

**SUMMARY OF MAJOR CHANGES TO CHAPTER 35  
DOD 7000.14-R, VOLUME 7A  
MILITARY PAY POLICY AND PROCEDURES - ACTIVE DUTY AND RESERVE PAY**

**New and revised instructions are indicated by a star placed immediately before the new or revised section, paragraph, subparagraph, decision logic table, etc.**

<b>Page</b>	<b>Paragraph</b>	<b>Explanation of Change/Revision</b>	<b>Effective Date</b>
35-17	350404.A.3	14-98 clarifies language regarding taxability of disability severance pay, and provides a standard policy for reporting of wages to States when a member claims an exemption from withholding based on the state's residency requirements.	Feb 27, 1998
35-5, 35-33	350102.A, Table 35-5	IC 31-98 addresses Basic Allowance for Housing for Payment of Accrued Leave.	Jan 31, 1998
35-29	350804	IC 7-99 clarifies Voluntary Separation Incentive beneficiary payments due a minor child.	Feb 23, 1999
35-42	Table 35-11	IC 22-99 clarifies under what conditions a confined member is entitled to the \$25.00 gratuity.	Jul 9, 1999
35-24	350801F	IC 27-99 clarifies continuation of VSI entitlement.	Aug 2, 1999
35-33 through 35-34 35-35	Table 35-3,  Table 35-4 Bibliography	IC 15-00 clarifies lump sum leave in conjunction with reenlistment/extension of enlistment without regard to when the current enlistment expires.	Oct 5, 1999
35-34	Table 35-3	IC 23-00 clarifies accrued leave payments in conjunction with a reenlistment.	Oct 5, 1999

## CHAPTER 35

SEPARATION PAYMENTS3501 ACCRUED LEAVE PAY350101. Entitlement

A. Except as provided in subparagraph 350101.D, below, a member who is discharged under honorable conditions is entitled to payment of unused accrued leave unless the member continues on active duty under conditions which require accrued leave to be carried forward. Also, an enlisted member who voluntarily extends enlistment for the first time is entitled to payment for unused accrued leave. Beginning on February 10, 1976, a military member has been entitled to receive no more than 60 days of accrued leave during a military career. Payments for accrued leave made before that date shall be excluded from this 60-day limitation. Beginning on July 14, 1976, a member eligible for an accrued leave settlement has been authorized an election to receive payment for a portion of the accrued leave, not to exceed a career total of 60 days, and have the remaining accrued leave carried forward to a new or extended enlistment. The combination of elections may exceed 60 days. Tables 35-1 through 35-4 give the rules for determining whether a member may be paid for accrued leave.

B. Contingency Operation1. 60-Day Career Ceiling Waiver for Members of a Reserve Component

a. Persian Gulf Conflict. Effective August 2, 1990, members of Reserve Components; of the Retired Reserve; and of the Retired Regular, or Fleet Reserve or Fleet Marine Corps Reserve who were ordered to active duty (other than for training) under the authority of Title 10, U.S.C., sections 672, 12302, 12304, 12306, 12307, or 688 of (reference (c)), were entitled to be paid for more than 60 days unused leave.

b. Effective December 5, 1991, the categories of members identified in subparagraph 350101.A, above, who served on active duty in support of a contingency operation have been entitled to be paid for more than 60 days unused leave.

c. Payment Limitation. Payment for more than 60 days under subparagraphs 350101.A and B, above, may include only the unused leave which accrued on and after August 2, 1990, specifically during the Persian Gulf Conflict or which accrued on and after December 5, 1991, specifically during a contingency operation active duty period. See paragraph 350102, below, for rules that apply to accounting for accrued and used leave and paragraph 350103, below, for the possible applicability of the combat zone tax exclusion. For a computation example, see subparagraph 350101.D, below.

d. Career Leave Total

(1) Unused leave accrued specifically during the Persian Gulf Conflict or an active duty period in support of a contingency operation that is paid under the authority of subparagraph 350101.B.1.a or subparagraph 350101.B.1.b, above, is not added to the member's career leave total. For example:

Example 1: An eligible member accrues 12 days of leave during a contingency operation period of active duty. The member does not use these days of leave, is separated from active duty and immediately is reordered to active duty for other than a contingency operation under the authority of Title 10, U.S.C (reference (c)). The member elects payment of the 12 days of accrued, unused leave. The member previously had received payment for a total of 35 days leave. The member's career total remains 35 days and future entitlements are limited to a total of 25 days (i.e., 60 days minus 35 days) unless the member again qualifies for payment under subparagraph 350101.B, above.

Example 2: On January 1, 1991, a National Guard member on active duty under Title 32, U.S.C., (reference (bq)) (other than for training) is mobilized with his or her unit under 10 U.S.C. 672 (reference (c)). Although paid for career leave of 48 days, the member elects to carry forward all 32 current accrued, unused leave days. (The leave balance does not include any unused leave accrued before February 10, 1976.) On April 6, 1991, the member is discharged again and immediately is ordered to active duty under Title 32, U.S.C. (reference (bq)), for a period of 3 years. The member used leave from April 2, 1991, through April 5, 1991, (4 days). The member may elect to be paid for 16 days (or less) leave at discharge. The member's previous 32-day balance, plus the 8 days accrued under the Title 10 active duty period, minus the 4 days leave used, totals 36 days accrued, unused leave at discharge ( $32 + 8 - 4 = 36$ ). Of those days for which the member elects to be paid, only 4 days may be applied to the 60-day ceiling waiver (because the last leave earned is the first leave used) and the remaining 12 days, if paid, would result in a new career leave total of 60 days (or less if fewer than 16 days are paid at discharge).

(2) Unused leave accrued during the Persian Gulf Conflict may be "saved" and applied to the waiver at a later separation when consecutive tours are involved. In other words, unused leave may be carried forward into a new contract period of active duty and later be subject to payment in addition to other leave to which the 60-day career ceiling applies. See subparagraph 350102.A, below, for rules that apply to accounting for accrued and used leave. For example:

Example 1: Using the member from Example 1 above, he or she could have elected to carry forward the 12 days of leave with the intention of being paid for 37 days ( $60 - 35 + 12 = 37$ ) at a later separation. Since the last leave earned is the first leave used, however, the member may be paid for only 25 days ( $60 - 35 = 25$ ) at a later separation if the 12 days accrued during the contingency operation were used during a later active duty period.

Example 2: Using Example 2 above, on April 6, 1991, the member could have elected to carry forward the original 32 days plus the (net) 4 days under Title 10, U.S.C. (reference (c)), intending to be paid for 16 days at a later separation. The member would be limited to selling 12 days leave ( $60 - 48 = 12$ ) at a later separation, however, if the (net) 4 days accrued during the Persian Gulf Conflict are used during a later active duty period.

C. Under regulations prescribed by the Secretary of the Military Department concerned, a member sentenced to unsuspended dismissal or unsuspended dishonorable or bad-conduct discharge by court-martial may be required to take leave pending review of the conviction as provided by Article 76a, Uniform Code of Military Justice (reference (i)). The member may elect to be paid for the leave accrued to his or her credit on the day before the day that the leave begins. Payment shall be based on the rate of basic pay to which the member was entitled on the day before the day leave begins.

D. A member who is discharged under other than honorable conditions forfeits all accrued leave to the his or her credit at the time of discharge. Also, a member separated because of a fraudulent enlistment is not entitled to payment for accrued leave, regardless of the length of time the separated member has served.

E. All Military Service members enlisted or commissioned on or after October 19, 1984, including prior Military Service members with breaks in service of 93 or more consecutive days, forfeit all accrued leave at the time of discharge. This applies also to members who are discharged after March 1, 1985, before completing 6 months of active duty, when the basis for discharge is unsatisfactory performance or misconduct under any of the following reasons:

1. Enlisted Members
  - a. Defective enlistment or induction (minority and fraudulent entry only)
  - b. Entry level performance and conduct
  - c. Unsatisfactory performance
  - d. Homosexuality (unless the member receives an honorable discharge)
  - e. Drug/alcohol abuse rehabilitation failure

f. Misconduct

g. Separation in lieu of trial by court-martial

h. Security (unless the member receives an honorable discharge)

2. Officers

a. Separation for cause

b. Dropped from the rolls

c. Homosexuality (unless the member receives an honorable discharge)

d. Misconduct/moral/ professional dereliction

e. Separation in lieu of trial by court-martial

f. Security (unless the member receives an honorable discharge)

F. Beginning on February 10, 1996, if a member dies while on active duty (or if a member or former member dies after retirement or discharge, but before receiving payment of accrued leave), payment for accrued leave has been based upon the unused accrued leave that he or she carried forward into the leave year in which deceased plus the unused leave that accrued to the deceased during that leave year. In such cases, the limitation on payment for more than 60 days leave accrual discussed in subparagraph 350101.A, above, does not apply.

350102. Computation of Payment

★ A. Beginning on August 31, 1976, settlement for accrued leave has included basic pay, BAH, BAS, and personal money allowance (PMA) as appropriate. Settlement for leave accrued on or after September 1, 1976, has included basic pay only. Account for leave used as follows: the last leave earned is the first leave used.

Example: On August 31, 1990, a member had 65 days of accrued leave, 55 of which was accrued prior to September 1, 1976, and remain unused. The member took leave from September 5 through 24, 1990 (20 days), using 8 of the 55 days of saved leave and reducing the saved leave balance to 47 days. Future leave accrued and used will be computed from that balance.

B. Leave accrual and use for leave earned in a combat zone also shall be computed as in the above example. For each month in which a member serves for any period of time in a designated combat zone, the total accrual for that month is identified as combat zone-earned leave.

NOTE: Service accounting (tracking) for combat zone-earned leave was not required before leave accrual commencing on January 1, 1991.

C. Payment shall be based on the last 60 days (or less) accrued and unused or the first 60 days, whichever is most beneficial to the member, and will be computed based on the rules provided in Table 35-5.

350103. Taxability and Withholding Tax

A. Lump-sum payments of accrued leave, exclusive of allowances, are normally subject to taxation and withholding tax.

B. Payment for any leave accrued while serving in a designated combat zone or qualified hazardous duty area which remains unused at separation is excluded from federal taxation (and state taxation where applicable) under the conditions set forth in paragraph 440103 and is not subject to federal or state income tax withholding. (Also, see Table 44-1, rules 4 and 14). Payment does not have to be received during a month in which the member qualified for the exclusion. A commissioned officer's exclusion, however, may not exceed the monthly limitation that previously was not used for monthly exclusions that were attributable to the same periods of service.

