

DOCUMENT RESUME

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Department of Defense Military Pay and Allowance Committee
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Decision by Robert F. Keller, Deputy Comptroller General.

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37 U.S.C. 1009(c-f)). P.L. 93-491. 37 U.S.C. 401. 37 U.S.C.
403. 37 U.S.C. 420. 10 U.S.C. 7572(b). S. Rept. 94-878. S.
Rept. 94-1004. H. Rept. 94-1305. H.R. 12438 (94th Cong.). 53
Comp. Gen. 152-4. 53 Comp. Gen. 148. Executive Order 11941.

The Assistant Secretary of Defense (Comptroller) requested an advance decision on questions concerning the payment of partial basic allowance for quarters. A member of a uniformed service married to another member, who has no other dependents, is entitled to partial basic allowance for quarters when assigned to single-type Government quarters, but not when assigned to family quarters. An officer on sea duty being reimbursed for the expense incurred for quarters because his shipboard quarters are uninhabitable is entitled to partial basic allowance for quarters. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-188481

DATE: August 10, 1977

MATTER OF: DOD Military Pay and Allowance Committee
Action No. 535

- DIGEST:
1. A member of a uniformed service married to another member, who has no dependents other than his or her spouse, is entitled to partial basic allowance for quarters (BAQ) under 37 U. S. C. 1009(d), when assigned to single-type Government quarters. However, such a member assigned to family quarters is not entitled to partial BAQ.
 2. A single member without dependents is not entitled to partial basic allowance for quarters (BAQ) under 37 U. S. C. 1009(d) when assigned to family quarters since partial BAQ is intended to be paid to members not entitled to full BAQ who are assigned to low-value Government single quarters, not higher value family quarters.
 3. An officer on sea duty being reimbursed under 10 U. S. C. 7572(b) for the expense incurred for quarters because his ship-board quarters are uninhabitable is entitled to partial basic allowance for quarters under 37 U. S. C. 1009(d).

This action is in response to letter dated February 24, 1977, from the Assistant Secretary of Defense (Comptroller) requesting an advance decision on certain questions concerning payment of partial basic allowance for quarters (BAQ) which have arisen as a result of the enactment of section 303 of Public Law 94-381, July 14, 1976, 90 Stat. 923, 925, which added 37 U. S. C. 1009(c)-(f). The questions, together with a discussion, are contained in Department of Defense Military Pay and Allowance Committee Action No. 535.

Committee Action No. 535 presents the following questions concerning such partial BAQ:

- "1. Does the term 'member without dependents', as used in 37 U. S. C. 1009(d), include a member married to a member, when neither has a dependent other than his or her spouse?

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"2. If the answer to question 1 is affirmative, is such a member entitled to the partial basic allowance for quarters (BAQ) authorized by 37 U. S. C. 1009(d), as implemented by Executive Order 11941 of October 6, 1976, when both members are assigned to family-type public quarters at the same station or separate stations?

"3. If the answer to question 2 is negative, is a single member without dependents entitled to such partial BAQ when assigned to family-type public quarters?

"4. Is an officer entitled to such partial BAQ when on sea duty and authorized to be reimbursed an amount not to exceed his applicable BAQ in accordance with 10 U. S. C. 7572(b)?"

Sections 1009(a) and (b), title 10, United States Code, provide for upward adjustments in the basic pay, basic allowance for subsistence and BAQ of members of the uniformed services whenever there is an adjustment in the General Schedule of compensation for Federal classified employees. Such adjustments are to be of the same overall percentage as the increase in General Schedule rates. Under section 1009(c) the President may allocate the overall average percentage increase among the elements of compensation on an other than an equal percentage basis. When the President chooses to allocate the increase on an other than equal percentage basis, section 1009(d), which provides as follows, authorizes payment of a "partial" BAQ to certain members without dependents:

"(d) Under regulations prescribed by the President whenever the President exercises his authority under subsection (c) to allocate the elements of compensation specified in subsection (a) on a percentage basis other than an equal percentage basis, he may pay to each member without dependents who, under section 403 (b) or (c), is not entitled to receive a basic allowance for quarters, an amount equal to the difference between (1) the amount of such increase under subsection (c) in the amount of the basic allowance for quarters which, but for section 403 (b) or (c), such member would be entitled to receive, and (2) the amount by which such basic allowance for quarters would have been increased under subsection (b)(3) if the

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President had not exercised such authority." (Emphasis added.)

Subsection 403(a) of title 37, United States Code, authorizes the payment of BAQ. However, subsections 403(b) and 403(c), respectively, provide generally that a member who is assigned adequate Government quarters or who is on field duty or sea duty is not entitled to BAQ.

The legislative history of 37 U. S. C. 1009(d) shows that it originated as part of a legislative proposal by the Department of Defense. The purpose of the proposal was explained in a letter dated March 3, 1976, from the General Counsel of the Department of Defense to the President of the Senate in which it was stated in part as follows:

"The purpose of the proposed legislation is to provide the President with the flexibility to allocate a greater proportion of future military pay raises to the basic allowance for quarters (BAQ). There are both economic and intrinsic advantages to granting this flexibility.

