

GAO

Second Edition

**MILITARY
PERSONNEL
LAW MANUAL**

Title I—Active Duty
Pay and Allowances

Foreword

This is Title I of the Second Edition of the Military Personnel Law Manual. The Manual is prepared by the Office of General Counsel, U.S. General Accounting Office (GAO). The purpose of the Manual is to present the legal entitlements of members of the uniformed services including an overview of the statutes and regulations which give rise to those entitlements, in the following areas: Title I—Active Duty Pay and Allowances; Title II—Travel; Title III—Retired Pay, Separation Payments, and Death Benefits; and Title IV—Survivor Benefit Plan.

This edition of the Military Personnel Law Manual is being published in loose leaf style with the introduction and four titles separately wrapped. The Manual generally reflects decisions of this Office issued through September 30, 1992. The material in the Manual is, of course, subject to revision by statute or through the decision-making process. Accordingly, this Manual should be considered as a general guide only and should not be cited as an independent source of legal authority. This Manual supersedes the edition of the Military Personnel Law Manual which was published in June 1983 with revised pages issued May 1985, covering decisions through December 31, 1984.

We plan to issue regular supplements to be filed with this edition of the Military Personnel Law Manual. We have included an "Introduction" which follows immediately in two parts. Part I examines GAO's authority to issue decisions and settle claims and includes a discussion of a variety of issues on jurisdictional limitations and policy considerations. Part II explains the availability of additional research materials and facilities of the General Accounting Office. As always, we would welcome any comments that you may have regarding any aspect of the Manual.



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Contents

Foreword		1
Introduction		1
	Part I	1
	Part II	10
Chapter 1— Entitlement to and Adjustments in Pay		1-1
Chapter 2—Nonpay or Reduced Pay Status		2-1
Chapter 3— Forfeitures and Collections of Pay		3-1
	Subchapter I—Forfeitures of Pay and Allowances by Court-Martial Sentence	3-1
	Subchapter II—Debt Collections From Pay	3-7
Chapter 4—Grade or Rank Affecting Pay		4-1
	Subchapter I—Pay is Generally Based on Grade or Rank to Which Member Assigned	4-1
	Subchapter II—Promotions to Higher Grade or Rank	4-5
	Subchapter III—Erroneous Appointments or Promotions	4-12
Chapter 5—Service Credit—Basic Pay Purposes		5-1
Chapter 6—Active Duty Pay for Reserves		6-1

Chapter 7—Waivers	7-1
Chapter 8—Special Pay	8-1
Chapter 9—Allowances	9-1
Index	
Chapter 1—Entitlement to and Adjustments in pay	Index-1
Title I—Active Duty Pay and Allowances	Index-1
Chapter 2—Nonpay or Reduced Pay Status	Index-2
Chapter 3—Forfeitures and Collections of Pay	Index-3
Subchapter I—Forfeitures of Pay and Allowances by Court-Martial Sentence	Index-3
Subchapter II—Debt Collections From Pay	Index-3
Chapter 4—Grade or Rank Affecting Pay	Index-4
Subchapter I—Pay Is Generally Based on Grade or Rank to Which Member Assigned	Index-4
Subchapter II—Promotions to Higher Grade or Rank	Index-4
Subchapter III—Erroneous Appointments or Promotions	Index-4
Chapter 5—Service Credit—Basic Purposes	Index-5
Chapter 6—Active Duty Pay for Reserves	Index-6
Chapter 7—Waivers	Index-7
Chapter 8—Special Pay	Index-8
Chapter 9—Allowances	Index-9

Abbreviations

ADT	active duty training
AF	Air Force
AUS	Army of the United States
AFR	Air Force Regulation
BAS	basic allowance for subsistence

