.96%

E. Calendar year 2004 is the baseline year for the phase-in. In calendar year 2004, the phase-in percentage is zero; therefore, a qualified retiree will be paid monthly CRDP

that is equal to the amount, if any, of their GRP in excess of their current baseline offset plus the 2004 CRDP baseline amount based on their VADP. The CRDP amount determined, however, may not exceed the amount of retired pay to which the member would otherwise be entitled after the phase-in period. For calendar years 2005 to 2013, a qualified retiree will be paid monthly retired pay in accordance with the calculation in subparagraph 640402.B. Again, the CRDP determined payable may not exceed the amount of retired pay to which the member would otherwise be entitled after the phase-in period. Use the 2004 CRDP base amount applicable to the retired member's current VADP for the current month of entitlement being calculated, regardless of the VADP percentage applicable in 2004. Use the Phase-in Percentage for the calendar year applicable to the current month of entitlement being calculated.

640403. Exception to Phase-in Period

In the case of a qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent, or 100 percent by reason of a determination of individual unemployability (IU), payment of retired pay is subject to the phase-in only during the period beginning on January 1, 2004, and ending on December 31, 2004. Subsequently, qualified retirees who received veterans' disability compensation at 100 percent shall be entitled to restoration of the full CRDP entitlement from the date of qualification if the 100 percent disability compensation was payable by reason of an IU rating and if prior to October 1, 2008 it was subject to the phase-in.

6405 RELATION TO OTHER PROVISIONS

640501. Relation to Combat-Related Special Compensation (CRSC)

A member entitled to both CRDP and CRSC may receive either one or the other, but not both. An approved application for CRSC will cause the member's CRDP payments to be reconsidered. Unless the member elects otherwise, CRSC will be paid instead of CRDP if the member has applied for and been approved for such benefits and the gross CRSC entitlement is found to exceed the gross CRDP entitlement.

A. All members entitled to both CRDP and CRSC shall be provided an annual open season period during which the member may elect to change between the two programs.

B. Eligible members shall be notified of the opportunity to elect to change between CRDP and CRSC. The notification shall be based on the entitlement information available at the time the notice is provided, and shall specify the date that an election change will be effective.

C. Changes in the amount of a member's entitlement to either CRDP or CRSC, which occur after the close of an annual open season period, shall not be the basis to alter a current election between CRDP and CRSC prior to the next annual open season. This limitation includes changes in a member's VA disability rating, which have a retroactive effective date prior to the date that DFAS is notified of the change. NOTE: The limitation in the

prior sentence does not apply if maintaining the member's most recent CRDP or CRSC open season election would result in the member incurring a retired pay debt or losing the CRDP or CRSC entitlement altogether.

640502. Relation to Regular Retired Pay

As a restoration of retired pay, CRDP remains subject to the requirement to make direct payment of retired or retainer pay as property of a former spouse in compliance with court orders. Receipt of CRDP does not alter or affect any coverage under the Survivor Benefit Plan (SBP), but is available for deduction of any SBP premiums otherwise due. If a member has sufficient CRDP to cover SBP premiums, then such premiums will be deducted from CRDP. CRDP is also subject to a Treasury offset to recover a debt owed to the United States, as well as garnishment for child support or alimony. CRDP is subject to any other action or process, such as allotments, that applies to retired pay generally.

640503. Taxability

Payments of CRDP are taxable according to the taxability of the retired pay such payments represent, i.e., according to the taxability of the restored retired pay otherwise waived under ***38 U.S.C. 5304*** and ***5305***.

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CHAPTER 64 – CONCURRENT RETIREMENT AND DISABILITY PAYMENT (CRDP)

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	640204	10 U.S.C. 12731
	640205	5 U.S.C. 8332 5 U.S.C. 8411
6404	Monthly Payment Amount	38 U.S.C. 5304 38 U.S.C. 5305
	640401	10 U.S.C. 1201 through 1222 10 U.S.C. 12732 38 U.S.C. 5304 and 5305
	640403	Public Law 108-375, section 642, October 28, 2004 10 U.S.C. 1414(a)(1) 10 U.S.C. 1414(c) Public Law 110-181, section 642, January 28, 2008 10 U.S.C. 1414 note
6405	Relation to Other Provisions	
	640501	10 U.S.C. 1413a 10 U.S.C. 1414(d)

640502	10 U.S.C. 1408 10 U.S.C. 1452
640503	38 U.S.C. 5304 38 U.S.C. 5305 26 C.F.R. 31.3401(a)-1(a)(2)