Example: An O-3 (over 3 years service) commenced active duty on January 25, 1991, and reported TAD to a designated combat zone on January 26, 1991. He departed the zone on March 2, 1991, and was separated from active duty on March 4, 1991. The officer earned \$456.00 basic pay and \$18.33 hostile fire pay/imminent danger pay (HFP/IDP) in January; \$2280.00 basic pay and \$110 HFP/IDP in February; and \$304.00 basic pay and \$14.67 HFP/IDP in March. Only a portion of the unused leave attributable to January and March (.5 days each) could be excluded from taxation, \$25.67 of a possible \$38.00 (\$500.00-\$474.33) for January and \$38.00 for March, for a total exclusion of \$63.67. The officer previously had met the exclusion limitation in February.

350104. Availability to Liquidate Debts. All items of the lump-sum payment for accrued leave (including subsistence and quarters allowance portions if applicable) may be used to liquidate debts to the U.S. Government.

350105. Payment to Beneficiaries

A. Death of Member on Active Duty. (See Table 35-1, rule 8.)

B. Death After Retirement or Discharge. If a member or former member dies after retirement or discharge, and before receiving any or all compensation for accrued leave, the balance is paid to beneficiaries designated in section 3602 of this volume. Submit claims for accrued leave under this subparagraph to the appropriate address below:

1. Army  
Director  
DFAS-Indianapolis Center  
DFAS-I-JEC-I  
8899 E. 56th Street  
Indianapolis, IN 46249-0845
2. Navy  
Director  
DFAS-Cleveland Center (JJCS)  
Anthony J Celebrezze Federal Building  
Cleveland, OH 44199-2055
3. Air Force  
Director  
DFAS-Denver Center  
DFAS-DE-FJP  
6760 E. Irvington Place  
Denver, CO 80279-7000
4. Marine Corps  
Director  
DFAS-Kansas City Center  
DFAS-KC-EYC  
1500 E. 95th Street  
Kansas City, MO 64197-0001

3502 SEPARATION PAY (NONDISABILITY)

350201. Entitlement

A. Full Separation Pay. Beginning on June 20, 1991, full payment of nondisability separation pay has been authorized to Military Service members of the Regular and Reserve Components who have been involuntarily separated from active duty and have met each of the following four conditions:

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

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

b. The member (other than a regular enlisted member) was on active duty or full-time National Guard duty on November 5, 1990, and on that date had 5 or more, but less than 6, years of active service. Reserve members not on the active duty list when separated must have 5 years of continuous active duty or full-time National Guard duty immediately preceding separation. A period of active duty is considered continuous if any break in active service does not exceed 30 days.

c. Effective December 1, 1993, a member who is a Regular officer and is separated under chapter 36 of 10 U.S.C. (reference (c)) (except under sections 630(1)(A) or 643 of such chapter (reference (c))) or under 10 U.S.C., 580 or 6383 of (reference (c)) must have completed at least 6 years, but less than 20 years, of active service.

d. The member, who is a Regular officer and is separated under chapter 36 of 10 U.S.C. (reference (c)) (except under sections 630(1)(A) or 643 of such chapter (reference (c))), or under 10 U.S.C., sections 580 or 6383 (reference (c)), must have completed 5 or more years, but less than 6 years, of active service on November 30, 1993.

2. The member's separation must be characterized as "honorable" and none of the conditions apply that are listed in paragraph 350202, below.

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

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

b. The member must be fully qualified for retention, but be involuntarily separated under a Reduction in Force (RIF) by authority designated by the Secretary of the Military Service concerned.



c. The member, if a Regular officer, commissioned or warrant, must be separated under 10 U.S.C. 564, 1165, or 6383, or chapter 36 (reference (c)); if a Reserve commissioned officer, other than a commissioned warrant officer, must be separated or transferred to the retired Reserve under 10 U.S.C., chapters 361, 363, 573, 861, or 863 of (reference (c)); or if a Reserve commissioned officer on the active duty list or a Reserve warrant officer must be separated for similar reasons under Military Service policies.

d. The member must be denied reenlistment or continuation on active duty or full-time National Guard duty under subparagraphs 350201.A.3.a through c, above, and have accepted an earlier separation from active duty.

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

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

b. A member who enters into this written agreement and who is not qualified for enlistment or appointment in the Ready Reserves need not be enlisted or appointed by the Military Service concerned to be considered to have met this condition of eligibility for separation pay.

B. Half Separation Pay. Beginning on June 20, 1991, half payment of nondisability separation pay has been authorized to Military Service members of the Regular and Reserve Components who involuntarily have separated from active duty and who have met each of the following four conditions: (Note: In extraordinary instances, the Secretary of the Military Service concerned may award full separation pay to a member otherwise eligible for half separation pay when the specific reasons for the separation and the overall quality of the member's service have been such that denial of full separation pay would be clearly unjust.)

1. The member must meet one of the criteria for active service specified in subparagraph 350201.A.1, above.

2. The member's separation must be characterized as "honorable" or "general", and none of the conditions apply that are listed in paragraph 350202, below.

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

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

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

b. The member must be separated under a Military Service-specific program established as a half payment level by the Secretary of the Military Service concerned.

c. The member must be denied reenlistment or continuation on active duty or full-time National Guard duty under subparagraphs 350201.B.3.a and b, above, and accept an earlier separation from active duty.

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

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

b. A member who enters into this written agreement and who is not qualified for enlistment or appointment in the Ready Reserve need not be enlisted or appointed by the Military Service concerned to be considered to have met this condition of eligibility for separation pay.

C. Separation Pay from November 5, 1990, through June 19, 1991. Members (including regular enlisted members) on active duty (other than for training) on November 5, 1990, who were separated involuntarily from active duty before June 20, 1991, were entitled to receive any separation pay to which they were entitled to under 10 U.S.C., as amended by Public Law No. 101-510, section 501 (reference (q)), in accordance with the DoD policies and procedures in effect before June 20, 1991. DoD Directive 1332.29, July 20, 1985 (reference (br)), and Table 35-6 are modified as follows:

1. Regular enlisted members who are separated involuntarily or as a result of denial of reenlistment after having completed 6 or more, but less than 20 years of active duty, will receive separation pay.

2. Limitations concerning the maximum amount of separation pay that members may receive, as stated in DoD Directive 1332.29, July 20, 1985 (reference (br)), and Table 35-6, do not apply.

3. In addition to the disqualifying circumstances listed in DoD Directive 1332.29, July 20, 1985 (reference (br)), a member is not eligible for separation pay if:

a. The member does not meet one of the criteria for active service stated in subparagraph 350201.A.1, above.

b. The member has not entered into a written agreement with the Military Service concerned to serve in the Ready Reserve of a Reserve Component of the Armed Forces for a minimum period of 3 years following separation from active duty under the same requirements and procedures stated in subparagraph 350201.A.4, above.

c. The member is separated from active duty during an initial term of enlistment or an initial period of obligated service. “Initial term of enlistment” and “initial period of obligated service” have the same meaning as stated in subparagraph 350202.B, below.

350202. Limitations of Eligibility. Military Service members separated under the following circumstances are not eligible for separation pay:

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

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

2. A member requests separation under regulations established by the Secretary of the Military Service concerned as provided for in DoD Directives 1332.14 (reference (bs)) and 1332.30 (reference (bt)).

3. A Reserve officer declines a Regular appointment at the mandatory

integration point, when an all-regular career force program is implemented by the Secretary concerned.

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

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

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

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

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

G. The member is being dropped from the rolls of the Military Service concerned.

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

I. The member is an enlisted member who is separated for unsatisfactory performance or misconduct as set forth in DoD Directive 1332.14 (reference (bs)), except when half-pay is authorized in subparagraph 350201.B, above.

J. The member is an officer who is separated for substandard performance, or acts of misconduct or moral or professional dereliction, except when half pay is authorized in subparagraph 350201.B, above.

K. The member is separated under a Military Service-specific program established as a no payment level by the Secretary concerned.

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

350203. Computation of Active Service. Compute active service time as follows:

A. Qualifying years, except as noted in subparagraph 350201.A.1, above, do not have to be continuous; however, the last phase of the qualifying term must end immediately before the separation from active duty occurs.

B. Compute fractions of years in the following manner:

1. Separation Pay. Beginning September 24, 1983, each full month of military service that is in addition to the number of full years of active service has been counted as one-twelfth of a year. Disregard any remaining fractional part of a month.

2. Readjustment or Severance Pay. Six months or more is counted as a whole year, and disregard any part less than 6 months. (Note: In computing readjustment pay, the minimum eligibility of 5 full years of continuous active duty must be met first.)

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

D. Count periods of active military service in a Regular or Reserve Component. Include active duty for training performed on or after August 10, 1956.

E. Do not include periods of absence without leave, confinement time awaiting trial that results in a conviction, confinement time while serving a court-martial sentence, and time lost while not in the line of duty. Count time in service to makeup for lost time.

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

350204. Computation of Separation Pay

A. Compute full separation pay at 10 percent of 12 times the amount of monthly basic pay to which entitled at the time of separation from active duty, times the active service time as computed in paragraph 350203, above.

B. Compute “half separation pay” at 50 percent of what the full separation pay would have been.

350205. Effect on Retired Pay or VA Compensation

A. A deduction shall be made from Military Service members who receive separation pay, severance pay, or readjustment pay under any provision of law based on service in the Armed Forces, and who later qualify for retired or retainer pay under 10 U.S.C. (reference

(c)) or 14 U.S.C. (reference (bu)), in an amount equal to the total gross amount of separation pay, severance pay, and readjustment pay. This amount will be recouped from each payment of this retired or retainer pay until the total amount deducted is equal to the total gross amount of separation pay, severance pay, and readjustment pay received. (Note: See Chapter 4 of Volume 7B of this Regulation (reference (cn)) for guidance on the calculation of recoupment.)

B. A deduction shall be made from members who receive separation pay, severance pay, or readjustment pay under any law based on active military service, and become eligible for disability compensation administered by the Department of Veterans Affairs. The deducted from disability compensation shall be equal to the total gross amount of separation pay, severance pay, or readjustment pay received. Effective for payments of separation pay, severance pay, or readjustment pay that are made after September 30, 1996, the amount subject to recoupment under this paragraph is the total gross amount of separation pay, severance pay, or readjustment pay received, less the amount of federal income tax withheld from such pay (such withholding, being at the flat withholding rate for federal income tax withholding, as in effect pursuant to regulations prescribed under Chapter 24 of the Internal Revenue Code) (reference (ec)). This reduction, however, shall not apply to disability compensation in which the entitlement to that disability compensation is based on a later period of active duty than the period of active duty for which the separation pay, severance pay, or readjustment pay was received.