Contents

BAQ	basic allowance for quarters
cf.	compare
C.F.R.	Code of Federal Regulations
ch.	chapter
CIA	Central Intelligence Agency
CMA	Court of Military Appeals
COC	Office of the Comptroller of the Currency
COLA	cost of living allowance
Comp. Gen.	Decisions of the Comptroller General of the United States (published volumes)
CONUS	the continental United States
Ct. Cl.	Court of Claims
DIC	Dependency and Indemnity Compensation
DITY	Do-It-Yourself
DLA	dislocation allowance
DOD	Department of Defense
FDIC	Federal Deposit Insurance Corporation
FSA	family separation allowance
GAO	General Accounting Office
GTR	government transportation request
HHE	household effects
HHG	household goods
HPSF	Health Profession's Scholarship Program
IHA	interim housing allowance
JFTR	Joint Federal Travel Regulations, Vol. 1 (formerly Joint Travel Regulations, Vol. 1)
1 JTR	Joint Travel Regulations, Vol. 1 (now Joint Federal Travel Regulations, Vol. 1)
JROTC	Junior Reserve Officers' Training Corps
LWOP	leave without pay
MADCOP	Marine Corps Associate Degree Completion Program
MH	mobile home
MIA	missing in action
MOS	military occupational specialty
MPM	Military Personnel Manual
MSC	military sea command
MVTA-2	multiple unit training assembly-two
NAAA	Naval Academy Athletic Association
NATO	North Atlantic Treaty Organization
NROTC	Navy Reserve Officers' Training Corps
OCS	Officer Candidate School

Contents

para.	paragraph
paras.	paragraphs
PCS	permanent change of station
PDTATAC	Per Diem Travel and Transportation Allowance Committee
PHS	Public Health Service
POV	privately owned vehicle
Pub. L. No.	Public Law Number
ROTC	Reserve Officers Training Corps
RSFPP	Retired Serviceman's Family Protection Plan
SBP	Survivor Benefit Plan
SRB	selective reenlistment bonus
SROTC	Senior Reserve Officers' Training Corps
Stat.	Statutes at Large
TAD	temporary additional duty
"TAPER" appointment	temporary appointment pending establishment of a register
TDRL	Temporary Disability Retired List
TDY	temporary duty
TLA	temporary lodging allowance
UCMJ	Uniform Code of Military Justice
U.S.C.	United States Code
U.S.C.A.	United States Code Annotated
USMC	United States Marine Corps
USSDP	Uniform Service Savings Deposit Program
VA	Veterans Administration (now Department of Veterans Affairs)
VHA	variable housing allowance
vol.	volume
VIP	variable incentive pay
§	section
§§	sections

Introduction

Part I

GAO Authority to Issue Decisions and Settle Claims

The General Accounting Office's authority in matters of military personnel law exists by virtue of the duties imposed upon our Office by the Congress with respect to expenditures of appropriated funds, which necessarily involve the determination of the legality of such expenditures. This authority is exercised when a question as to the legality of a proposed action is raised by an agency head, or an interested party, or by information coming to our attention in the course of our other operations. The General Accounting Office has consistently been recognized as the final administrative authority to rule on questions of the propriety of expenditures of appropriated funds. Skinner and Eddy Corp. v. McCarl, 275 U.S. 1, 4-5, note 2 (1927).

The GAO was created by the Budget and Accounting Act, 1921, 42 Stat. 23, 31 U.S.C. § 702. Since its creation, GAO, under the direction of the Comptroller General, has performed the functions of settling public accounts and of approving or disapproving payments made by the government:

"Except as provided in this chapter or another law, the Comptroller General shall settle all claims of or against the United States Government." (31 U.S.C. § 3702)

"On settling an account of the Government, the balance certified by the Comptroller General is conclusive on the executive branch of the Government. On the initiative of the Comptroller General or on request of an individual whose accounts are settled or the head of the agency to which the account relates, the Comptroller General may change the account within a year after settlement. The decision of the Comptroller General to change the account is conclusive on the executive branch." (31 U.S.C. § 3526)

Under 31 U.S.C. § 3529, a disbursing official or the head of an agency may apply to the Comptroller General for his decision upon any question involving a payment to be made by them. Also, under that section, certifying officers are granted the same right to obtain a decision on any question of law involved in a payment on any vouchers presented to them for certification. Thus, when disbursing officer or a certifying officer has doubts about the legality of an expenditure which he has been asked to either pay or certify, he should request a decision from the Comptroller General under 31 U.S.C. § 3529. In the matter of responsibilities and liabilities of certifying officers, 55 Comp. Gen. 297 (1975). The request should be accompanied by an original voucher, properly certified and approved.