VOLUME 7B, APPENDIX A: "BLOCKED COUNTRIES"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 May 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Appendix A is removed from the DoDFMR and archived. Transmittal Letter 577 (Feb 9, 1999), Treasury Financial Manual (TFM), Volume 1, Part 4 , Section 2000 (Payment Issue Disbursing Procedures), Appendix A is the source document to DoD FMR, Volume 7B, Appendix A; however, TFM Volume 1, Part 4, Section 2000, has been rescinded by TL 687 (Dec 12, 2012). Refer to ***31 CFR 211.1*** for specific conditions for withholding the delivery of checks to addresses outside the United States.	Delete

VOLUME 7B, APPENDIX F: "SBP/RSFPP COMPOUND INTEREST TABLE"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 January 2012 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Table is updated with rates provided by the Department of Defense Office of the Actuary.	Revision

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APPENDIX F

*SBP/RSFPP COMPOUND INTEREST TABLE
(Period October 1, 2013 – Current Date)

Total Payments Due	Compound Interest Factor	Total Payments Due	Compound Interest Factor	Total Payments Due	Compound Interest Factor
1	1.00000	41	42.68389	81	87.83679
2	2.00200	42	43.76928	82	89.01251
3	3.00601	43	44.85684	83	90.19058
4	4.01202	44	45.94658	84	91.37101
5	5.02005	45	47.03849	85	92.55379
6	6.03009	46	48.13259	86	93.73895
7	7.04215	47	49.22888	87	94.92647
8	8.05624	48	50.32736	88	96.11637
9	9.07236	49	51.42804	89	97.30865
10	10.09050	50	52.53092	90	98.50332
11	11.11069	51	53.63601	91	99.70037
12	12.13292	52	54.74331	92	100.89982
13	13.15719	53	55.85282	93	102.10167
14	14.18351	54	56.96456	94	103.30593
15	15.21188	55	58.07851	95	104.51259
16	16.24232	56	59.19470	96	105.72167
17	17.27481	57	60.31312	97	106.93316
18	18.30937	58	61.43378	98	108.14708
19	19.34599	59	62.55667	99	109.36343
20	20.38470	60	63.68182	100	110.58221
21	21.42547	61	64.80921	101	111.80343
22	22.46834	62	65.93886	102	113.02709
23	23.51328	63	67.07077	103	114.25320
24	24.56032	64	68.20495	104	115.48177
25	25.60946	65	69.34139	105	116.71279
26	26.66069	66	70.48011	106	117.94627
27	27.71402	67	71.62110	107	119.18222
28	28.76946	68	72.76438	108	120.42064
29	29.82702	69	73.90995	109	121.66154
30	30.88669	70	75.05780	110	122.90493
31	31.94847	71	76.20796	111	124.15080
32	33.01239	72	77.36041	112	125.39916
33	34.07843	73	78.51517	113	126.65002
34	35.14660	74	79.67224	114	127.90339
35	36.21691	75	80.83162	115	129.15926
36	37.28936	76	81.99333	116	130.41764
37	38.36396	77	83.15735	117	131.67854
38	39.44071	78	84.32371	118	132.94196
39	40.51961	79	85.49240	119	134.20791
40	41.60067	80	86.66343	120	135.47639

*APPENDIX F

SBP/RSFPP COMPOUND INTEREST TABLE (Continued)
(Period October 1, 2013 – Current Date)