C. Notwithstanding subparagraphs 350205.A and B, above, members who received readjustment or severance pay before September 15, 1981, and who, on or after September 15, 1981, became entitled to retired or retainer pay under 10 U.S.C. (reference (c)) or 14 U.S.C. (reference (bu)) have been required to repay that readjustment pay or severance pay in accordance with the laws in effect on September 14, 1981.

350206. Availability To Liquidate Debts. Separation pay under this section may be used to liquidate debts to the U.S. Government.

### 3503 SAVINGS PROVISIONS FOR READJUSTMENT AND SEVERANCE PAY (OTHER THAN DISABILITY)

#### 350301. Basic Conditions of Entitlement

A. This section is applicable only to members who were on active duty (other than for training) on September 14, 1981, and after such date are involuntarily discharged or released from active duty. Members entitled to readjustment or severance pay under this section and separation pay under section 3502, above, may not receive both, but shall elect which they will receive. If no election is made, members will receive the amount that is most favorable to them.

B. With respect to members discharged or released on or after October 19, 1984, members have not been entitled to readjustment or severance pay if the Secretary of the Military Department concerned determines that the conditions under which the discharge or separation occurs do not warrant such pay. It is intended that this discretionary authority to deny payment will sparingly be used. This provision does not apply to Regular officers who have completed 5 or more, but less than 20, years of service who are involuntarily discharged or released from active duty because of failure to be selected for promotion.

350302. Effect on Retired Pay or VA Compensation

A. See paragraph 350205, above, for procedures when readjustment or severance pay is received after September 14, 1981.

B. Refund upon Retirement. A Reserve member who received a readjustment payment on separation after June 28, 1962, and before September 15, 1981, and who later qualified for retired or retainer pay under 10 U.S.C. (reference (c)) or 14 U.S.C. (reference (bu)) (upon completing 20 years of active service), must refund 75 percent of the gross readjustment pay, without interest, by immediate deduction from retired or retainer pay. This was not required if readjustment pay had been waived or refunded under subparagraph 350302.C, below.

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

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

350303. Entitlement to and Computation of Readjustment Pay. Conditions of entitlement are in Tables 35-7 and 35-8. Table 35-9 shows how readjustment pay is computed.

350304. Computation of a 5-Year Continuous Period. To compute the 5 years of continuous active duty needed to qualify for readjustment pay, follow these rules:

A. Breaks in Service. Breaks in service of 30 days or less do not destroy the continuity of active duty (even though two or more breaks total more than 30 days). The time covered by such breaks, however, must be excluded in computing the minimum 5 years of active duty.

NOTE: Do not consider AWOL, confinement, time awaiting trial which results in

conviction, time lost through intemperate use of drugs or alcohol or time lost through disease or injury resulting from misconduct as “breaks in service.”

B. Active Duty for Training. Include active duty for training performed on and after August 10, 1956.

C. Service Component. Combine service in the Regular Component with service in a Reserve Component.

D. Officer or Enlisted Service. Combine duty as an enlisted member and as a commissioned or warrant officer.

E. Other Branch of Service. The 5-year period continuous active duty need not be performed in the same Military Service.

F. Home Awaiting Orders. Do not include time spent at home awaiting active duty orders.

350305. Computation of Active Service. See paragraph 350203, above.

350306. Entitlement to and Computation of Severance Pay (Other Than Disability). See Table 35-10.

350307. Availability To Liquidate Debts. Readjustment and severance pay under this section may be used to liquidate debts to the U.S. Government.

#### 3504 DISABILITY SEVERANCE PAY

350401. Entitlement. A member separated from the Military Service for physical disability is entitled to severance pay if qualified as prescribed in personnel regulations of the Military Service concerned. When a member is entitled to disability severance pay, separation orders specify this entitlement.

350402. Disability Incurred During Non-pay Status. A member who incurs a disability while in a total pay forfeiture status is not entitled to disability severance pay. This is true even though the Secretary of the Military Service concerned remits the unexecuted portion of the sentence, including all uncollected forfeitures.

350403. Computation

A. Formula. To compute disability severance pay, multiply the sum of basic pay for 2 months by the number of combined years of active service and inactive duty training (but not over 12) (exception: a member of the Regular forces may not have inactive duty performed under 10 U.S.C. 270 (reference (c)) included in the calculation). Do not include as basic pay the 25 percent increase prescribed under certain conditions for a Navy or Marine Corps



member retained on active duty after enlistment expires.

B. Years of Service. The member's separation orders specify the total combined years of active service and inactive duty training (subject to the exception in subparagraph 350403.A, above) to be counted in computing severance pay. Round this total to the nearest whole year, with 6 months or more rounded up. If a member has less than 6 months of combined service, there is no disability severance pay entitlement.

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

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

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

$$\begin{array}{r}
 11 \text{ years, 4 months, 9 days} = 11.3583 \text{ years} \\
 \underline{76 \text{ "points"} / 360 = .2111 \text{ years}} \\
 \text{Total Service} = 11.5694 \text{ years}
 \end{array}$$

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

NOTE: For purposes of this calculation, "points" in excess of 60 during any single year are disregarded.

#### 350404. Taxability and Withholding

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

1. On September 24, 1975, the individual was either a member of a Uniformed Service or was under a binding written commitment to become a member;

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

- a. As a direct result of armed conflict,
- b. While actually performing extra-hazardous service, even if the service does not directly involve combat,
- c. Under conditions simulating war, including maneuvers or training, or
- d. By an instrumentality of war, such as weapons.

★ 3. The member has official notification from the Department of Veterans Affairs (VA) approving entitlement to disability compensation for the same illness or injury that caused the entitlement to disability severance pay.

B. Withholding Taxes. Withhold income taxes on all payments of disability severance pay unless the member qualifies for an exemption under subparagraph 350404.A, above, of this paragraph. Finance or personnel officers should advise members that payments of disability severance pay could become non-taxable if the VA awards disability compensation for the same illness or injury for which disability severance pay was paid.

NOTE: The VA may award disability compensation in either the same tax year or a subsequent tax year in which a member is paid disability severance pay. Once a member is awarded disability compensation, a refund of the income taxes withheld may be requested as discussed in the subparagraphs 350404.C and D, below.

C. VA Compensation Awarded in the Tax Year of Payment. Finance or personnel officers should advise members that a refund of taxes withheld may be obtained from the supporting DFAS Center if disability compensation from the VA is awarded in the same calendar year in which the member received disability severance pay. To obtain a refund from the DFAS, requests must be submitted by December 31st of the year in which a disability severance pay payment is paid. In addition, a member who requests a refund must provide documentation to substantiate that the disability compensation award from the VA was awarded for the same injury or illness for which the member received disability severance pay.

D. VA Compensation Awarded in Tax Year After Payment. Finance or personnel officers should advise members that a refund for income taxes withheld must be obtained from the Internal Revenue Service (IRS) if disability compensation from the VA is awarded in a different calendar year than the year in which the member received disability severance pay. The member also should be advised to submit the appropriate documentation from the VA along with related separation documents to claim a reduction in taxable income. A corrected IRS Form W-2 or other documents to support the decrease in taxable income will not

be issued.

350405. Availability To Liquidate Debts. Disability severance pay may be used to liquidate debts to the U.S. Government.

350406. Deduction From VA Compensation. The VA deducts disability severance pay from any VA compensation to which the member or dependents later become entitled for the same disability. Deductions are not made from death compensation to which dependents become entitled after the member's death.

350407. Other Benefits and Claims. A member paid disability severance pay is not entitled to any payment from the Military Service for, or arising out of, service before separation. This does not prohibit payment if an amount is due the member on the date of separation, or if a claim is allowed under law.

### 3505 CONTRACT CANCELLATION PAY AND ALLOWANCES (NAVY AND MARINE CORPS ONLY)

350501. Entitlement. Members released from active duty in the Navy or Marine Corps without their consent before the end of their active duty agreement made under 10 U.S.C. 679(a) (reference (c)) are entitled to a special payment under 10 U.S.C. 12312 (reference (c)). This payment is in addition to any pay and allowances to which member is otherwise entitled.

350502. Computation. To compute the amount payable, multiply the number of years and fraction of years of the unexpired period of service under the contract by the sum of basic pay, special pay, and allowances for one month to which the member is entitled on the day of release. Count a fraction of a month that is 15 days or more as a whole month and disregard a fraction of a month that is less than 15 days. Separation orders show the number of years and months of unexpired service for which contract cancellation pay and allowances are payable.

350503. Restrictions. A member is not entitled to the special payment authorized by this section if:

- A. Dismissed or discharged under the sentence of a court-martial;
- B. Released because of an unexplained absence without leave of at least 3 months;
- C. Released because of conviction and sentence to confinement in a federal or state penitentiary or correctional institution which sentence has become final;
- D. Released because of a physical disability resulting from intentional misconduct or willful neglect;

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

F. Placed on a temporary disability retired list; or

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

350504. Withholding Tax. Contract cancellation pay is subject to withholding tax.

350505. Availability To Liquidate Debts. Contract cancellation pay may be used to liquidate debts to the U.S. Government.

### 3506 MISCELLANEOUS SEPARATION PAYMENTS

350601. Discharge Gratuity. See Table 35-11.

350602. Travel Allowance on Separation. See Joint Federal Travel Regulations (JFTR), paragraph U5125 (reference (d)), and Volume 9 of this Regulation.

### 3507 SPECIAL SEPARATION BENEFIT

350701. Entitlement. A member who separates voluntarily from a Military Service before October 1, 1999, could, under conditions prescribed by the Secretary concerned, elect to receive a special separation benefit (SSB). Such a member must have met each of the following conditions.

A. Time-in-service requirements:

1. A member separating prior to November 30, 1993, must have served for more than 6 years on active duty, full-time National Guard duty, or any combination thereof, before December 5, 1991, but have less than 20 years of service creditable for retirement.

2. A member separating on or after November 30, 1993, must have served for more than 6 years on active duty, full-time National Guard duty, or any combination thereof, but less than 20 years of service creditable for retirement.

B. The member must have completed initial term of enlistment or initial period of obligated service prior to separation.

C. The member must have served at least 5 years of continuous active duty, full-time National Guard duty, or any combination thereof, immediately prior to the date of separation.

D. The member must not be eligible immediately for retired or retainer pay because of Military Service.

E. The Secretary of the Military Service concerned, or designee, must approve the member's application for voluntary separation before the member may receive payment.