Where the record shows, however, that the certifying or disbursing officer does have a voucher before him, the question presented may be decided in order to expedite matters. 58 Comp. Gen. 612 (1979). Hypothetical or additional inquiries formulated by the certifying or disbursing officer are normally deferred for future consideration as they do not present questions of law involved in the payment of vouchers in accordance with 31 U.S.C. § 3529. See 61 Comp. Gen. 3 (1981).

Under 31 U.S.C. § 3711 the Comptroller General has authority to collect and compromise claims of the United States when the claim is referred for collection action.

Claims Settlement
Procedures

Part 31, title 4, Code of Federal Regulations, prescribes general procedures applicable to claims against the United States which must be adjudicated in the General Accounting Office. Special procedures applicable to specified types or classes of claims against the United States are contained in the subsequent parts of this regulatory authority.

Statutory Time Limitations
on Claims

31 U.S.C. § 3702(b) provides that all claims against the United States, except as otherwise provided by law, are subject to a 6-year statute of limitations. GAO's claims regulations in 4 C.F.R. Part 31 were amended in 1989, to provide that claims received by the General Accounting Office, or by the department or agency out of whose activities the claim arose, within the 6-year period shall be treated as timely filed for purposes of the Barring Act, 31 U.S.C. § 3702(b).

In Xie Qianhao, 70 Comp. Gen. 612 (1991), we concluded that the Barring Act, 31 U.S.C. § 3702(b), did not bar the payment of military retired pay and survivor benefits, if any, withheld from payment to Ah Doo, a retired Navy member who resided in China until his death in 1965, or to his survivors, during the period when relations between the United States and China were severed. Relations were severed in 1949 and renewed in 1989. Claims to recover moneys held in trust by the government under 31 U.S.C. § 3329 were not barred under 31 U.S.C. § 3702(b).

Five widows' annuity claims were submitted to us in light of Hart v. United States, 910 F.2d 815 (Fed. Cir. 1990), which prohibited use of the continuing claim theory as an exception to the 6-year Claims Court statute of limitations in a situation where all events necessary to establish the claim had occurred more than 6 years previously. We will henceforth

follow Hart in similar situations under our Barring Act, 31 U.S.C. § 3702(b). In light of this change in statutory interpretation, we will not disturb the services' prior establishment of annuities in three of the cases. Two other claims must be denied. Application of the Barring Act to Annuity Claims, 71 Comp. Gen. 398 (1992).

A retired Army member, who subsequently retired in 1981 under the Civil Service Retirement System from a civilian agency and waived his military retired pay to increase his civil service annuity, succeeded in having his civilian records changed in 1989 to reflect government service through July 1984. He then filed a claim for accrued but unpaid military retired pay for the period up to July 1984. He filed this claim with the Army on December 6, 1989, and with this Office on May 18, 1990. Retired pay accrued after December 6, 1983, (6 years from the date the claim was first filed) may be paid to him, but the portion accrued before that date is time barred by 31 U.S.C. § 3702(b). The pendency of legal action on the term of his civilian employment does not waive the 6-year statute of limitations. Captain Elias W. Covington, USA (Retired), B-244827, Sept. 9, 1992.

A Coast Guard member received less than the correct amount of retired pay from his retirement in 1975 until the error was discovered in 1990. He was then paid the additional amount for the 6 years prior to the discovery in 1990. His claim for the amount which accrued before that 6-year period is barred by 31 U.S.C. § 3702(b), which allows GAO to settle only claims which are presented within 6 years of accrual. QMCM Bennie S. Kearley, USCG (Retired), B-246871, June 4, 1992.

Administrative Basis of Claims Adjudications

Under 4 C.F.R. § 31.7, claims are settled on the basis of the facts as established by the government agency concerned and by evidence submitted by the claimant. Settlements are founded on a determination of the legal liability of the United States under the factual situations involved as established by the written record.

