

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

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

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

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

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

The previous version dated May 2010 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter is being updated to comply with current administrative instruction.	Update
130203.A 130203.B	Restored subparagraphs to pre-August 2008. The omission of “or” and “; and,” changed the context of the paragraph 130203.	Update
Bibliography	Updated with references listed in Table 13-1.	Update

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CHAPTER 13

SUSPENSION OF PAY

1301 GENERAL

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

1302 STATUTORY REQUIREMENTS

130201. Failure to Comply With Statutes

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

130202. Retired Pay Suspended

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

- A. Is recalled to active duty.
- B. Requests waiver of retired pay because of:
 - 1. Award of Department of Veterans Affairs (VA) disability compensation or pension payments.
 - 2. Military service being used for purposes of qualifying for a United States civil service retirement annuity.
- C. Completes 5 years on the Temporary Disability Retired List (TDRL), subject to placement on the Permanent Disability Retired List (PDRL).
- D. Fails to report for a required physical examination while on the TDRL or while a member of the Fleet Reserve/Fleet Marine Corps Reserve.
- E. Is employed by a foreign government (to include local government units within a foreign country, as well as the national government itself) without applicable congressional or secretarial approvals.

F. Is found to be mentally incapable of managing his or her personal affairs, and no guardian, trustee, or other legal representative has been appointed. See [Chapter 16](#) of this volume for further information.

130203. Retired Pay Suspended by Secretary of the Military Department Concerned

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

* A. A felony warrant has been issued against the absent member by the United States under the authority of [Title 18, United States Code \(U.S.C.\), section 1073](#), "Flight to avoid prosecution or giving testimony," and the Department of Justice has sought extradition; or,

* B. A felony warrant has been issued against the absent member by the United States 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,

C. 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. As a result:

1. The DFAS-Cleveland Center shall immediately suspend retired pay upon receipt of an order to suspend payments from the Secretary of the Military department concerned (or designee). Suspension continues until DFAS 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.

2. Payment of any amounts subject to involuntary withholding or paid as insurance premiums by previously established allotments shall not be suspended, but shall continue to be paid from the member's pay unless otherwise directed by the Secretary of the Military Department concerned (or designee).

1303 REGULATORY REQUIREMENTS

Retired pay may be suspended if certain situations exist where regulations prohibit making payments. For example, retired pay is suspended if the retiree requests that the retired paycheck be mailed to a country listed in Appendix A of this volume.

1304 ADMINISTRATIVE REQUIREMENTS

130401. Failure to Provide Timely Administrative Actions and Declines Further Payments

In accordance with the requirements of this volume and DFAS-Cleveland's Office of Retired Pay procedures, the head of the retired pay activity may suspend retired pay if the retiree fails to take necessary administrative actions on time, or if the retiree declines further payments.

130402. Failure to Provide Proof of Existence and Address

Retired pay may be suspended if the retiree:

A. Fails to furnish a required proof of existence. See Chapter 15 of this volume for further information.

B. Fails to notify DFAS-Cleveland, Office of Retired Pay, of an address change and the retiree's current address is unknown.

C. Refuses to accept further payments.

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

130501. Taxable Income and Federal Income Tax Withheld

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

130502. Allotment Deductions

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

130503. Survivor Annuity Deductions

Generally, the retiree's cost for participation in the Retired Serviceman's Protection Plan (RSFPP) and/or the Survivor Benefit Plan (SBP), while the retired pay is suspended, would be deducted from the accumulated retired pay upon reinstatement of retired pay. For special rules regarding SBP, refer to Chapter 45, Table 45-4 of this volume.

Table 13-1. Suspension of Pay Statutory Requirements

SUSPENSION OF PAY — STATUTORY REQUIREMENTS			
R U L E	A	B	C
	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>
2	Air Force		
3	Navy or Marine Corps		<u>10 U.S.C. 688</u> or <u>10 U.S.C. 6485.</u>
4	Armed Forces	waiver of retired pay in favor of VA compensation or pension	<u>38 U.S.C. 5305.</u>
5		waiver of retired pay in favor of civil service annuity	<u>5 U.S.C. 8332.</u>
6		completion of 5 years on TDRL	<u>10 U.S.C. 1210(h).</u>
7		failure to report for periodic physical for TDRL or while a member of the Fleet Reserve/Fleet Marine Corps Reserve	<u>10 U.S.C. 1210(a).</u>
8		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>
9		being mentally incapable of managing own affairs	<u>37 U.S.C., Chapter II.</u>
10		interstate or international flight to avoid prosecution or giving testimony	<u>18 U.S.C. 1073</u>
11	international parental kidnapping	<u>18 U.S.C. 1204</u>	
12	conviction of certain offenses as stated in <u>5 U.S.C. 8312</u>	<u>5 U.S.C. 8312</u>	
13	being absent from the US to avoid prosecution	<u>Public Law 104-201,</u> section 633, September 23, 1996.	

BIBLIOGRAPHY

CHAPTER 13—SUSPENSION OF PAY

1301 - GENERAL

1301 71 Comp Gen 107 (1991); 62 Comp Gen 211
(1983)

* 1302 - STATUTORY REQUIREMENTS

130202.A 10 U.S.C. 688
10 U.S.C. 6485

130202.B.1 38 U.S.C. 5305

130202.B.2 5 U.S.C. 8332

130202.C 10 U.S.C. 1210(h)

130202.D 10 U.S.C. 1210(a)

130202.E 10 U.S.C. 908
Article 1, Section 9, Clause 8,
United States Constitution
Comp Gen Decision B-251084, October 12,
1993

130202.F 37 U.S.C. , Chapter 11

130203 OUSD, P&R Directive-Type Memorandum,
issued May 29, 1997
Public Law 104-201, section 633,
September 23, 1996

130203.A 18 U.S.C. 1073

130203.B 5 U.S.C. 8312
18 U.S.C. 1204

1303 - REGULATORY REQUIREMENTS

31 C.F.R. 211