

VOLUME 7B, CHAPTER 13: “SUSPENSION OF PAY”**SUMMARY OF MAJOR CHANGES**

Changes are identified in this table and also denoted by [blue font](#).

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

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

Hyperlinks are denoted by [bold, italic, blue, and underlined font](#).

The previous version dated [March 2018](#) is archived.

| PARAGRAPH | EXPLANATION OF CHANGE/REVISION | PURPOSE |
|---|---|----------------|
| All | Updated this chapter with hyperlinks and formatting to comply with current administrative instructions. | Revision |
| 1.2 (130102) | Updated the “Authoritative Guidance” paragraph to comply with current administrative instructions. | Revision |
| 2.2.3 (130202.C) 2.2.4 (130202.D) and Table 13-1, Rule 6 and 7 | Updated expiration period from 5 years to 3 years for a member whose name is on the disability retired list, pursuant to Title 10, United States Code, section 1210(b) and (h). | Revision |
| 5.3 (130503) | Added the deduction of Survivor Benefit Plan premiums from Combat Related Special Compensation when deductions from the member’s retired pay is insufficient, pursuant to 10 U.S.C. § 1452(d)(2). | Addition |
| References | Renamed “Bibliography” to “References.” | Revision |

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CHAPTER 13

SUSPENSION OF PAY

1.0 GENERAL (1301)

1.1 Purpose (130101)

The pay account of a retiree may be placed in a suspended (nonpayment) status for a definite or indefinite period of time. The pay may be suspended to comply with statutory or regulatory requirements or Defense Finance and Accounting Service (DFAS) retired pay procedures. Such suspension may not necessarily affect continued or future entitlement when the requirements or procedures that were the basis for the suspension no longer apply. When a retired member is missing and there is no information concerning his or her whereabouts, the member's retired pay must be suspended from the date that he or she was last known to be alive.

*1.2 Authoritative Guidance (130102)

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 5, 10, 37 and 38. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 STATUTORY REQUIREMENTS (1302)

2.1 Failure to Comply With Statutes (130201)

As specified herein, applicable statutes may prohibit the retiree's receipt of concurrent payments, payments after a specific period of time, or payments if a member fails to comply with statutory requirements.

*2.2 Retired Pay Suspended (130202)

A retiree's pay is suspended (see Table 13-1) if he or she:

2.2.1. Is recalled to active duty;

2.2.2. Requests waiver of retired pay because of:

2.2.2.1. An award of Department of Veterans Affairs disability compensation or pension payments, or

2.2.2.2. Military service being used for purposes of qualifying for a U.S. civil service retirement annuity;

* 2.2.3. Completes 5 years on the Temporary Disability Retired List (TDRL), subject to placement on the Permanent Disability Retired List, [if placed on the TDRL prior to January 1, 2017](#);

* 2.2.4. Completes 3 years on the Temporary Disability Retired List (TDRL), subject to placement on the Permanent Disability Retired List, [if placed on the TDRL on or after January 1, 2017](#);

2.2.5. Fails to report for a required physical examination while on the TDRL or while a member of the Fleet Reserve/Fleet Marine Corps Reserve;

2.2.6. Is employed by a foreign government (to include local government units within a foreign country, as well as the national government itself) without applicable congressional or secretarial approvals; or

2.2.7. Is found to be mentally incapable of managing his or her personal affairs, and no guardian, trustee, or other legal representative has been appointed. See Chapter 16 for further information.

2.3 Retired Pay Suspended by Secretary of the Military Department Concerned (130203)

2.3.1. The Secretary of the Military Department concerned may order a retiree's pay suspended after determining that:

2.3.1.1. A felony warrant has been issued against the absent member by the United States:

2.3.1.1.1. Under the authority of [Title 18, U.S.C. § 1073](#), "Flight to avoid prosecution or giving testimony," and the Department of Justice has sought extradition; or

2.3.1.1.2. For violation of the International Parental Kidnapping Act, [18 U.S.C. § 1204](#), or for a crime stated in [5 U.S.C. § 8312](#); and

2.3.1.2. The member is outside the United States and has willfully remained outside the United States to avoid criminal prosecution for 30 or more consecutive days subsequent to the date of issue of the felony warrant.

2.3.2. Upon receipt of an order issued by the Secretary of the Military Department concerned (or designee) that a retiree's pay be suspended:

2.3.2.1. The DFAS Cleveland site must immediately suspend retired pay. Payment of any amounts subject to involuntary withholding or paid as insurance premiums by previously established allotments must not be suspended, but must continue to be paid from the member's pay unless otherwise directed by the Secretary of the Military Department concerned (or designee).

2.3.2.2. Suspension continues until DFAS Cleveland site receives orders from the Secretary of the Military Department concerned (or designee) to resume monthly payments and to pay the balance of suspended payments. No interest may be paid on any suspended amounts.

3.0 REGULATORY REQUIREMENTS (1303)

Retired pay may be suspended if certain situations exist where regulations prohibit making payments. For example, retired pay is suspended if the retiree requests that their check be mailed to addresses outside the United States listed in [*Title 31, Code of Federal Regulations \(CFR\), part 211.1*](#). Retiree requests for international Electronic Fund Transfer (EFT) receive specialized processing. The DFAS Cleveland site will send an inquiry to the Federal Reserve Bank to ascertain if the EFT is permitted to the foreign country. The retiree will be advised if the EFT is not permitted.