Total Payments Due	Compound Interest Factor	Total Payments Due	Compound Interest Factor	Total Payments Due	Compound Interest Factor
121	136.74741	161	189.72847	201	247.11871
122	138.02097	162	191.10802	202	248.61307
123	139.29709	163	192.49033	203	250.11042
124	140.57575	164	193.87540	204	251.61076
125	141.85697	165	195.26325	205	253.11411
126	143.14075	166	196.65387	206	254.62046
127	144.42711	167	198.04728	207	256.12983
128	145.71603	168	199.44347	208	257.64221
129	147.00754	169	200.84246	209	259.15763
130	148.30162	170	202.24424	210	260.67607
131	149.59830	171	203.64883	211	262.19755
132	150.89757	172	205.05623	212	263.72208
133	152.19944	173	206.46644	213	265.24965
134	153.50392	174	207.87948	214	266.78028
135	154.81100	175	209.29534	215	268.31397
136	156.12070	176	210.71403	216	269.85073
137	157.43302	177	212.13557	217	271.39057
138	158.74796	178	213.55994	218	272.93349
139	160.06554	179	214.98717	219	274.47949
140	161.38575	180	216.41725	220	276.02858
141	162.70860	181	217.85019	221	277.58078
142	164.03409	182	219.28600	222	279.13608
143	165.36224	183	220.72468	223	280.69449
144	166.69305	184	222.16624	224	282.25601
145	168.02652	185	223.61068	225	283.82067
146	169.36266	186	225.05801	226	285.38845
147	170.70146	187	226.50824	227	286.95937
148	172.04295	188	227.96137	228	288.53343
149	173.38712	189	229.41741	229	290.11064
150	174.73398	190	230.87635	230	291.69100
151	176.08354	191	232.33822	231	293.27453
152	177.43579	192	233.80301	232	294.86122
153	178.79075	193	235.27073	233	296.45109
154	180.14842	194	236.74139	234	298.04414
155	181.50881	195	238.21499	235	299.64038
156	182.87192	196	239.69154	236	301.23981
157	184.23775	197	241.17104	237	302.84243
158	185.60632	198	242.65350	238	304.44827
159	186.97762	199	244.13893	239	306.05732
160	188.35167	200	245.62733	240	307.66958

*APPENDIX F

SBP/RSFPP COMPOUND INTEREST TABLE (Continued)
(Period October 1, 2013 – Current Date)

Total Payments Due	Compound Interest Factor	Total Payments Due	Compound Interest Factor	Total Payments Due	Compound Interest Factor
241	309.28507	281	376.62505	321	449.56918
242	310.90380	282	378.37848	322	451.46855
243	312.52576	283	380.13543	323	453.37171
244	314.15097	284	381.89589	324	455.27867
245	315.77942	285	383.65987	325	457.18946
246	317.41114	286	385.42738	326	459.10406
247	319.04612	287	387.19842	327	461.02250
248	320.68437	288	388.97301	328	462.94477
249	322.32590	289	390.75115	329	464.87089
250	323.97071	290	392.53285	330	466.80086
251	325.61881	291	394.31811	331	468.73470
252	327.27021	292	396.10694	332	470.67240
253	328.92491	293	397.89935	333	472.61398
254	330.58292	294	399.69535	334	474.55944
255	332.24425	295	401.49493	335	476.50879
256	333.90891	296	403.29812	336	478.46205
257	335.57689	297	405.10492	337	480.41921
258	337.24821	298	406.91533	338	482.38028
259	338.92287	299	408.72936	339	484.34528
260	340.60089	300	410.54702	340	486.31421
261	342.28226	301	412.36832	341	488.28708
262	343.96699	302	414.19326	342	490.26390
263	345.65510	303	416.02185	343	492.24467
264	347.34658	304	417.85410	344	494.22940
265	349.04144	305	419.69002	345	496.21811
266	350.73970	306	421.52961	346	498.21079
267	352.44135	307	423.37287	347	500.20746
268	354.14641	308	425.21983	348	502.20812
269	355.85488	309	427.07048	349	504.21278
270	357.56676	310	428.92483	350	506.22146
271	359.28207	311	430.78289	351	508.23415
272	361.00082	312	432.64467	352	510.25087
273	362.72300	313	434.51018	353	512.27163
274	364.44862	314	436.37941	354	514.29642
275	366.17770	315	438.25239	355	516.32527
276	367.91024	316	440.12911	356	518.35818
277	369.64624	317	442.00959	357	520.39515
278	371.38571	318	443.89382	358	522.43620
279	373.12867	319	445.78183	359	524.48133
280	374.87511	320	447.67362	360	526.53055

VOLUME 7B, APPENDIX G: "Memorandum of Understanding Between the Department of Veterans Affairs and the Department of Defense – Retired Pay and Survivor Annuities"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	The memorandum is now hosted on the DFAS ePortal and managed by the DFAS Enterprise Management Services, Support Services Directorate. For individuals who may not have access to the DFAS ePortal, please send an email to ***DFASSUPPORTAGREEMENT@DFAS.MIL*** for questions or to obtain a copy.	Delete

VOLUME 7B, APPENDIX H: "AGE OF MAJORITY BY STATE AND UNITED STATES POSSESSION"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 January 2012 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
State of Pennsylvania	Updated age of majority for Pennsylvania from 21 to 18.	Revision