- Burden of proof

There is no provision under our personnel claims procedures for our Office to conduct adversary hearings or to interview witnesses. All claims are considered on the basis of the written record only, and the burden of proof is on the claimants to establish the liability of the United States and the claimants' right to payment. The burden is on the claimant to prove

- Statutory construction

A provision of the United States Code authorizes military leave at the rate of 15 days per year for federal employees who are members of Reserve components of the Armed Forces. On October 10, 1980, that provision was amended to change the method of granting annual military leave from a calendar year to a fiscal year basis. The amending legislation provided that it was to "take effect October 1, 1980," that is, on the first day of fiscal year 1981, or 10 days earlier than its date of enactment. The amendment must be given retroactive effect, since amending legislation may not be construed as being only prospective in its operation if it contains express language requiring retrospective application. Laurie M. Brown, B-217565, June 27, 1985.

- Criminal conflict of interest statutes

The Comptroller General has no authority to issue formal opinions concerning the application of criminal conflict of interest statutes. No proper basis exists, however, for generally excluding federal retirees from obtaining government contracts, and a dentist was not barred by conflict of interest considerations from providing services under contract to the Coast Guard simply because he was a retired officer of the Public Health Service. Dr. Edward Kugma, USPHS (Retired), B-215651, Mar. 15, 1985.

- Federal income tax consequences of claims settlement

In our decision B-202201, Dec. 23, 1981, we held that while the General Accounting Office has jurisdiction to decide questions related to the correction of errors in federal personnel payroll records and the waiver under 10 U.S.C. § 2774 of overpayments resulting from the errors, our Office has no jurisdiction to issue revenue rulings, and the income tax consequences of actions taken to correct payroll errors are primarily matters for consideration and determination by the Internal Revenue Service.

- Matters pending before other forums

In our decision 58 Comp. Gen. 282 (1979), we were asked to rule on an issue presented by the Department of Defense which was the subject of litigation in a United States district court. We stated that it is a longstanding rule that this Office will not act on matters which are in the

courts during pendency of litigation, since the eventual outcome of the litigation may fully resolve the first question submitted.

- Claims involving the Federal Tort Claims Act

The Federal Tort Claims Act, 28 U.S.C. § 1346(b) and §§ 2671-2680, determines those instances in which the government is liable for torts committed by government personnel. In essence, the government's potential liability extends to claims for money damages for property damage or loss or personal injury caused by the negligent or wrongful act or omission of any employee or member of the government while acting within the scope of his employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Under these statutory provisions, our Office has no jurisdiction over claims other than GAO employees for damages in a tort action, and therefore, no authority to consider claims under the Federal Tort Claims Act. See, for example, B-201773, Mar. 4, 1981; and B-207342, June 14, 1982.

- Military Personnel and Civilian Employees' Claims Act

See Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. § 3721.

- Res judicata

An employee sought a Comptroller General decision on his entitlement to salary retention. The General Accounting Office adheres to the doctrine of res judicata to the effect that the valid judgment of a court on a matter is a bar to a subsequent action on that same matter before the General Accounting Office. 47 Comp. Gen. 573 (1968). Since in William C. Ragland v. Internal Revenue Service, Appeal No. 55-81 (C.A.F.C. Nov. 1, 1982), it was previously decided that the employee was not entitled to saved pay benefits; the General Accounting Office did not consider his claim for salary retention. William C. Ragland, B-204409, May 23, 1983.

Other Substantive
Jurisdictional Issues

- "De minimis" claims

On July 14, 1976, we issued a letter to the heads of departments and agencies and to disbursing and certifying officers. That letter (B-161457) is as follows:

"Under existing law disbursing officers and certifying officers may apply for and obtain a decision by the Comptroller General of the United States upon any question involving a payment to be made by them or a payment on any voucher presented for certification. 31 u.s.c. 74, id. 82d.

"In order to obtain the protection afforded by the cited statutory provisions numerous questions involving minor amounts are presented for decision by the Comptroller General. The General Accounting Office and the agencies involved incur inordinate administrative costs in processing these requests for decision and the necessity for dealing with them serves to delay attention to questions involving more significant amounts and subjects.

"Therefore, in lieu of requesting a decision by the Comptroller General for items of \$25 (now \$100) or less, disbursing and certifying officers may hereafter rely upon written advice from an agency official designated by the head of each department or agency. A copy of the document containing such advice should be attached to the voucher and the propriety of any such payment will be considered conclusive on the General Accounting Office in its settlement of the accounts involved."