F. The member must have entered into a written agreement to serve in the Ready Reserve for a period of not less than 3 years following separation. If the member had any other service obligation remaining unfulfilled at the time of separation, the new 3-year period of obligated service began on the day after the day the member completed such period of prior obligated service.

G. The member's separation must not have resulted from release from a period of active duty for training.

H. The member must not have been approved for payment of variable separation incentive (VSI). (See section 3508, below.)

350702. Computation. Upon approval, and upon receipt of the member's election to receive SSB, pay the member a lump sum computed according to this formula: Multiply rate of monthly basic pay on date of separation times 12 times years of active service times 0.15.

A. Compute years of active service according to the formula in subparagraph 350203.B.1, D, E, and F, above. Do not count any period of prior military service for which the member has received separation pay, severance pay, or readjustment pay under any provision of law relating to members of the Uniformed Services. When computing partial years of service, round fractional parts of a year to the nearest one tenth of one percent, or three decimal places. For example, if the member has 11 years and 5 months of service, the year multiplier in the formula would be 11.417.

B. Withhold federal and state taxes at the rate appropriate for onetime payments.

C. Deduct from the remaining balance any debt owed the United States.

D. Do not collect Federal Insurance Contributions Act (FICA) taxes.

E. Payment will be made on, but in no cases prior to, date of separation.

F. For separations after November 11, 1993, reduce the gross amount of the SSB payment by the gross amount of any of the following bonuses that the member received during the calendar year in which the member is separating with entitlement to SSB:

1. Multi-year special pay, paragraph 0508;

2. Enlistment/reenlistment bonus of any type, paragraph 0901 and paragraphs 570402, 570403, 570404;
3. Nuclear officer career accession bonus, Chapter 12;
4. Nuclear career annual incentive bonus, Chapter 12;
5. Nuclear officer accession bonus, Chapter 12;
6. Aviator retention bonus, Chapter 20;
7. Registered nurse accession bonus, paragraph 2101;
8. Bonus for critical acquisition positions (37 U.S.C. 317) (reference (aa)); but do not effect this reduction if the member separates within one year of the date of termination of the period for which the bonus has been paid. Do not reduce any payment to less than zero. The date the bonus is received means the date on which the bonus is payable. Reduction in SSB entitlement and collection of unearned bonuses because of failure to fulfill the contract under which the bonus was paid are two separate actions. If the reduction in SSB equals or exceeds the bonus recoupment required elsewhere in this volume, no further action is necessary. If, however, the SSB reduction is less than the required bonus recoupment, the difference remains as a debt owing by the member.

Example 1: On March 1, 1993, the member reenlisted for 4 years with entitlement to selective reenlistment bonus (SRB) in the amount of \$18,000. The member received one-half of the bonus at reenlistment, with the remainder paid in three annual installments, \$3,000 each on March 1, 1994, 1995, and 1996. The member separated under the SSB program on December 31, 1993, with a SSB entitlement in the gross amount of \$28,000. Since the member received the bonus in the same calendar year in which separating under the SSB, the member's gross SSB entitlement was reduced by \$9,000, the gross amount of the bonus paid. Since collection of the unearned SRB would have amounted to only \$5,250, (\$9,000 SRB paid minus the bonus earned for 10 months at \$375 per month), no further collection was required.

Example 2: The facts are the same except member separated on September 30, 1996. Since the separation event occurred within 1 year of the date of termination of the bonus period, no reduction was made from the SSB payment. Since the member did not complete 5 months of the period for which he received the bonus, however, he was indebted to the United States in the amount of \$1,875 (unearned bonus for 5 months at \$375 per month). This amount was collectible from any funds otherwise due at separation, including the SSB payment.

Example 3: The facts are the same except the member separates under the SSB program on December 31, 1994. Since the member separated during a year in which she had received an SRB installment, the first action was to reduce her SSB entitlement by the amount of the March 1, 1994, \$3,000 installment. This reduced her SSB to \$25,000 (before taxes). However, the member only served 22 months of the reenlistment, so she earned only

\$8,250 of the total bonus of \$12,000 she had received (22 months at \$375 per month). Her gross debt for the unearned bonus was \$12,000 minus \$8,250, or \$3,750. That debt was reduced by the \$3,000 reduction in her SSB entitlement, leaving a debt of \$750 to be collected from final pay, including her net SSB entitlement.

350703. Forfeiture and Recoupment

A. A deduction shall be made from a member who has received an SSB, and who later qualifies for retired or retainer pay. The deduction shall be a portion of such retired or retainer pay until an amount equal to the gross amount of such SSB has been deducted. See Chapter 4, section 0406, of Volume 7B of this Regulation (reference (cn)), for details of the recoupment formula.

B. A deduction shall be made from a member who has received an SSB and who qualifies for benefits under the law as administered by the VA. The deduction from such benefits shall be the gross amount of the SSB paid to the member. Effective for payments of SSB that are made after September 30, 1996, the amount subject to recoupment under this paragraph is the total gross amount of SSB paid, less the amount of federal income tax withheld from such pay (such withholding being at the flat withholding rate for federal income tax withholding, as in effect pursuant to regulations prescribed under Chapter 24 of the Internal Revenue Code) (reference (ec)). There shall be no such deduction, however, if the disability for which the member receives compensation was incurred or aggravated during a period of later active duty.

C. Subsequent receipt of basic pay for active or Reserve service, of muster duty allowance, or of compensation for a period of inactive duty training does not require the forfeiture of an SSB.

D. If the member does not complete the required 3 years service in the Ready Reserve, for reasons other than through no fault of the member, collect on a pro rata basis any unearned portion of the member's SSB from the date of his or her failure to maintain Reserve affiliation through the date of the 3-year commitment. The member's Reserve Personnel Activity will certify when he or she does not complete the Reserve commitment through personal fault.

Example: A member separated on June 30, 1995, with an SSB entitlement of \$64,000, and a commitment to serve in the Ready Reserve through June 29, 1998. Effective December 17, 1997, the member was separated from his Reserve unit, through fault of the member as certified by the servicing personnel activity. The member was credited with serving a total of 2 years and 6 months of Reserve service using the following computation method (if more than 14 days round up, if less than 15 disregard):

<u>YR</u>	<u>MO</u>	<u>DAY</u>	
97	12	17	
<u>-95</u>	<u>06</u>	<u>30</u>	
02	05	17	
		+ <u>01</u>	(inclusive day)
02	05	18	

The unearned portion of the SSB was 6/36ths of \$64,000, or \$10,667. A debt against the member was established in that amount.

E. A member whose application for separation with entitlement to an SSB was approved by competent authority after September 30, 1994, forfeits all entitlement to the SSB payment if that member is employed in a civilian position in the Department of Defense at any time before the expiration of 180 days following the date the member is released from active duty with entitlement to the SSB. This includes appointment to a position while on terminal leave if that appointment is not terminated prior to the date of the member's separation. Upon receipt of notification of such employment, collection action must be instituted to recoup the gross amount of SSB paid to or on behalf of the member.

### 3508 VOLUNTARY SEPARATION INCENTIVE

350801. Entitlement. A member who separates voluntarily from Military Service before October 1, 1999, may, under conditions prescribed by the Secretary of the Military Department concerned, elect to receive a voluntary separation incentive (VSI). The member must meet each of the following conditions:

A. Time-in-service requirements

1. Members separating prior to November 30, 1993, must have served more than 6 years on active duty, full-time National Guard duty, or any combination thereof before December 5, 1991, but have less than 20 years of service creditable for retirement.

2. Members separating on or after November 30, 1993, must have served more than 6 years on active duty, full-time National Guard duty, or any combination thereof, but have less than 20 years of service creditable for retirement.

B. The member must have completed initial term of enlistment or initial period of obligated service prior to separation.

C. The member must have served at least 5 years of continuous active duty, full-time National Guard duty, or any combination thereof, immediately prior to the date of separation.

D. The member must not immediately be eligible for retired or retainer pay because of military service.



E. The Secretary of the Military Service concerned (or designee) must approve the member's application for voluntary separation before the member may receive payment.

★ F. The member must accept voluntary appointment or enlistment in, or transfer to the Ready Reserve of a Reserve Component, and must continue to serve in a Reserve Component during the entire period of eligibility for VSI. If the member does not continue to serve in the Ready Reserve, the VSI installments terminate on the date of separation from the Reserve Component or transfer to the Retired Reserve. If the member becomes ineligible to serve for the following reasons, VSI installments continue for the remaining period authorized if:

1. The separation or transfer is required by reason of the age or number of years service of the member,

2. The separation or transfer is required by reason of failure of selection for promotion or medical disqualification of the member, except in a case in which the Secretary of Defense or Secretary of Transportation determines that the basis of the separation or transfer is a result of a deliberate action by the member with the intent to avoid retention in the Ready Reserve or Standby Reserve, or

3. In the case of separation, the member is separated from the Reserve Component for appointment or enlistment in or transfer to another Reserve Component of an Armed Force for service in the Ready Reserve or Standby Reserve of that Armed Force.

G. The member has not been approved for payment of SSB. (See section 3507, above.)

350802. Computation. Upon approval, and upon receipt of the member's election to receive VSI, pay the member a lump sum at separation computed according to the following criteria.

A. Multiply the rate of monthly basic pay on date of separation times years of service times 12 times 0.025. When computing partial years of service, round fractional parts of a year to the nearest one tenth of one percent, or three decimal places. For example, if the member has 11 years and 5 months of service, the year multiplier in the formula would be 11.417.

B. So long as the member continues to serve in a Reserve Component, make annual payments on the anniversary date of the member's separation from active service until the total number of payments made equals twice the number of years of active service used in computing the basic entitlement. See the example below for instance where the member's years of active service are not a whole number.

Example: The member separates on June 30, 1992, with a total of 11 years, 3 months and 11 days of active service, at which time the member is a major with more than 10 years service. The initial installment of VSI, paid on the date of separation is the member's basic pay of \$3,156.30, times 12 times .025, times 11-3/12 (only full months of service

count), which equals \$10,652.51. The member is due 22 of these payments (11-3/12 times 2). Make 21 more payments of \$10,652.51, the last such full payment being due on June 30, 2013. On June 30, 2014, pay the member a final installment of \$5,326.26, which is one-half the amount of the prior installments.

C. Compute years of service according to 10 U.S.C. 1405 (reference (c)). Do not count any period of prior military service for which the member has received separation pay, severance pay, or readjustment pay under any provision of law relating to members of the Uniformed Services.