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VOLUME 7B, APPENDIX H: "AGE OF MAJORITY BY STATE AND UNITED STATES POSSESSION" 1

AGE OF MAJORITY BY STATE AND UNITED STATES POSSESSIONS..... 3

AGE OF MAJORITY BY STATE AND UNITED STATES POSSESSIONS

State	Age	State	Age
Alabama	19	Nebraska	19
Alaska	18	Nevada	18
Arizona	18	New Hampshire	18
Arkansas	18	New Jersey	18
California	18	New Mexico	18
Colorado	18	New York	18
Connecticut	18	North Carolina	18
Delaware	18	North Dakota	18
District of Columbia	18	Ohio	18
Florida	18	Oklahoma	18
Georgia	18	Oregon	18
Hawaii	18	Pennsylvania	18
Idaho	18	Puerto Rico	21
Illinois	18	Rhode Island	18
Indiana	18	South Carolina	18
Iowa	18	South Dakota	18
Kansas	18	Tennessee	18
Kentucky	18	Texas	18
Louisiana	18	Utah	18
Maine	18	Vermont	18
Maryland	18	Virginia	18
Massachusetts	18	Virgin Islands	18
Michigan	18	Washington	18
Minnesota	18	West Virginia	18
Mississippi	21	Wisconsin	18
Missouri	18	Wyoming	18
Montana	18		

VOLUME 7B, APPENDIX J: "STATE TAX REPORTING"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

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

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

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The previous version dated August 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
Table	Added the Commonwealth of Northern Mariana Island to the list of States in this appendix.	Add

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VOLUME 7B, APPENDIX J: "STATE TAX REPORTING"..... 1

STATE TAX REPORTING..... 3

APPENDIX J

STATE TAX REPORTING

State	Mail Copy 1 of IRS TD 1099 or Automated Reports to:	State	Mail Copy 1 of IRS TD 1099 or Automated Reports to:
Alabama	Department of Revenue Income Tax Division Montgomery, AL 36102	Indiana	Gross Income Tax Division Indianapolis, IN 46204
Arizona	State Tax Commission Phoenix, AZ 85007	Iowa	Department of Revenue Lucas State Office Building Des Moines, IA 50319
Arkansas	Department of Finance and Administration Little Rock, AR 72203	Kansas	Department of Revenue Topeka, KS 66625
California	Franchise Tax Board Sacramento, CA 95876	Kentucky	Department of Revenue Frankfort, KY 40601
Colorado	Department of Revenue Denver, CO 80203	Louisiana	Department of Revenue Baton Rouge, LA 70821
Connecticut	Taxpayer Services Department of Revenue 92 Farmington Avenue Hartford, CT 06105	Maine	Bureau of Taxation Augusta, ME 04330
Delaware	Department of Finance 601 Delaware Avenue Wilmington, DE 19899	Maryland	Comptroller of the Treasury Income Tax Division Annapolis, MD 21404
District of Columbia	Department of Finance and Revenue Municipal Center Washington, DC 20001	Massachusetts	Department of Corporations and Taxation Boston, MA 02133
Georgia	Department of Revenue Trinity Washington Building Atlanta, GA 30334	Michigan	Department of Management and Budget Lansing, MI 48913
Hawaii	Department of Taxation Honolulu, HI 96813	Minnesota	Department of Revenue Centennial Office Building St Paul, MN 55145
Idaho	State Tax Commission P.O. Box 36 Boise, ID 83722	Mississippi	State Tax Commission P.O. Box 960 Jackson, MS 39205
Illinois	Department of Revenue Springfield, IL 62708	Missouri	Department of Revenue Jefferson City, MO 65101

* APPENDIX J

STATE TAX REPORTING
(Continued)