Payment of Interest on
Claims

It is well settled that the payment of interest by the government on its unpaid accounts or claims may not be made except when interest is stipulated for in legal and proper contracts, or when allowance of interest is specifically directed by statute. See, for example, Fitzgerald v. Staats, 578 F.2d 435 (D.C. Cir. 1978). For a comprehensive discussion of the payment of interest in regard to employee claims, see Principles of Federal Appropriations Law, Second Edition, published by the Office of General Counsel, United States General Accounting Office.

Waiver of Claims of the
United States for
Erroneous Payments

Certain claims of the United States involving erroneous payments may be waived under the provisions of 10 U.S.C. § 2774.

In addition to the waiver authority, under section 952(b) of the Federal Claims Collection Act of 1966, 31 U.S.C. § 3701, the head of an agency is authorized to compromise a claim or to terminate or suspend collection action under certain prescribed conditions. However, where there is a

present or prospective ability to pay on the debt, such as where the individual remains in the service, the overpayment may be collected by salary offset as prescribed by the Debt Collection Act of 1982, Pub. L. No. 97-365, October 25, 1982, 96 Stat. 1749-1758.

Erroneous Advice and Authorization

It is unfortunate when employees or members of the uniformed services receive erroneous advice or are erroneously authorized certain allowances which in fact are not reimbursable. However, it is a well settled rule of law that the government is not estopped from repudiating erroneous advice and authorizations of its officials, and any payments made on the basis of such erroneous advice or authorizations are recoverable by the government. 56 Comp. Gen. 131 (1976) and cases cited therein. Thus, the fact that agency personnel may have been responsible for the erroneous certification of a voucher does not provide a basis to relieve an individual claimant from the obligation to refund the amount overpaid. This follows from the fact the government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations. See 54 Comp. Gen. 747 (1975) and case precedents cited therein.

The above rule cannot be circumvented by invoking principles of contract law. Since federal employees or members of the uniformed services are appointed and serve only in accordance with the applicable statutes and regulations, the ordinary principles of contract law do not apply. See 56 Comp. Gen. 85 (1976) and decisions cited therein. See also B-195654, Nov. 27, 1979, involving a claim for backpay in connection with an appointment action wherein we stated that employee's alternative claim for contractual delay damages is denied since an offer to public employment does not give rise to a contractual relationship in the conventional sense. See also Riva Fralick, et al., 64 Comp. Gen. 472 (1985); and Herman Rosado and Sonia M. Terron, B-216343, Mar. 4, 1985.

Estoppel Against the Government

In 56 Comp. Gen. 85, cited above, we rejected the claimant's arguments that the doctrine of equitable estoppel applied to the circumstances of his travel and transportation claim.

The well-established principle that the government cannot be estopped by the erroneous advice of its employees was affirmed by the Supreme Court in Schweiker v. Hansen, 450 U.S. 785 (1981). In that decision the Supreme Court admonished all courts to observe the conditions defined by Congress for charging the public treasury. See also Dorcas Terrien,

B-218675, Oct. 31, 1985, and Jay L. Haas, B-215154, Nov. 29, 1984. Also see discussion of estoppel in Office of Personnel Management v. Charles Richmond, 496 U.S. 414 (1990).

Part II

GAO Research Materials and Facilities

- GAO Military Personnel Law Manual

GAO's Military Personnel Law Manual provides an overview of all decisions of the Comptroller General in the area of military personnel law.

- GAO research facilities

The Legal Support Services Branch of the Office of the General Counsel at Room 6N34, GAO Headquarters, maintains a digest and citator system for all published and unpublished decisions of the Comptroller General. Copies of the Military Personnel Law Manual are also available for use in that area.

The subject research system provides an index to all Comptroller General decisions. The citator system shows whether a Comptroller General decision has been cited, overruled, or modified by subsequent Comptroller General decisions; it also shows citations in Comptroller General decisions to court cases, the United States Code, the Code of Federal Regulations, the Joint Federal Travel Regulations (JFTR), etc.