D. For separations after November 11, 1993, reduce the gross amount of the initial VSI payment (and any subsequent installments) until the total reduction equals the gross amount of any of the following bonuses which the member received during the calendar year in which the member is separating with entitlement to VSI:

1. Multi-year special pay; see section 0508 of this volume;
2. Enlistment/reenlistment bonus of any type; see chapter 9 and paragraphs 570402, 570403, and 570404 of this volume;
3. Nuclear officer accession bonus; see chapter 12 of this volume.
4. Nuclear officer career accession bonus; see chapter 12 of this volume.
5. Aviator retention bonus; see chapter 20 of this volume;
6. Registered nurse accession bonus; see section 2101 of this volume;
7. Bonus for critical acquisition positions; see 37 U.S.C. 317 (reference (aa)). Do not, however, make a reduction if the member separates within 1 year of the date of termination of the period for which the bonus has been paid. Do not reduce any payment to less than zero. The date that the bonus is received means the date on which the bonus is payable. If the reduction in the initial VSI installment equals or exceeds the bonus recoupment required elsewhere in this volume, no further action is necessary. If, however, the VSI installment reduction is less than the required recoupment, the difference remains as a debt owing by the member.

Example 1: Member A reenlisted for 4 years on January 3, 1994, and received an SRB payment in the gross amount of \$12,000. She separated on December 31, 1994, with entitlement to an initial gross VSI payment of \$3,232. Since she received a VSI payment in the same calendar year in which a bonus was paid, reduce the initial VSI payment to zero. The member, however, still was liable for the unearned portion of the bonus, which must be collected from any payments that she otherwise is due, including any future VSI installment payments.

Example 2: The facts are the same as example 1, except member B separated under the VSI program on January 31, 1995. Since he did not receive a bonus during the calendar year 1995, there was no reduction in the amount of his VSI entitlement. The member, however, still was liable for the unearned portion of the bonus, which must be collected from any payments otherwise due the member, including the initial and any future VSI installments.

Example 3: Member C reenlisted for 4 years on October 1, 1994, with entitlement to SRB in the total amount of \$12,000. She received \$6,000 at reenlistment, with the remainder to be paid in \$2,000 installments on October 1, 1995, 1996, and 1997. On December 31, 1995, she separated with entitlement to 15 VSI payments of \$3,453 each. Since the member separated during a calendar year in which she received a SRB installment, the gross VSI installment was reduced by the \$2,000 received October 1, 1995. Also, the member had earned only \$3,750 (15 months at \$250 per month) of the SRB paid to her, though she had been paid a total of \$8,000. The balance due for unearned SRB was \$8,000 less the \$3,750 earned and less the \$2,000 by which her VSI initial installment was reduced. This left a debt of \$2,250 to be collected from final pay. All final pay, including the remaining initial net VSI entitlement of \$1,453, shall be used to liquidate the debt.

Example 4: The facts are the same as in example 3, except member D separated on October 31, 1996. Since the separation event occurred within 1 year of the date of the termination of the bonus period, no reduction was made from the VSI payment. (This included the initial and all annual payments.) Since the member did not complete 11 months of the period for which he received the bonus, he was indebted to the United States for \$2,750. This amount must be collected from any funds otherwise due at separation, including the VSI payment.

E. A member who is in receipt of basic pay for active or Reserve service or inactive duty training compensation may elect to have his or her next VSI installment payment reduced by an amount no greater than the total amount of such pay or compensation received since the prior VSI installment payment. Do not reduce the installment payment unless the member provides a signed authorization which specifies the exact dollar amount by which to reduce the installment payment. If the member fails to qualify for retired/retainer pay for any reason, the amounts that have been offset are not refundable. A member may not reduce installment payments on account of muster duty allowances.

F. Withhold federal and state taxes at the rate appropriate for onetime payments.

G. Deduct from the payment any debt owed the United States.

H. Do not collect FICA taxes.

I. Payment shall be made on, but in no cases prior to, date of separation.

350803. Forfeiture and Recoupment

A. A member who has received VSI later may qualify for retired or retainer pay through additional military service. See section 0405, Volume 7B, of this Regulation (reference (cn)) for the requirement to reduce the member's retired pay until total reductions equal the gross amount of VSI the member has received. The reductions in retired pay will include only the amounts of VSI the member has received. Do not include prior reductions the member may have elected under subparagraph 350802.E, above.

Example: A member separated on June 30, 1992, with entitlement to VSI of \$8,000 per year for 16 years (a total of \$128,000). During each of the next 8 years, the member drilled with a Reserve unit and authorized a reduction in VSI of \$5,000 per year because of the Reserve training compensation she received. Thereafter, she received seven more VSI anniversary payments in the full amount of \$8,000 per year. When she became eligible for retired or retainer pay, the total reduction of such pay is \$88,000 (\$8,000 for the initial installment, plus \$3,000 for each of the next eight installments, plus \$8,000 for each of the next seven installments). The reductions in retired pay were equal to the gross amount that she received, including any taxes withheld from the VSI payment.

B. A member who receives VSI, and subsequently qualifies for disability compensation under laws administered by the VA, shall have the amount of disability compensation payable to the member offset from next VSI payment.

1. The annual VSI payment shall be offset by the same amount of disability compensation received during the 12-month period immediately preceding the VSI payment. In no instance will the disability compensation offset exceed the annual VSI installment.

Example 1: The VSI recipient was separated from active service on September 30, 1992, and received an initial VSI payment in the amount of \$7,000. On the VSI anniversary date of September 30, 1993, an annual payment of \$7,000 was made. On April 15, 1994, the member was paid a \$1,800 retroactive disability compensation payment (for the period November 1992 through April 1994) and received \$100 per month thereafter. The September 30, 1994, annual gross VSI payment will be offset by \$2,300 (\$1,800 retroactive payment plus \$100 received per month from May 1994 through September 1994).

Example 2: Same as in example 1, above, except the member received a \$6,000 retroactive payment on April 15, 1994, and \$500 per month thereafter. The September 30, 1994 annual gross VSI installment of \$7,000 will be completely offset with no payment due the member. Although the member received \$8,500 in disability compensation during the immediate preceding 12-month period, the maximum deduction from the September 30, 1994 payment is \$7,000. No collection action is required on the remaining \$1,500, nor will it be carried forward to the September 30, 1995 payment.

Example 3: Same as in example 1, above, except through administrative oversight, \$2,300 was not offset from the September 30, 1994, VSI installment. The \$2,300 becomes a debt owed by the member and is subject to immediate collection action. If collection is not accomplished, deduct \$3,500 (\$2,300 which should have been offset from the previous payment plus the current offset of \$100 per month for 12 months) from the September 30, 1995, payment.

Example 4: Same as in example 2, above, except through administrative oversight, \$7,000 was not offset from the September 30, 1994, VSI installment. As in example 3, above, the \$7,000 becomes a debt and requires immediate collection from the member. If collection action is not accomplished, the \$7,000 debt can be collected from future VSI payments. Since the member received \$6,000 (\$500 for 12 months) disability compensation during the immediate 12-month period prior to the next September 30, 1995, installment, collect the remaining \$1,000 towards the \$7,000 debt. In this case, carry the remaining \$6,000 unpaid debt forward.

2. Do not deduct from the member's VSI payment if the member is receiving VA disability compensation related to a period of service earlier than the period of service for which the member is receiving VSI.

C. If a member elected to have deducted any amount of basic pay for active or Reserve service or compensation for inactive duty training, deduct the gross amount of such pay or compensation from the next installment of VSI due before computing tax withholding.

D. Do not pay any further installments to a former member who fails to maintain Reserve affiliation for reasons other than specified in subparagraph 350801.F, above, or whose Reserve Personnel Activity certifies the member was transferred to the Standby or Retired Reserve through fault of the member. Collect on a pro rata basis any unearned portion of the member's VSI from the date of the member's failure to maintain Reserve affiliation through the date the next installment would have been due.

Example: A member separated on July 31, 1995, with annual VSI entitlement of \$7,500. Effective November 30, 1995, the member is separated from his Reserve unit because of usage of illegal drugs. The unearned portion of the VSI (see subparagraph 350703.D, above, for computation method) is 8/12ths of \$7,500, or \$5,000. Establish a debt against the member in that amount.

E. In the event a member becomes eligible for retired or retainer pay concurrently with annual VSI payments, both entitlements continue to be paid. Retired/retainer pay is offset according to subparagraph 350803.A, above.

F. A member whose application for separation with entitlement to VSI was approved by competent authority after September 30, 1994, forfeits all entitlement to VSI payments, including the initial payment, if the member is employed in a civilian position in the Department of Defense at any time before the expiration of 180 days following the date the

member is released from active duty with entitlement to VSI. This includes appointment to a position while on terminal leave if that appointment is not terminated prior to the date of the member's separation. Upon receipt of notification of such employment, institute collection action to recoup the gross amount of the first VSI installment. Do not pay any further VSI installments, even if the former member separates from such civilian employment during the period the member would otherwise be entitled to VSI installments.

★ 350804. Death. Upon death of the member, VSI annual payments continue for the remaining period of the entitlement. Make payment to the beneficiary as designated by the member or as otherwise provided by law (see section 3602). See Volume 7C, paragraph 010403 of this Regulation for beneficiary payment procedures.

350805. Transfer or Assignment. The member may not transfer or assign the right to VSI payments to any person or entity, except as indicated in paragraph 350804, above.

<b>PAYMENT OF ACCRUED LEAVE--OFFICERS AND ENLISTED MEMBERS--SEPARATION WITHOUT IMMEDIATE REENTRY ON ACTIVE DUTY</b>			
<b>R U L E</b>	<b>A</b>	<b>B</b>	<b>C</b>
	<b>If a member has been on active duty for 30 or more consecutive days and</b>	<b>and</b>	<b>then accrued leave is</b>
<b>1</b>	is discharged (including as a result of resignation)	separation is under honorable conditions (note 1)	payable (notes 2 and 8).
<b>2</b>	is released from active duty (note 3)		payable (notes 2, 4 and 8).
<b>3</b>	Retires		payable (notes 2, 5 and 8).
<b>4</b>	is transferred to Fleet Reserve or Fleet Marine Corps Reserve		
<b>5</b>	is discharged for fraudulent enlistment		
<b>6</b>	is released from duty because of void enlistment or void induction		
<b>7</b>	is discharged from service as a cadet or midshipman at a Military Service academy, or as a midshipman elsewhere		
<b>8</b>	dies on or after August 28, 1965, while on active duty	member is not put to death as lawful punishment for a crime or a military offense	payable to beneficiary with other unpaid pay and allowances as prescribed in section 3602 of this volume (notes 7 and 8).
<b>9</b>	is discharged before completing 6 months of active duty	separation is for unsatisfactory performance or misconduct for any reason set forth in subparagraph 350101.C	not payable.