State	Mail Copy 1 of IRS TD 1099 or Automated Reports to:	State	Mail Copy 1 of IRS TD 1099 or Automated Reports to:
Montana	Department of Revenue Mitchell Building Helena, MT 59620	Pennsylvania	Department of Revenue Harrisburg, PA 17127
Nebraska	Department of Revenue Lincoln, NE 68509	Puerto Rico	Director, Income Tax Division Treasury Department Box S-4515 San Juan, PR 00901
New Jersey	Department of the Treasury State House Trenton, NJ 08625	Rhode Island	Department of Administration State House Providence, RI 02903
New Mexico	Department of Finance and Administration State Capitol Santa Fe, NM 87501	South Carolina	State Tax Commission Columbia, SC 29201
New York	Department of Taxation and Finance State Campus Albany, NY 12227	Utah	Department of Finance 147 State Capitol Salt Lake City, UT 84114
North Carolina	Department of Revenue Raleigh, NC 27640	Vermont	Executive Department State of Vermont Montpelier, VT 05602
North Dakota	State Tax Commission Bismarck, ND 58505	Virginia	Department of Taxation Richmond, VA 23215
Ohio	Department of Taxation Columbus, OH 43215	West Virginia	State Tax Department Charleston, WV 25305
Oklahoma	State Tax Commission Oklahoma City, OK 73105	Wisconsin	Department of Revenue Madison, WI 53702
Oregon	Department of Revenue Salem, OR 97310	Commonwealth of Northern Mariana Islands	Department of Finance P.O. Box 5234 CHRB Saipan, MP 96950

NOTE: Information shown in this appendix was extracted from the Financial Management Service, ***Treasury Financial Manual, Volume 1, Part 3, Chapter 5000***. Forty-one states, the District of Columbia, and Puerto Rico impose personal income taxes. New Hampshire and Tennessee apply income tax only to personal income earned from interest and dividends. Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming do not tax personal income.

VOLUME 7B, APPENDIX L: "DEPENDENCY AND INDEMNITY COMPENSATION RATES"

A **SUMMARY OF MAJOR CHANGES**

All changes are denoted by blue font.

Substantive revisions are denoted by an * 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 May 2012 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated the Dependency and Indemnity Compensation (DIC) Cost-of-Living Adjustment rates, effective December 1, 2012.	Update

APPENDIX L

DEPENDENCY AND INDEMNITY COMPENSATION RATES DECEMBER 1, 2005 – DECEMBER 1, 2012

Dependency and Indemnity Compensation Rates

Pay Grade	PL 109-111 Dec 1, 2005 (See notes)	PL 109-461 Dec 1, 2006 (See notes)	PL 110-111 Dec 1, 2007 (See notes)	PL 110-389 Dec 1, 2008 (See notes)	PL 112-53 Dec 1, 2011 (See notes)	* PL 112-198 Dec 1, 2012 (See notes)
E1	$1,033	$1,067	$1,091	$1,154	$1,195	$1,215
E2	1,033	1,067	1,091	1,154	1,195	1, 215
E3	1,033	1,067	1,091	1,154	1,195	1, 215
E4	1,033	1,067	1,091	1,154	1,195	1, 215
E5	1,033	1,067	1,091	1,154	1,195	1, 215
E6	1,033	1,067	1,091	1,154	1,195	1, 215
E7	1,069	1,104	1,129	1,194	1,236	1,257
E8	1,128	1,165	1,191	1,260	1,305	1,327
E9	1,177	1,215	1,242	1,314	1,361	1,384
Sgt Major — Army	1,271	1,312	1,342	1,419	1,470	1,494
Sr Enl Adv — Navy	1,271	1,312	1,342	1,419	1,470	1,494
Ch MSgt — Air Force	1,271	1,312	1,342	1,419	1,470	1,494
Sgt Major — Marines	1,271	1,312	1,342	1,419	1,470	1,494
MCPO of the Coast Guard	1,271	1,312	1,342	1,419	1,470	1,494
W-1	1,092	1,128	1,153	1,219	1,262	1,283
W-2	1,135	1,172	1,198	1,267	1,312	1,334
W-3	1,169	1,207	1,234	1,305	1,351	1,373
W-4	1,236	1,276	1,305	1,380	1,429	1,453
O-1	1,092	1,128	1,153	1,219	1,262	1,283
O-2	1,128	1,165	1,191	1,260	1,305	1,327
O-3	1,207	1,246	1,274	1,347	1,395	1,418
O-4	1,277	1,319	1,349	1,427	1,478	1,503
O-5	1,406	1,452	1,485	1,571	1,627	1,654
O-6	1,585	1,637	1,674	1,771	1,834	1,865
O-7	1,712	1,768	1,808	1,912	1,980	2,013
O-8	1,879	1,941	1,985	2,100	2,175	2,211
O-9	2,010	2,076	2,123	2,246	2,326	2,365
O-10	2,204	2,276	2,328	2,463	2,551	2,594
Chm Joint Chiefs of Staff	2,365	2,443	2,499	2,643	2,738	2,784
Chief of Staff – Army	2,365	2,443	2,499	2,643	2,738	2,784
Chief of Naval Operations	2,365	2,443	2,499	2,643	2,738	2,784
Chief of Staff – Air Force	2,365	2,443	2,499	2,643	2,738	2,784
Commandant – Marine Corps	2,365	2,443	2,499	2,643	2,738	2,784
Commandant – Coast Guard	2,365	2,443	2,499	2,643	2,738	2,784

NOTE 1: If current year is not listed, then see ***Dependency and Indemnity Compensation Rates*** at the Department of Veterans Affairs website. Additionally, see the Department of Veterans Affairs website for any rate effective before December 1, 2005.

