

CHAPTER 37

BENEFITS FOR MEMBERS HELD AS CAPTIVES3701 FORMER CAPTIVE PAYMENT

See the Definitions. Entitlement is effective 27 August 1986.

370101. Entitlement Provisions. Entitlement may only be authorized by the Secretary of Defense (SECDEF). Once the SECDEF makes a "hostile action" determination, which is the authority for former captive payments, Service Secretaries will provide the names and dates of entitlements to their respective DFAS Center. Entitlement dates may not include any of the following without specific case by case approval of the SECDEF:

A. Dates in a captive status which are not dates of actual physical custody by a hostile force (for example, dates evading capture where the presence of a hostile force prevented escape or rescue); or

B. Dates which are doubtful that the missing status was the result of hostile action or was the result of membership in the Uniformed Services. Commanders will forward any request with justification via the appropriate service chain of command. When authorized, the DFAS Center concerned will make payment.

370102. Rates

A. For each day a member was held in a captive status, payment is 50 percent of the world-wide average per diem rate. (Rates are maintained by the Per Diem, Travel, and Transportation Allowance Committee of the OASD (FM&P). Status beginning and ending days (for example, day of return to military control) are days of entitlement. Payment must be made within 1 year after the member's captive status ends.

B. Former captives may receive more than the 50 percent rate when specifically approved by the SECDEF. Forward recommendations justifying a higher percentage through command channels via the appropriate Service Secretary.

370103. Persian Gulf Conflict. Payment for members in a former captive status resulting from Operation Desert Storm from January 1991 through April 1991 is \$131.00 per day for January, February, and April; and \$133.00 per day for March.

370104. Death of Member. If a member dies while in a captive status, any amount due is considered pay and allowances for the purposes of chapter 34 of this part.

370105. Exceptions

A. The SECDEF may defer payment for anyone (within the 1 year payment window) charged with a captivity-related offense and may deny payment if the member is convicted. If convicted, whether or not payment has been made, commanders will forward the case to the SECDEF (as per paragraph 370101) with justified recommendations for payment determination. Previously-made payments later denied must be collected.

B. No payment is authorized when Congress specifically provides for prisoner of war (POW) compensation for captivity periods. See section 3702.

370106. Taxability. Former captive payments are generally not taxable if the captive status resulted from the deprivation of personal rights, such as terrorist activity. However, if the captive status resulted from an engagement with another nation's armed forces, then payment may be taxable and is reported as taxable income. See table 44-1 for possible applicability of the combat zone tax exclusion.

3702 PRISONER OF WAR COMPENSATION

Payment authorized by Congress for a specific period of captivity as a POW is made by the Secretary of the Treasury (TREASSEC) and is not considered to be a Uniformed Services pay and allowances entitlement. The DFAS is not involved in payment procedures or tax reporting.

3703 SAVINGS ALLOTMENT

Service Secretaries may allot part or all of a captive's pay and allowances (except what is already allotted) to an interest-bearing savings fund that is maintained by the TREASSEC. Withdrawal procedures are established by the TREASSEC.