NOTES:

1. If member is discharged or relieved from active duty because of expiration of term of service (ETS), and is under investigation as an alleged security risk, do not pay accrued leave until investigation is completed and the character of the discharge determined. If discharge is under honorable conditions, accrued leave may then be paid.
2. The period when a member is home awaiting further orders in connection with physical evaluation board proceedings is charged as leave, to the extent that leave is available, beginning with the day after member arrives home or the day after constructive travel time ends, whichever is earlier. Limit payment to accrued leave remaining at time of retirement or discharge. (See note 4 for exception.) Authorized absence under these circumstances in excess of accrued leave is not chargeable as leave.
3. A period of active duty as a Reserve or National Guard member meets the 30-day requirement if it covers 30 or more consecutive days, even though it may be directed by more than one order covering unrelated duties.
4. If a Reserve member is entitled to pay and allowances during a disability period after a specified tour of active duty has expired, the period after that expiration date is not included in the period for which accrued leave is paid.
5. Member may not take accrued leave in lieu of payment beyond the effective date of retirement.
6. This rule does not apply when an individual inducted or enlisted into the Military Service is discovered by Military Service medical authorities to have been medically unfit for induction at the time of entrance into the Military Service and such individual is released from military control for such reason.
7. Accrued leave is payable retroactive to February 28, 1961, for a member in a missing status whose death is prescribed under section 3406. Payment is made according to section 3410.
8. On and after February 10, 1976, a member may be paid for a maximum of 60 days accrued leave during a military career. See subparagraph 350101.B for contingency operation exception and subparagraph 350101.F for exception where a member dies while on active duty.

**Table 35-1. Payment of Accrued Leave--Officers and Enlisted Members—Separation Without Immediate Reentry on Active Duty**

PAYMENT OF ACCRUED LEAVE--OFFICERS--SEPARATION WITH IMMEDIATE REENTRY ON ACTIVE DUTY				
R U L E	A	B	C	D
	If	has been on active duty for 30 or more consecutive days and is	and	then accrued leave is
1	an officer of any Military Service	retired	immediately reenters on active duty	not payable.
2		separated, on a day other than the end of the specified period of active duty, for the purpose of reentering on active duty in any status within any Uniformed Service (note 4)		
3		transferred to a different Uniformed Service by separation and immediate reappointment	immediately enters on active duty with the other Military Service	
4		separated for having failed selection to a higher grade	immediately reenters on active duty in an enlisted status	
5	a Reserve officer of any Military Service	released from active duty under honorable conditions under 10 U.S.C. 681 or similar laws authorizing release of Reserve officers at convenience of government, not for the purpose of reentering active service	immediately reenters on active duty (including active duty in enlisted or warrant officer status) for the purpose of retirement	payable (note 3).
6		released from active duty under honorable conditions at end of a specified period of time member agreed to serve or was obligated to serve (notes 2 and 4)	immediately reenters on active duty (note 4)	
7	a commissioned officer of any Military Service, who simultaneously holds a warrant officer appointment	released from active duty as a commissioned officer	reverts to warrant officer status and continues on active duty	not payable.
8	a temporary officer of the Navy or Marine Corps whose enlistment has expired	reverted to enlisted status and simultaneously discharged	immediately reenlists	payable at rate of pay of rank held at time of reversion (note 3).

NOTES:

- Officers, who after notification of an impending discharge, resign for the purpose of continuing a military career are not entitled to payment of accrued leave.
- A Reserve officer who remains on active duty beyond expiration date of initial obligation while awaiting Regular officer appointment is not entitled to payment of unused accrued leave as the separation to accept the appointment is not considered to be at the end of a specified period. The officer must be separated on the expiration date of the initial obligation for entitlement to exist.
- On or after February 10, 1976, a member may be paid for a maximum for 60 days of accrued leave during a military career. See subparagraph 350101.B for exception.
- A National Guard member serving on active duty under Title 10 or Title 32, U.S. Code, who is ordered to active duty under the other title (Title 32 or Title 10) is considered to have met the obligated service period for which the member agreed to serve (for the purposes of accrued, unused leave payment only), regardless of the unexpired time remaining on that Title 10 or Title 32 obligation. The member is not considered separated for the specific purpose of reenlisting or reentering active duty. Accrued, unused leave is payable.

**Table 35-2. Payment of Accrued Leave--Officers-Separation With Immediate Reentry on Active Duty**



<b>PAYMENT OF ACCRUED LEAVE--ENLISTED MEMBERS--SEPARATION WITH IMMEDIATE REENTRY ON ACTIVE DUTY</b>				
<b>R U L E</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
	<b>If an enlisted member</b>	<b>has been on active duty for 30 or more consecutive days and</b>	<b>and</b>	<b>then accrued leave is (note 1)</b>
★1	of any Military Service	on or after October 5, 1999, is discharged for the specific purpose of enlisting or reenlisting (note 7)	immediately reenlists or immediately reenters on active duty	payable
★2		prior to October 5, 1999, is separated under honorable conditions upon expiration of enlistment or is released from active duty under honorable conditions at the end of a specified period of time member agreed to serve or was obligated to serve (notes 2, 4 through 6)		
★3		prior to October 5, 1999, is separated before expiration of normal term of service or obligated period of duty for the specific purpose of enlisting or reenlisting (notes 3 and 6)		not payable.
★4		is discharged for the purpose of accepting a commission or appointment as a warrant officer in any Uniformed Service		
★5		enlistment is extended		go to Table 35-4.
★6		extension of enlistment is canceled before or during service under the extension		
★7		is retired	continues on or is recalled to active duty	not payable.
★8		accepts an appointment as a cadet or midshipman without being discharged from enlisted status	enters on duty as a cadet or midshipman	payable as though member were discharged on day before date appointment was accepted.
★9	inducted under the Universal Military Training and Service Act, or enlisted in the Regular Army under that Act	is separated under honorable conditions at the end of the period member is required to serve	immediately enlists or reenlists	payable.
★10	of the Army or Air Force who has more than 20 but less than 30 years' service	is retired and transferred to the Reserve Component of member's Military Service	is immediately ordered into active service	not payable.
★11	of the Navy or Marine Corps	is transferred to the Fleet Reserve or Fleet Marine Corps Reserve	continues on active service without a break in active service	

Table 35-3. Payment of Accrued Leave--Enlisted Members--Separation With Immediate Reentry on Active Duty

## NOTES:

1. On or after February 10, 1976, a member may be paid for a maximum of 60 days of accrued leave during a military career. See subparagraph 350101.B.1 for exception.
2. A member is considered as discharged upon expiration of enlistment if discharged not more than 3 months before the normal expiration date of the enlistment (effective January 2, 1968). The date of normal expiration of enlistment is excluded in computing the 3-month period.
3. A member is not considered as having been discharged for the purpose of enlisting or reenlisting if discharge occurs not more than 3 months before the normal expiration of the extension period (effective January 2, 1968). The date of normal expiration of the extension period is excluded in computing the 3-month period.
4. An extension of the active duty obligation does not create an entitlement under this rule.
- ★5. *For these purposes, the term "discharge" means separation or release from active duty under honorable conditions, or termination of an enlistment in conjunction with the commencement of a successive enlistment (without regard to the date of the expiration of the term of the enlistment being terminated).*

**Table 35-3. Payment of Accrued Leave--Enlisted Members--Separation With Immediate Reentry on Active Duty  
(Continued)**

<b>PAYMENT OF ACCRUED LEAVE--ENLISTED MEMBERS—EXTENSION OF ENLISTMENT: DISCHARGE AND REENLISTMENT BEFORE EXTENSION IS COMPLETED</b>				
<b>R U L E</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
	<b>If an enlisted member of</b>	<b>has been on active duty for 30 or more consecutive days and</b>	<b>and member</b>	<b>then accrued leave is (note 1)</b>
<b>1</b>	any Military Service	enlistment is involuntarily extended	continues on active duty in extension period	not payable until discharge.
<b>2</b>		voluntarily first extends enlistment, regardless of duration of extension		payable on day before effective date of extension (leave accrued during extension is paid on discharge after extension is completed) (note 2).
<b>3</b>	any Military Service, whose enlistment has been involuntarily extended	is separated under honorable conditions upon expiration of the involuntary extension of enlistment	immediately reenlists	payable.
<b>4</b>		is separated under honorable conditions, before extension period expires, for purpose of reenlisting		
<b>★5</b>	any Military Service, who has voluntarily extended enlistment	prior to October 5, 1999, extension is canceled before service under it begins and member is discharged under honorable conditions at normal expiration of enlistment (note 3)		not payable.
<b>★6</b>		prior to October 5, 1999, extension is canceled after service under it begins and member is discharged under honorable conditions, for purpose of reenlisting (note 4)		
<b>★7</b>		on or after October 5, 1999, extension is canceled after service under it begins and member is discharged under honorable conditions, for purpose of reenlisting		

NOTES:

1. On and after February 10, 1976, a member may be paid for a maximum of 60 days of accrued leave during a military career. See subparagraph 350101.B.1 for exception.
2. No payment can be made on second or subsequent extensions.

**Table 35-4. Payment of Accrued Leave--Enlisted Members--Extension of Enlistment: Discharge and Reenlistment Before Extension is Completed**

COMPUTATION OF ACCRUED LEAVE PAYMENT (Note 6)						
R U L E	A	B	C			
	If member is entitled to accrued leave payment under Table 35-1, 35-2, 35-3, or 35-4, and is an	and member has	the complete payment for the number of days accrued leave, but not more than 60 in a military career, to include: (note 1)			
			Basic Pay (note 2)	BAS (note 6)	BAH (note 6)	Personal Money Allowances (note 6)
1	enlisted member in pay grades E-5 to E-9	dependents (note 3)	at rate applicable on date of separation (note 4)	70 cents per pay	\$1.25 per day	none.
2		no dependents			None	
3	enlisted member in pay grades E-1 to E-4					
4	officer	dependents (note 3)	at rate applicable on date of separation (prorate for number of days of accrued leave)	at rate contained in Table 26-9 for member with dependents on date of separation (notes 4 and 5)	at rate contained in Table 26-9 for member without dependents on date of separation (notes 4 and 5)	if officer was receiving this allowance on date of separation (limited to allowances listed in chapter 31). Compute at rate payable on that date (note 4).
5		no dependents				

NOTES:

1. When the final leave balance includes a one-half day total, compute the amount to be paid by crediting the member with one-half of a day entitlement. Round the total to the nearest penny.
2. Do not include in basic pay the 25 percent increase authorized certain Navy and Marine Corps members retained beyond normal ETS.
3. A dependent on active duty is not considered a dependent in determining right to BAH.
4. Date of separation is date of discharge, release from active duty, transfer to Reserve, or death; day before effective date of retirement; day before date of appointment as cadet or midshipman; or day before effective date of extension of enlistment.
5. Pay BAH even though the member is not receiving BAH on date of separation because public quarters are occupied or available.
6. Cash settlement of leave accrued as of August 31, 1976, will be on the basis of basic pay, BAS, BAH, and PMA as appropriate. Cash settlement of leave accrued on and after September 1, 1976, will be on the basis of basic pay only for all grades, officer and enlisted. See subparagraph 350102.A for example.