NOTE 2: The Dependency and Indemnity Compensation (DIC) rate remained unchanged from December 1, 2008 through November 30, 2011.

NOTE 3: DIC is payable at a flat rate and increased by cost-of-living adjustments when a veteran dies on or after January 1, 1993. An additional amount may be payable if the veteran was receiving a Service-connected disability compensation (or would have but for the receipt of retired or retainer pay) for at least 8 years immediately preceding death. If a veteran died before January 1, 1993, then DIC was payable based on the pay grade of the veteran. Effective January 1, 1993, DIC was payable at the flat rate of $750 (including $165, if applicable according to ***Title 38, United States Code, section 1311(a)(2)*** if it is more favorable than the DIC amount based on the veteran's pay grade. The following table provides the historical flat rates (including additional amount, if applicable) through current.

Dependency and Indemnity Compensation Rates (Continued)

Flat Rate	Additional	Effective Date
$769	$169	December 1, 1993
790	173	December 1, 1994
810	177	December 1, 1995
833	182	December 1, 1996
850	185	December 1, 1997
861	187	December 1, 1998
881	191	December 1, 1999
911	197	December 1, 2000
935	202	December 1, 2001
948	204	December 1, 2002
967	208	December 1, 2003
993	213	December 1, 2004
1,033	221	December 1, 2005
1,067	228	December 1, 2006
1,091	233	December 1, 2007
1,154	246	December 1, 2008
1,154	246	December 1, 2009
1,154	246	December 1, 2010
1,195	254	December 1, 2011
*1,215	258	December 1, 2012

VOLUME 7B, APPENDIX P: "DATA FOR PAYMENT OF RETIRED PERSONNEL"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

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

The previous version dated May 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Appendix is formatted in accordance with latest administrative guidance.	Add

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P002 APPLICABILITY AND SCOPE 3

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P00303. Service Member Responsibilities 3

APPENDIX P

DATA FOR PAYMENT OF RETIRED PERSONNEL

P001 PURPOSE

This chapter provides the procedures for the administration and completion of the ***Department of Defense (DD) Form 2656*** (Data for Payment of Retired Personnel), and ***DD Form 2656-1*** (Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage).

P002 APPLICABILITY AND SCOPE

The DD Form 2656 and DD Form 2656-1 (if appropriate), must be completed by those Service members requesting retirement, members transferring to the Fleet Reserve, Retired Reserve, Inactive Reserve, and former members who qualify to retire under ***Title 10, United States Code (U.S.C.), chapter 1223***. This form replaces NAVCOMPT 2272, DA Form 4240, and AF Forms 1266, 1267, and 1268.

P003 RESPONSIBILITIES

P00301. Defense Finance and Accounting Service (DFAS)-Cleveland Site Responsibilities

The DFAS-Cleveland Site is the primary source for information and technical guidance concerning the DD Forms 2656 and 2656-1. The DFAS-Cleveland Site processes the documents for military retirement submitted by the Military Services.

P00302. Military Service Responsibilities

Each respective personnel activity will provide pre-retirement counseling to prospective retirees. As part of the counseling process, each personnel activity will ensure that DD Forms 2656 and 2656-1 (if appropriate), are properly completed by the prospective retirees. The forms and appropriate documentation will be forwarded to the DFAS-Cleveland Site electronically (Army uses Military Personnel Transition Point Processing System), or mailed to:

Defense Finance and Accounting Service
US Military Retired Pay
PO Box 7130
London, KY 40742-7130

P00303. Service Member Responsibilities

Members requesting retirement or transfer to the Fleet Reserve, Retired Reserve, Inactive Reserve, and former members who qualify under 10 U.S.C., chapter 1223, will complete the DD Form 2656 and DD Form 2656-1, if appropriate. Completion of these forms is necessary to

establish the retired/retainer pay account, designate beneficiaries for Survivor Benefit Plan electors, determine Federal tax withholding, and establish payee address information.

