

DECISION



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

DOD AGC00005

FILE: B-193772 Authority to Make DATE: January 22, 1980

MATTER OF: Advance payments of retired pay
and survivor annuities

- DIGEST: 1. Retired pay is included within the definition of pay in 37 U.S.C. 101(21). Therefore, authority in 37 U.S.C. 1006(h) to make payments up to 3 days in advance of a regular payday, of pay and allowances to individuals under the jurisdiction of the Secretaries of the military departments includes payments of retired pay.
2. Payments such as survivor annuities to dependents not included within the definitions of pay and allowances contained in title 37, United States Code, may not be made in advance under the authority of 37 U.S.C. 1006(h).

The question presented in this case is:

"Can advance payments authorized by 37 U.S.C. § 1006(h) (1970) be made to military retirees and surviving military dependent annuitants on the same basis as is now done for active duty members under the provisions of 37 U.S.C. § 1006(h)?"

Advance payments to military retirees may be made under the authority of 37 U.S.C. 1006(h) (1976). However, advance survivor annuity payments may not be made under this authority.

The question and discussion thereof are contained in Department of Defense Military Pay and Allowance Committee Action Number 543, transmitted to this Office by the Assistant Secretary of Defense (Comptroller).

Subsection 1006(h) of title 37, United States Code, provides as follows:

"Notwithstanding section 529 of title 31, the Secretary concerned may, when the last day of the pay period falls on a Saturday, Sunday, or legal holiday, authorize the payment of pay and allowances to members of an armed force under his jurisdiction on the preceding workday but not more than

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three days before the last day of that pay period. If a member dies after he has received an advance payment under this subsection, but before the last day of the pay period for which the payment is made, no part of the amount so advanced is recoverable by the United States."

Section 529 of title 31, United States Code, prohibits the advance of public money unless authorized by appropriation or other law. Subsection 1006(h) provides an exception.

In the Committee Action, it is noted that monthly annuity payments to military retirees and surviving military dependents are mailed or otherwise transmitted to arrive at their destination on the last day of the month. When the regular delivery date falls on a Saturday, the check is difficult to cash or deposit; and if it falls on a Sunday, or on a Monday holiday, the payment is delivered on the next business day. In extreme cases this means a delay of 3 days in cashing or depositing the payment. In many cases the delay constitutes an inconvenience and hardship to retired members or annuitants and their dependents.

The Department of Defense Military Pay and Allowance Committee is of the view that the language of 37 U.S.C. 1006(h) is sufficient to authorize advance payment to retirees and that as a matter of equity this policy should be extended to survivor annuities paid to dependents since both types of payments come within the jurisdiction of the Secretary concerned as provided in the statute.

The question, however, has been presented to this Office since the legislative history indicates that 37 U.S.C. 1006(h) was probably intended to apply to pay and allowances of active duty personnel.

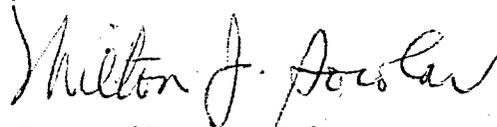
The legislative history of 37 U.S.C. 1006(h) does indeed indicate that at the time the Senate was considering the legislation it seemed to be referring to only pay and allowances of active duty personnel. See S. Rep. No. 685, 89th Cong., 1st Sess. (1965). However, 37 U.S.C. 101(21) includes in the definitions of terms used in title 37, the following:

B-193772

"(21) 'pay' includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances;" (Under-scoring supplied.)

In view of this, we must assume that in using the term "pay" in 37 U.S.C. 1006(h), the Congress was aware that such term included retired pay. Accordingly, it is our view that payments of retired pay may be included within the advance payment authorization of 37 U.S.C. 1006(h). Thus, as to retired pay, the question presented is answered yes.

Survivor annuities paid to dependents of members of the uniformed services are paid under chapter 73, title 10, United States Code. Neither 37 U.S.C. 101(21) nor the similar definition in 10 U.S.C. 101(27) (1976) includes such annuities in the definition of "pay", nor are such annuities defined as "allowances." In addition we are not aware of any other authority for the advance payment of survivor annuity payments to dependents or any other payments not defined in title 37, United States Code. Therefore, as to such payments, the question presented is answered no.



For the Comptroller General
of the United States