**Table 35-5. Computation of Accrued Leave Payment**

SEPARATION PAY ENTITLEMENT AND COMPUTATION (Note 8)				
R U L E	A	B	C	D
	If a member is	and is involuntarily discharged or released from active duty because of (note 1)	then compute separation pay at	but not more than
1	an officer ( notes 2 and 3)	failure to be selected for promotion (note 4)	10 percent of 12 months of basic pay multiplied by years and fractions of a year based on additional full months of active service	\$30,000.
2	a warrant officer separated during the 3-year probationary period	failure to be selected for promotion		
3	a warrant officer	second failure to be selected for promotion and does not enlist or the request to enlist is denied and is not retained on active duty in grade above W-4		
4	a Reserve member	non-selection for an additional tour of active duty for which member volunteered unconditionally		
5	a chaplain	failure to maintain professional qualifications		
6	a Reserve member	separation at any time prior to the completion of a specified period of active duty or indefinite period of active duty except separations for reasons shown in rules 8 and 9 and subparagraphs 350203.A.10 through 13		
7	a warrant officer or Reserve officer	age (notes 6 and 7)		
8	an officer or Reserve enlisted member (note 5)	substandard performance of duty, moral or professional dereliction, unfitness or unsatisfactory performance, misconduct, unsuitability, homosexuality, drug abuse, to include drug rehabilitation failure, inability to perform prescribed duties, repetitive absenteeism, nonavailability for worldwide assignment as a result of parenthood, or retention is not consistent with the interest of national security	one half of 10 percent of 12 months of basic pay multiplied by years and fractions of a year based on additional full months of active service	\$15,000.
9	an officer	written notification that member must show cause for retention and who subsequently requests discharge or release from active duty		

NOTES:

1. Includes member’s acceptance of an earlier release before the scheduled involuntary separation date, as directed by the Secretary of the Military Service concerned.
2. Includes a Regular commissioned officer with less than 5 years of commissioned service.
3. Includes a Regular officer continued on active duty pursuant to 10 U.S.C. 637(a) or a Reserve officer continued on active duty after failure to be selected for promotion, upon expiration of the period of continuation on active duty or upon separation if continuation is declined.
4. Includes officer not found qualified for promotion to grade of First Lieutenant or Lieutenant (JG).
5. A warrant officer who is eliminated for unfitness or unsatisfactory performance of duty and elects to enlist is not entitled to separation pay.
6. Includes members separated after expiration of Secretarial retention period.
7. If the member is eligible for voluntary retirement, the member is not entitled to separation pay even though the member does not apply for retirement concurrently with release from active duty.
8. Entitlement provisions apply through June 19, 1991. The limitations in column D were removed effective November 5, 1990. See subparagraph 350201.C for additional eligibility requirements for the period of November 5, 1990 through June 19, 1991.

**Table 35-6. Separation Pay Entitlement and Computation**

ENTITLEMENT TO READJUSTMENT PAY (Note 1)					
R U L E	A	B	C	D	
		<b>If a Reserve member or a member of the without component (temporary) who has completed immediately before separation at least 5 years of continuous active duty, is (notes 2 and 8)</b>	<b>and</b>	<b>And</b>	<b>then readjustment pay is (note 9)</b>
1	involuntarily released from active duty for reason other than moral or professional dereliction (see Table 35-8 rulings on whether separation is "involuntary release")	is immediately eligible for separation pay based on military service under some other law except 10 U.S.C. 680 (note 3)	elects to receive readjustment pay (note 4)	payable.	
2				elects to receive other separation pay	not payable.
3		is immediately eligible for retired or retainer pay based solely on military service (including retired pay under title 10 U.S.C., chapter 67 for non-regular service) (note 6)			payable but VA will deduct from future VA compensation (subparagraphs 350205.B and 350302.D).
4		is eligible for VA disability compensation			
5	released from active duty because of moral or professional dereliction (note 5)			not payable.	
6	released from active duty at own request (note 7)				
7	released from active duty upon completion of a specific tour of active duty	volunteers for an additional tour of active duty in keeping with current directives	is not accepted for the additional tour	Payable.	
8	released from active duty upon completion of a specific tour of active duty	volunteers for a shorter period of active duty than permitted in current directives	is not accepted for the additional tour	not payable.	
9		volunteers for a period of active duty contingent on assignment to certain type of duty or location, or being tendered specific type of contract			

NOTES:

- Members entitled to readjustment pay under section 3503 and separation pay under section 3502 may not receive both, but shall elect which one they will receive.
- A period of active duty is continuous if it is not interrupted by a break in service of more than 30 days. Paragraph 350205 specifies how to compute the 5-year active duty period.
- "Separation pay" means an amount paid in connection with separation from the Military Service when the person's military status is terminated. This includes payments under sections 3502, 3503, 3504, and 3506.
- A member may elect to receive either readjustment pay or other separation pay (as defined in note 3), but not both. A member who elects to receive readjustment pay may not later change the election to receive other separation pay.
- A member dismissed or discharged as a result of trial by court-martial, dropped from the rolls of the Military Service concerned, or administratively discharged under other than honorable conditions is presumed to be separated because of moral or professional dereliction. An honorable discharge or a discharge under honorable conditions is presumed to be not due to moral or professional dereliction unless the Secretary of the Military Service concerned determines it to be such. Do not pay readjustment pay until character of discharge is determined.
- If eligible for voluntary retirement under 10 U.S.C. 8911 or 3911, a member is not entitled to readjustment pay even though such an election is made not to retire concurrently with involuntary release from active duty.
- Disapproval of a Reserve officer's request to withdraw an application for separation will not change the release from "voluntary" for consideration of entitlement to readjustment pay.
- Readjustment pay is not payable upon release from active duty for training or full-time training duty.
- With respect to members discharged or released on or after October 19, 1984, the member is not entitled to readjustment pay if the Secretary of the Military Department concerned determines that the conditions under which the member is discharged or separated do not warrant such pay.

**Table 35-7. Entitlement To Readjustment Pay (Continued)**

<b>RULES FOR DETERMINING WHETHER SEPARATION IS INVOLUNTARY RELEASE FROM ACTIVE DUTY (Note 1)</b>				
<b>R U L E</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
	<b>If a Reserve member is</b>	<b>and</b>	<b>then separation is</b>	<b>and</b>
<b>1</b>	involuntarily released from active duty as a Reserve officer	immediately enlists in the Regular Component of any Military Service, or enters on active duty as a regular or Reserve officer in the same or a different Military Service	an actual involuntary release from active duty, regardless of reentry on active duty	entitlement to readjustment pay is determined under Table 35-7.
<b>2</b>	a commissioned officer serving in dual status and is released from active duty as a Reserve commissioned officer	reverts to a Regular warrant officer status	not an actual release from active duty	readjustment pay is not authorized.
<b>3</b>	serving under a temporary appointment as a Reserve commissioned or warrant officer and the appointment is terminated	reverts to a permanent Reserve enlisted or warrant officer status without a break in service		
<b>4</b>	granted release from active duty at member's request, before completion of tour of duty	requests release after offer to serve another tour of active duty was denied		
<b>5</b>	released from active duty upon reaching the mandatory age limit of 60	does not offer to serve another tour of active duty	an involuntary release from active duty	entitlement to readjustment pay is determined under Table 35-7.
<b>6</b>		offer to serve another tour of active duty is denied		
<b>7</b>	a female officer and is involuntarily released from active duty for reasons of pregnancy or minor children	separation is under approved recommendation of board of officers (note 2)		

NOTES:

1. This table reflects the Comptroller General's decision regarding what constitutes "involuntary release from active duty." Do not consider the table all-inclusive.
2. A female officer may waive a hearing before the board without affecting her right to readjustment pay-the separation is still considered involuntary.

**Table 35-8. Rules for Determining Whether Separation is Involuntary Release From Active Duty**

COMPUTATION OF READJUSTMENT PAY					
R U L E	A	B	C	D	E
		<b>If readjustment pay is authorized under Table 35-7 and separation is</b>	<b>compute readjustment pay on basis of</b>	<b>multiplied by years of active service</b>	<b>but do not pay more than</b>
<b>1</b>	for any reason other than stated in rules 2 and 3 below	2 months of basic pay of grade in which member is serving when separated	but not over 12 computed under paragraph 350203	2 years of basic pay or \$15,000, whichever is less	prior readjustment payments, unless they are refunded (note 1).
<b>2</b>	because performance of duty falls below standards prescribed by the Secretary of the Military Service concerned (note 2)	One-half month's basic pay of grade in which member is serving when separated	but not over 18, computed under paragraph 350203	9 month's basic pay or \$15,000, whichever is less	
<b>3</b>	because retention is not clearly consistent with interests of national security (note 2)				

NOTES:

1. When prior readjustment payment is refunded, consider the period covered by the previous payment as a period for which no payment has been made.
2. See administrative regulations of the Military Service concerned to determine whether separation is in this category.

