

VOLUME 7A, CHAPTER 37: “BENEFITS FOR MEMBERS HELD AS CAPTIVES”**SUMMARY OF MAJOR CHANGES**

All changes are 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 [November 2018](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
370102	Updated the “Authoritative Guidance” paragraph to comply with current administrative instructions.	Revision

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CHAPTER 37

BENEFITS FOR MEMBERS HELD AS CAPTIVES

3701 GENERAL

370101. Purpose

This chapter describes the policy provisions for benefits for members who are held as captives as determined by the Secretary of Defense.

*370102. Authoritative Guidance

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 and 37. 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.

3702 FORMER CAPTIVE PAYMENT

370201. Entitlement Provisions

A former captive is a member who was held in a captive status. Entitlement may only be authorized by the Secretary of Defense. Once the Secretary of Defense makes a "hostile action" determination, which is the authority for former captive payments, the Military Service Secretaries will provide the names and dates of entitlements to their respective Defense Finance and Accounting Services (DFAS) Center. Entitlement dates may not include any of the following without specific case-by-case approval of the Secretary of Defense:

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 that 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 Military Service chain of command. When authorized, the DFAS Center concerned will make payment.

370202. Rates

A. For each day a member was held in a captive status, payment **will** be 50 percent of the then-current world-wide average per diem rate. 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. Rates will be obtained from the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy/Compensation), 1500 Defense Pentagon, Washington, D.C. 20301-1500.

B. Former captives may receive more than the 50 percent rate when specifically approved by the Secretary of Defense. Recommendations justifying a higher percentage will be forwarded through command channels via the appropriate Military Service Secretary.

370203. 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.

370204. Exceptions

A. The Secretary of Defense 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 in a court of competent jurisdiction. If convicted, whether or not payment has been made, commanders will forward the case to the Secretary of Defense with justified recommendations for payment determination. Payments previously made and later denied must be collected.

B. No payment is authorized when the Congress specifically provides for prisoner of war (POW) compensation for captivity periods. See section 3703.

370205. Taxability

Payments to former captives generally are 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 reported as taxable income. See Chapter 44, Table 44-1 for possible applicability of the combat zone tax exclusion.

3703 POW COMPENSATION

Payment authorized by the Congress, for a specific period of captivity as a POW, is made by the Secretary of the Treasury, and is not considered to be an Uniformed Services pay and allowances entitlement. DFAS is not involved in this payment procedure or its tax reporting consequences.

3704 SAVINGS ALLOTMENT

Military 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 Secretary of the Treasury. The Secretary of the Treasury establishes the withdrawal procedures for this savings fund.

REFERENCES

CHAPTER 37 - BENEFITS FOR MEMBERS HELD AS CAPTIVES

3702 Former Captive Payment

Title 5, U.S.C., section 5569(d)(2)

37 U.S.C. § 551

37 U.S.C. § 559(c)

370204

37 U.S.C. § 559(a)(1)

3704 Savings Allotment

37 U.S.C. § 559(b)