"The Congress, in enacting the three-way pay split legislation of 1974 (Public Law 93-419), has already provided that military pay raises are to be spread equally among the three cash elements of compensation--basic pay, basic allowance for quarters, and basic allowance for subsistence. This was an improvement over the previous practice in which military pay increases were allocated exclusively to basic pay. The current law, however, does not recognize that the level of the allowances may not be related to the costs of the services they were originally intended to procure. The Department of Defense believes that such is the case with the quarters allowance especially. Further, military family quarters on the average have value substantially above the current rates of the BAQ, and military bachelor quarters have a value substantially below current BAQ rates. The Department therefore wants to adjust BAQ rates to more nearly approximate the average value of military family quarters. This will be a first step toward replacing the current full BAQ "forfeiture" system with a fair market rental system in which members in military quarters would pay rent appropriate for the quarters they actually occupy.

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"We propose to do this by placing a portion of future military basic pay raises into BAQ and continuing to do so until BAQ matches the average value of military family quarters. A part of these increases would be rebated to members without dependents who are on sea or field duty and to those who occupy bachelor quarters, in recognition of field and sea duty and of the lower value of those quarters."

* * * * *

"We currently expect that the initial adjustment for FY 1977 would reallocate approximately 25 percent of expected basic pay increase to the basic allowance for quarters. It would also pay to those members without dependents who are on sea or field duty or are in military quarters approximately 6% of the new BAQ rate in order to return to them a portion of the BAQ increase in recognition of sea and field duty and of the lower value of bachelor quarters. * * *¹¹ (Emphasis added.)

See S. Rep. No. 94-878, 94th Cong., 2d Sess. 132-133 (1976).

Although the Senate did not pass the rebate provision now in subsection 1009(d) that provision was incorporated in the legislation as enacted in conference. The report of the Senate and House of Representatives conferees on H. R. 12438, which became Public Law 94-361, shows that it was felt especially by the House conferees, that reallocation of compensation increases would be inequitable without also authorizing the President "to rebate to single personnel living in barracks and Bachelor Officers Quarters." S. Rep. No. 94-1004, 94th Cong., 2d Sess. 45 (1976), and H. R. Rep. No. 94-1305, 94th Cong., 2d Sess. 45 (1976).

Therefore, as the submission indicates, it appears that the legislative purpose in enacting 37 U. S. C. 1009(d) was to pay partial BAQ to members without dependents who are not entitled to regular BAQ, because they are assigned to single-type Government quarters (barracks and bachelor quarters), or who are on sea or field duty, since it is recognized that the value of the quarters furnished in such cases is less than the BAQ forfeited.

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Concerning question 1, while a spouse is defined as a dependent for BAQ purposes by 37 U. S. C. 401 (1970), pursuant to 37 U. S. C. 420 (1970) a member may not be paid BAQ at the "with dependents" rate on account of a spouse who is also a member of a uniformed service entitled to basic pay. See generally 53 Comp. Gen. 14P, 152-154 (1973). Therefore, it is our view that a member whose only dependent is a spouse entitled to basic pay and, thus, whom he may not claim as a dependent for increased BAQ, may be considered a member without dependents for the purpose of section 1009(d). Accordingly the answer to the first question is affirmative.

Concerning question 2 and 3, it was not the intent of Congress to extend the rebate to members who are already receiving the substantial benefit of living in family-type quarters. As is indicated previously, the reason the Department of Defense proposed, and the Congress approved, a partial rebate was that the value of Government single quarters is substantially below the current BAQ without dependents rates. Congress reasoned that it would be inequitable to reallocate compensation increases without also authorizing a rebate to members assigned to single quarters. It was recognized, however, that the value of family quarters exceed the BAQ rates. Therefore, it is our view that to pay partial BAQ to members, single or married to other members, who occupy the higher value family quarters would be contrary to the purpose of the law. Accordingly, the answers to questions 2 and 3 are negative.

Concerning question 4, 10 U. S. C. 7572(b) provides as follows:

"(b) Under such regulations as the Secretary prescribes, any officer of the naval service on sea duty who is deprived of his quarters on board ship because of repairs or because of other conditions that make his quarters uninhabitable, and who is not entitled to basic allowance for quarters, may be reimbursed for expenses incurred in obtaining quarters, in an amount not more than the basic allowance for quarters of an officer of his grade, if it is impracticable to furnish accommodations under subsection (a)."

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The submission indicates that if 37 U. S. C. 1009(d) is construed to allow payment of partial BAQ to officers being reimbursed under 10 U. S. C. 7572(b), in a majority of cases it will result in the officer receiving reimbursement of an amount equal or nearly equal to the BAQ rate plus partial BAQ.

Subsection 7572(b) does not provide for payment of BAQ, but provides for reimbursement of expenses incurred in obtaining quarters in an amount not to exceed the applicable BAQ rate. While such reimbursement may in many cases be at the maximum amount (full BAQ rate), that would not always be the case. Also, there is no indication in the legislative history of 37 U. S. C. 1009(d) that consideration was given to precluding payment of partial BAQ to an officer being reimbursed under 10 U. S. C. 7572(b) even though such reimbursement is limited to the BAQ amount which could be paid to that officer in appropriate circumstances. Therefore, since such an officer without dependents who is on sea duty fits the criteria established by section 1009(d), he would be entitled to partial BAQ. Accordingly, the answer to question 4 is affirmative.


Deputy, Comptroller General
of the United States