VOLUME 7B, APPENDIX R: "ANNUAL INCOME RATES FOR MINIMUM INCOME ANNUITIES UNDER SURVIVOR BENEFIT PLAN (SBP)"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

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

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

The previous version dated May 2012 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This Appendix is being formatted to comply with current administrative instructions.	Update
All	Effective December 1, 2012, the annual income rates for minimum income annuities under the Survivor Benefit Plan are changed.	Update

APPENDIX R

ANNUAL INCOME RATES FOR MINIMUM INCOME ANNUITIES UNDER SURVIVOR BENEFIT PLAN (SBP)

MINIMUM INCOME ANNUITY CHANGES

MAXIMUM MONTHLY ANNUITY PAYABLE	MINIMUM ANNUAL INCOME	EFFECTIVE FROM
*696.58	8,359	December 1, 2012
684.92	8,219	December 1, 2011
661.08	7,933	December 1, 2008
624.83	7,498	December 1, 2007
610.75	7,329	December 1, 2006
591.17	7,094	December 1, 2005
567.83	6,814	December 1, 2004
552.83	6,634	December 1, 2003
541.42	6,497	December 1, 2002
533.92	6,407	December 1, 2001
519.75	6,237	December 1, 2000
502.17	6,026	December 1, 1999
490.33	5,884	December 1, 1998
484.00	5,808	December 1, 1997
470.75	5,649	December 1, 1996
457.33	5,488	December 1, 1995
445.58	5,347	December 1, 1994
433.33	5,200	December 1, 1993
422.25	5,067	December 1, 1992
409.83	4,918	December 1, 1991
395.08	4,741	December 1, 1990
374.67	4,496	December 1, 1989
357.67	4,292	December 1, 1988
343.75	4,125	December 1, 1987
329.75	3,957	December 1, 1986
325.42	3,905	December 1, 1985
315.50	3,786	December 1, 1984
304.67	3,656	December 1, 1983
294.25	3,531	June 1, 1982
273.75	3,285	June 1, 1981
245.83	2,950	June 1, 1980
214.67	2,576	June 1, 1979
195.00	2,340	October 1, 1978
175.00	2,100	October 1, 1976
116.67	1,400	September 21, 1972

- NOTE: The annual income rate remained unchanged from December 1, 2008 through November 30, 2011.

***VOLUME 7B, "DEFINITIONS"**

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

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

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

The previous version dated August 2011 is archived

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
Chapter Title	Changed name of chapter from "Glossary" to "Definitions" to comply with Office of the Under Secretary of Defense (Comptroller) guidance that the DoD FMR has only one main Glossary. All volume editions will be referred to as "Definitions".	Update
Page D-2	Included a Scope statement.	Add
Page D-3	Clarified the definition of Combat Related Special Compensation.	Update
Page D-3	Clarified the definition of Concurrent Retirement and Disability Pay.	Update
Page D-3	Clarified the definition of Cost-of-Living Adjustment.	Update
Page D-3	Clarified the definition of Dependency and Indemnity Compensation (DIC).	Update
Page D-3	Clarified the definition of Entitlement.	Update
Page D-5	Clarified the definition of Surviving Spouse	Update

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DEFINITIONS

*A. Scope

The following list defines general terms of significance or importance relating to military retired pay policies for the Department of Defense (DoD) that are discussed in various chapters. The definitions are provided for general information; it is by no means an exhaustive list of all financial management terms, and it does not define terms when standard dictionary definitions apply. Authoritative guidance with more detailed explanations or nuances may be found in specific chapters.

B. List of Definitions

Active Duty
Full-time duty in the active service of a Uniformed Service, including full-time training duty, annual training duty, and attendance while in the active service at a school designated as a Military Service school by law or by the Secretary of the Military Service concerned (or designee).

Active Duty List
A single list for the Army, Navy, Air Force, or Marine Corps which contains the names of all officers of that Armed Force, other than officers described in ***Title 10, United States Code, section 641***, who are serving on active duty.

Amendatory Birth Certificate
A birth certificate that has been corrected, changed, or revised.

Annuitant
The person receiving a monthly payment as a result of a service member's specific survivorship plan.

Annuity
A monthly payment made to a person as a result of a specific survivorship plan.

Armed Forces of the United States
A term used to denote collectively all components of the Army, Marine Corps, Navy, Air Force, and Coast Guard (when mobilized under Title 10, United States Code, to augment the Navy).