4.0 ADMINISTRATIVE REQUIREMENTS (1304)

4.1 Failure to Provide Timely Administrative Actions and Declines Further Payments (130401)

In accordance with the requirements of the DoD Financial Management Regulation and DFAS Cleveland site, Office of Retired Pay procedures, the head of the retired pay activity may suspend retired pay if the retiree fails to take necessary administrative actions on time, or if the retiree declines further payments.

4.2 Failure to Provide Proof of Existence and Address (130402)

Retired pay may be suspended if the retiree:

4.2.1. Fails to furnish the required proof of existence. See Chapter 15 for further information;

4.2.2. Fails to notify DFAS Cleveland site, Office of Retired Pay, of an address change and the retiree's current address is unknown; or

4.2.3. Refuses to accept further payments.

5.0 EFFECT OF SUSPENSION ON TAXABLE INCOME, FEDERAL INCOME TAX WITHHELD, AND OTHER ACTIONS (1305)

5.1 Taxable Income and Federal Income Tax Withheld (130501)

The suspension of a retiree's pay account for any reason cited in sections 1302 through 1304 may result in the suspension of any other reporting of taxable income and income taxes withheld. The reporting of taxable income and taxes withheld, if applicable, resumes upon removal of the suspension of pay. See Chapter 24 regarding taxable income, tax withheld, and issuance of Internal Revenue Service Form 1099R, "Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc."

5.2 Allotment Deductions (030502)

Voluntary allotments of retired pay or retainer pay for military retirees are limited to discretionary and nondiscretionary allotments. General provisions governing allotments of retired pay and administrative procedures are located in Chapter 19.

*5.3 Survivor Annuity Deductions (130503)

Generally, the retiree's cost for participation in the Retired Serviceman's Protection Plan and/or the Survivor Benefit Plan (SBP), while the retired pay is suspended, will be deducted from the accumulated retired pay or Combat Related Special Compensation (CRSC) (when deductions from the member's retired pay are insufficient to pay the full amount of the SBP premium) upon reinstatement of retired pay or CRSC, pursuant to 10 U.S.C. § 1452(d)(2). See Chapter 63, paragraph 630803. For special rules regarding SBP, also refer to Chapter 45, Table 45-4.

*Table 13-1. Suspension of Pay Statutory Requirements

| R U L E | If a member of the | has pay suspended for | then authority is |
|----------------------------|---------------------------|--|---|
| 1 | Army | recall to active duty | <u>10 U.S.C. §§ 688</u> and 688a. |
| 2 | Air Force | recall to active duty | 10 U.S.C. §§ 688 and 688a. |
| 3 | Navy or Marine Corps | recall to active duty | 10 U.S.C. § 688 or <u>10 U.S.C. § 8385.</u> |
| 4 | Armed Forces | waiver of retired pay in favor of Veterans Administration compensation or pension | <u>38 U.S.C. § 5305.</u> |
| 5 | Armed Forces | waiver of retired pay in favor of civil service annuity | <u>5 U.S.C. § 8332.</u> |
| *6 | Armed Forces | completion of 5 years on TDRL, if prior to January 1, 2017 | <u>10 U.S.C. § 1210(b) and (h).</u> |
| *7 | Armed Forces | completion of 3 years on TDRL, if on or after January 1, 2017 | 10 U.S.C. § 1210(b) and (h) |
| 8 | Armed Forces | failure to report for periodic physical for TDRL or while a member of the Fleet Reserve/Fleet Marine Corps Reserve | 10 U.S.C. § 1210(a). |
| 9 | Armed Forces | employment by a foreign government without congressional or secretarial approvals | Article 1, section 9, clause 8, United States Constitution, <u>37 U.S.C. § 908.</u> |
| 10 | Armed Forces | being mentally incapable of managing own affairs | <u>37 U.S.C., Chapter 11.</u> |
| 11 | Armed Forces | flight to avoid prosecution or giving testimony | 18 U.S.C. § 1073. |
| 12 | Armed Forces | international parental kidnapping | 18 U.S.C. § 1204. |
| 13 | Armed Forces | conviction of certain offenses as stated in 5 U.S.C. § 8312 | 5 U.S.C. § 8312. |
| 14 | Armed Forces | being absent from the United States to avoid prosecution | <u>Public Law 104-201,</u> section 633, September 23, 1996. |

REFERENCES*CHAPTER 13 – SUSPENSION OF PAY**

1.0 – GENERAL (1301)

- 1.1 62 Comptroller General (Comp Gen) 211 (1983)
71 Comp Gen 107 (1991)

2.0 - STATUTORY REQUIREMENTS (1302)

- 2.2.1 10 U.S.C. § 688
10 U.S.C. § 688a
10 U.S.C. § 8385
- 2.2.2.1 38 U.S.C. § 5305
- 2.2.2.2 5 U.S.C. § 8332
- 2.2.3 10 U.S.C. § 1210(b) and (h)
- 2.2.4 10 U.S.C. § 1210(a)
- 2.2.5 10 U.S.C. § 908
Article 1, Section 9, Clause 8,
United States Constitution
Comp Gen Decision B-251084,
October 12, 1993
- 2.2.6 37 U.S.C., Chapter 11
- 2.3 Office of the Under Secretary of Defense,
Personnel and Readiness, Directive-Type
Memorandum, issued May 29, 1997
Public Law 104-201, section 633,
September 23, 1996
- 2.3.1 18 U.S.C. § 1073
5 U.S.C. § 8312
18 U.S.C. § 1204

3.0 - REGULATORY REQUIREMENTS (1303)

- 31 CFR 211