**Table 35-9. Computation of Readjustment Pay**



<b>SEVERANCE PAY ENTITLEMENT (OTHER THAN DISABILITY) AND ITS COMPUTATION (Note 1)</b>					
<b>R U L E</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
	<b>If a member is</b>	<b>and is discharged because</b>	<b>then compute severance pay at (note 6)</b>	<b>multiply by (note 2)</b>	<b>but do not pay more than</b>
<b>1</b>	a Regular commissioned officer of any Military Service	of failure of selection for promotion to grade O-3 or above	2 months of basic pay of grade held at time of discharge	years of service, but not more than 12 (note 3)	2 years of basic pay or \$15,000 whichever is less.
<b>2</b>	a woman officer of the Regular Navy or Regular Marine Corps in grade O-2	she is not on a promotion list and has completed 7 years of active commissioned service in the Navy or Marine Corps (note 5)		years of active commissioned service in the Navy or Marine Corps (note 3)	
<b>3</b>	a woman officer of the Regular Navy or Regular Marine Corps in grade O-3	she is not on a promotion list and has completed 13 years of active commissioned service in the Navy or Marine Corps		12 (note 3)	2 years of basic pay or \$15,000, whichever is less.
<b>4</b>	an ensign in the Navy or a second lieutenant in the Marine Corps	found not professionally qualified upon reexamination for promotion		years of active commissioned service in the Naval service, but not more than 6 (note 4)	1 year of basic pay.
<b>5</b>	a Regular commissioned officer of the Army or Air Force	of substandard performance of duty	1 month of basic pay of the grade held at time of discharge	years of active commissioned service but not more than 12 (note 3)	
<b>6</b>	an officer of the Navy or Marine Corps with less than 20 years of service	of unsatisfactory performance of duty, as determined by selection board	2 months of basic pay of grade held at time of discharge	years of service, but not more than 12 (note 3)	2 years of basic pay or \$15,000, whichever is less.
<b>7</b>		of unsatisfactory performance of duty, as determined by board in connection with temporary promotion in time of war or national emergency		years of service, but not more than 6 (note 3)	1 year of basic pay.
<b>8</b>	a Regular commissioned officer of the Army or Air Force	of moral or professional dereliction or in the interests of national security	1 month of basic pay of the grade held at time of discharge	years of active commissioned service, but not more than 12 (note 3)	1 year of basic pay.
<b>9</b>	an officer of the Navy or Marine Corps	found not qualified, from cause arising from own misconduct, upon reexamination for promotion		number of months stated in separation orders	
<b>10</b>	a Regular warrant officer of any Military Service	of failure of selection for promotion, and member does not enlist or is not retained on active duty in the commissioned grade in which serving	2 months of basic pay of grade held at time of discharge	years of active service, but not more than 12 (note 3)	2 years of basic pay or \$15,000 whichever is less.

**Table 35-10. Severance Pay Entitlement (Other Than Disability) and Its Computation**

R U L E	A	B	C	D	E
	<b>If a member is</b>	<b>and is discharged because</b>	<b>then compute severance pay at (note 6)</b>	<b>multiply by (note 2)</b>	<b>but do not pay more than</b>
<b>11</b>	a Regular warrant officer of any Military Service, who has more than 3 years of active service since original permanent appointment as a Regular warrant officer	of unfitness or unsatisfactory performance of duty, and member does not enlist	1 month of basic pay in the grade held at time of discharge	years of active service, but not more than 12 (note 3)	1 year of basic pay.

NOTES:

1. Members entitled to severance pay under sections 3503 and 3504 and separation pay under section 3502 may not receive both, but shall elect which they will receive.
2. Military Service administrative regulations govern computations of years of service for purposes of severance pay.
3. Count a fraction of a year that is 6 months or more as a full year. Disregard a fraction of a year that is less than 6 months. For Navy or Marine Corps officers, only years of commissioned service apply.
4. Count whole years only. Disregard any fraction of a year.
5. An officer retains entitlement to severance pay if discharged at member's request at any time during the fiscal year in which member fails to appear on a promotion list and will have completed 7 years of active commissioned service.
4. With respect to members discharged or released on or after October 19, 1984, the member is not entitled to severance pay if the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay.

**Table 35-10. Severance Pay Entitlement (Other Than Disability) and Its Computation (Continued)**

ENTITLEMENT TO DISCHARGE GRATUITY						
RU L E	A	B	C	D	E	F
	If	is	and	and	and	then
★1	an enlisted member of any Military Service	a prisoner released from confinement in a military or contract prison to parole, appellate review leave, or expiration of sentence			has less than \$25 in possession	pay the member the difference between funds in possession and \$25 (note).
2		discharged for fraudulent enlistment	discharge is not for returning member to another branch of the Armed Forces on account of absence without authority from that branch	the member is present to receive the discharge		
3		discharged under other than honorable conditions				
4		discharged from active duty because of void enlistment				
5	an enlisted member of any Military Service	discharged from active duty because of void enlistment	enlistment is void because contracted when member was mentally incompetent		do not pay a discharge gratuity.	
6		discharged for minority with pay and allowances payable through date of discharge				

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

★Table 35-11. Entitlement To Discharge Gratuity

## Chapter 35—Separation Payments

## 3501—Accrued Leave Pay

350101	37 U.S.C. 501 Public Law 94-419, Sep 22, 1976 Public Law 94-361, July 14, 1976
350101.A	37 U.S.C. 501 Public Law 94-419, Sep 22, 1976 Public Law 94-361, July 14, 1976
350101.B.1	Public Law 101-510, Section 1115, Nov 5, 1990 OASD(FM&P) Memo, Feb 15, 1991 Public Law 102-25, Section 314, Apr 6, 1991 Public Law 102-190, Section 637, Dec 5, 1991
350101.C	Public Law 98-525, Oct 19, 1983 Public Law 97-81, Nov 20, 1981
350101.D	Public Law 98-525, Oct 19, 1983 OASD Memo, Feb 8, 1985 OASD(C-DFAS) Item A-16, Apr 8, 1991
350101.E	37 U.S.C. 501(e)(1)
350101.F	37 U.S.C. 501(e)(1) Public Law 104-106, Section 641, Feb 10, 1996
350102	Public Law 94-361, July 14, 1976 OASD(C-DFAS) Item A-16, Apr 8, 1991
350102.A	OASD(MPP) Memo, Jan 8, 1998
350103	26 U.S.C. 112 IRS Rev. Rule 73-343 as amplified by IRS Rev. Rule 73-187

	Public Law 104-117, Mar 20, 1996
	26 CFR 1.112-1 (b) (2)
350104	5 U.S.C. 5514
	34 Comp Gen 504
350105	37 U.S.C. 501(d)
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350105.B	Public Law 101-510, Section 1115, Nov 5, 1990
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3502—Separation Pay (Nondisability)	
350201-350203	DoD Instruction 1332.29, June 20, 1991
350201.A/C and D	Public Law 103-160, Section 501, Nov 30, 1993
	10 U.S.C. 1174 (a) (1)
350201.B.3a(8)	OASD(FM&P) Memo, Mar 10, 1992
	39 Comp Gen 223, 226
350204 and 350205	DoD Instruction 1332.29, June 20, 1991
350205.B	Public Law 104-201, Section 653, Sep 23, 1996
3503—Savings Provisions for Readjustment and Severance Pay (Other Than Disability)	
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350304.A	36 Comp Gen 390
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350403.B	10 U.S.C. 1208, 1212 39 Comp Gen 291
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350701.B	10 U.S.C. 1174(e) 10 U.S.C. 1174a(g)
350701.C	10 U.S.C. 1174a(c)(3) and (4), as amended by Public Law 102-484, Section 4422(a), Oct 23, 1992
350701.D	10 U.S.C. 1174(e)(2)(D) 10 U.S.C. 1174a(g)
350701.E	10 U.S.C. 1174a(e)(5) atch to OASD(FM&P) Memo, Jan 2, 1992, para C1d
350701.F	10 U.S.C. 1174a(e)
350701.G	10 U.S.C. 1174(e)(1)(A) 10 U.S.C. 1174a(g)
350701.H	10 U.S.C. 1174(e)(2)(c) 10 U.S.C. 1174a(g)

350702	10 U.S.C. 1174a(b)(2)(A) Public Law 103-139, Section 8127, Nov 11, 1993
350702.A	10 U.S.C. 1174a(g) 10 U.S.C. 1174(f) Atch to OASD(FM&P) Memo, Jan 3, 1992, para C4b(1)
350702.B	DoDPM Para 70104a
350702.C	DoDPM para 70702b
350702.D	DoDPM para 70202
350703.A	10 U.S.C. 1174(h)(1) 10 U.S.C. 1174a(g)
350703.B	10 U.S.C. 1174(h)(2) 10 U.S.C. 1174a(g) Public Law 104-201, Section 653, Sep 23, 1996
350703.C	Atch to OASD(FM&P) Memo, Jan 3, 1992, para C5c
350703.E	Public Law 103-335, Section 8106a, Sep 30, 1994, amended by Public Law 104-6, Section 105, Apr 10, 1995 ASD(FMP) Memo, Feb 6, 1995
3508—Voluntary Separation Incentive	
350801.A	10 U.S.C. 1175(b)(1), as amended by Public Law 102-484, Section 4422(b), Oct 23, 1992 Atch to OASD(FM&P) Memo, Jan 3, 1992, Para C1a
350801.A.2	Public Law 103-160, Section 502, Nov 30, 1993
350801.B	Atch to OASD(FM&P) Memo, Jan 3, 1992, Para C1a
350801.C	10 U.S.C. 1175(b)(2), as amended by Public Law

		102-484, Section 4422(b), Oct 23, 1992
	350801.D	Atch to OASD(FM&P) Memo, Jan 3, 1992, Para C1c
	350801.E	10 U.S.C. 1175(b)(3)
★	350801.F	10 U.S.C. 1175(a)(2) Atch to OASD(FM&P) Memo, Jan 3, 1992 Para C2 Public Law 105-261, Section 563, Oct 17, 1998
	350801.G	10 U.S.C. 1175(a)
	350802.A	10 U.S.C. 1175(e)(1) Atch to OASD(FM&P) Memo, Jan 3, 1992, Para C4a(1)
	350802.B	OASD(FM&P) Memo, Jan 3, 1992, Para C4a(3)
	350802.C	10 U.S.C. 1175(e)(5) Atch to OASD(FM&P) Memo, Jan 3, 1992, Para C5b
	350802.D	Public Law 103-139, Section 8127, Nov 11, 1993
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	350802.G	42 U.S.C. 409(d)
	350803.A	10 U.S.C. 1175(e)(3)
	350803.B	10 U.S.C. 1175(e)(4)
	350803.C	10 U.S.C. 1175(e)(2), as amended by Public Law 102-484, Section 4406, Oct 23, 1992
	350803.D	10 U.S.C. 1175(f)
	350803.F	Public Law 103-335, Section 8106a, Sep 30, 1994, amended by Public Law 104-6, Section 105, Apr 10, 1995 ASD(FMP) Memo, Feb 6, 1995



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