Basic Pay
The active-duty pay rates prescribed for an officer or enlisted member according to pay grade and years of service.

Beneficiary

The term beneficiary means the recipient of certain benefits due as a result of a relationship to or designation by a member.

Common-Law Marriage

A marriage not solemnized by religious or civil ceremony as defined in pertinent state law.

***Combat Related Special Compensation (CRSC)**

This program provides a special compensation to members of the uniformed services who have their retired pay reduced by reason of receiving Department of Veterans Administration (VA) disability compensation where a portion of such VA compensation is the result of disabilities that are combat-related.

***Concurrent Retirement and Disability Pay (CRDP)**

CRDP is a program that restores retired pay of certain retired members who are also are entitled to disability compensation from the Department of Veteran's Affairs (VA). Under the CRDP program, regular or reserve members who are entitled to retired pay based on either length of service or disability, and who are also entitled to VA disability compensation based on a combined VA disability rating of 50% or greater may receive both retired pay and disability pay concurrently. Members retired under military disability provisions (Chapter 61 to Title 10 United States Code) must have at least 20 years of creditable service.

***Cost-of-Living Adjustment**

Percentage change applied to retired pay and Survivor Benefit Plan (SBP) annuities based on laws using the Consumer Price Index (CPI), Urban Wage Earners and Clerical Workers–U.S. City Average (CPI-W), as published by the Bureau of Labor Statistics.

Currency-Blocked Country

A country specified by the Treasury Department to which dollar instruments may not be transmitted.

***Dependency and Indemnity Compensation (DIC)**

Compensation paid by the VA to the eligible survivors of military service members who died after December 31, 1956, from a service-connected or compensable disability.

***Entitlement**

Legally established benefits available to any person meeting eligibility requirements established by law.

Fiduciary

A person, legally designated, who holds something in trust for another person.

Fleet Reserve or Fleet Marine Corps Reserve

A Component of the Regular Service to which members may be transferred and released from active duty after obtaining 20 or more years of active Federal service.

Foreign Address

An address outside of the United States, its possessions and territories is a foreign address.

Inactive Duty Training

a. Duty prescribed for members of a Reserve Component by the Secretary of the Military Service concerned (or designee); or

b. Special additional duties authorized for members of a Reserve Component by an authority designated by the Secretary of the Military Service concerned and performed by them on a voluntary basis in connection with prescribed training or maintenance activities of the units to which they are assigned.

Military Retired Pay (Includes Fleet Reserve and FMCR Retainer Pay)

The gross entitlement for a member based on conditions of the retirement law, pay grade, years of service for basic pay, years of service for percentage multiplier, percentage of disability, if applicable, and date of retirement (transfer).

Missing Status

Includes missing, missing-in-action, interned in a foreign country, captured, beleaguered, besieged by a hostile force, or detained in a foreign country against a member's will.

Overpayment

An amount paid to a retiree, annuitant, or legal fiduciary which is more than that to which entitlement exists.

Pay Grade

The step or degree in a graduated scale to which members of the Uniformed Services are assigned or distributed for military pay and allowances purposes. See Volume 7A, Comparable Grades.

Reserve Component

With respect to the Armed Forces, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, and the Air National Guard of the United States.

Retainer Pay

Pay received by a member of the Fleet Reserve/Fleet Marine Corps Reserve.

Retired List

Any one of several lists of military members retired from the Regular or Reserve Components of the Armed Forces.

Retired Saved Pay

Special pay provisions that allow retired members, under certain conditions, to retain entitlement to pay under prior laws when beneficial to the member.

Retirement Date

The term retirement date means the first day of entitlement to retired pay, not a day of active duty.

Service Connected

With respect to disability or death, such disability was incurred or aggravated or the death resulted from a disability incurred or aggravated in the line of duty in the active military, naval, or air service (VA definition only).

***Surviving Spouse**

A person who was validly married to the decedent on the date of the decedent's death and who survived the decedent is the surviving spouse.

Tower Amendment

The law provided that a member retiring after January 1, 1971 may not receive less retired pay than the monthly retired or retainer pay to which he or she would be entitled if the member had become entitled to retired or retainer pay at an earlier date.

Transfer Date (Fleet Reservists, Fleet Marine Corps Reservists)

Date of release from active duty (a day of entitlement to active duty pay and allowances).

Uniformed Services

The Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service comprise the Uniformed Services.

United States

The United States includes the 50 states and the District of Columbia.