- Copies of Comptroller General decisions

To obtain copies of decisions, call (202) 512-6000 or FAX requests to (301) 258-4066. Copies will be mailed or may be picked up at Room 1100, GAO Headquarters, 441 G Street, N.W., Washington, D.C. 20548.

Unpublished decisions are cited by both the B-number and the date, i.e., B-248928, Sept. 30, 1992. Published decisions are cited by volume and page, i.e., 71 Comp. Gen. 530 (1992).

Entitlement to and Adjustments in Pay

Title I—Active Duty Pay and Allowances

A. Entitlement to Military Pay—Statutory Right

Common-law rules governing private contracts have no place in the area of military pay. A soldier's entitlement to pay is dependent upon a statutory right and generally he is entitled to the statutory pay and allowances of his grade and status, however ignoble a soldier he may be. Bell v. United States, 366 U.S. 393, 401-402 (1961). Such pay is not generally dependent upon the duties he performs but upon the status he occupies. Ward v. United States, 158 F.2d 499 (1947), cert. denied, 331 U.S. 844 (1947). Therefore, in determining whether an individual is entitled to the pay and allowances of a member of the Armed Forces, it is first necessary to determine whether he has achieved a military status. 54 Comp. Gen. 291, 294 (1974). See also United States v. Larionoff, 431 U.S. 864, 869 (1977); 56 Comp. Gen. 943 (1977); 60 Comp. Gen. 257 (1981); 61 Comp. Gen. 461 (1982).

B. Active Duty Status

1. Entrance on duty

a. Pay during litigation over military status

An enlisted member of the United States Naval Reserve who, after being ordered to active duty, filed a petition for habeas corpus on grounds that he was not a member and was determined by federal court order to have been lawfully enlisted and in a military status is entitled to pay and allowances during the litigation, regardless of whether he performs military duties. However, settlement of the member's claim for such pay and allowances is subject to a deduction of gross civilian earnings when he performed no meaningful or useful services for the United States government during the period. 55 Comp. Gen. 507 (1975).

b. Illegal recall to active duty

Two retired Navy enlisted men who were recalled to active duty and later permitted to return to their homes, upon a determination by a United States district court that they were illegally recalled to active duty, are to be regarded as having been released "from any and all active duty status" and are not entitled to active duty pay after the court order, notwithstanding the absence of written orders which would cancel or

terminate their active duty status; however, on the day following the court order, the members are entitled to retired pay provided their right thereto has not otherwise been lost. 36 Comp. Gen. 228 (1956).

c. Call to active duty versus placement on the active list

An officer who was reappointed to the active list of the Regular Army from the temporary disability retired list, effective 1 day, and on the same day retired, effective the following day, may not be regarded as having been recalled to active duty since under the appointment no active duty was contemplated. Thus, under paragraph 1-5a(1) of Army Regulations 37-104, which provides that the pay of an officer of the Regular Army commences on the date the officer begins to comply with the orders calling him to active duty regardless of date of appointment, the member has no entitlement to active duty pay and allowances. In that regard, the Armed Forces Leave Act of 1946, which changed for military officers the general rule that compensation attaches to an office and accrues without regard to the performance of duty. 39 Comp. Gen. 787 (1960).

d. Reserve constructively entering on active duty

A discharged member of the Naval Reserve who under orders issued in the belief he was still a member rather than a civilian proceeded from his home to the place he was ordered to report for a physical examination to determine his fitness for active duty, at which place he immediately reenlisted in the service and was transferred to a permanent duty station. The member is entitled to active duty pay and allowances for travel time to the point of reenlistment, including travel allowances and transportation for dependents, the member having constructively entered upon military duty in a *de jure* status on the day he departed from his home to comply with his orders. 45 Comp. Gen. 218 (1965). See also B-168645, Feb. 10, 1970; B-164116, June 20, 1968; and 35 Comp. Gen. 564 (1956).

2. Termination of active duty

See also Chapter 2, B., of this title.

a. Discharge based on intentions of member and service

Section 1168(a) of title 10, United States Code, provides that a member of an armed force may not be discharged until his final pay and certificate of discharge are ready for delivery to him. The statute does not operate to

invalidate an otherwise proper discharge when both the member and the service intend that and act as if a discharge or separation has occurred even though actual delivery of the discharge document is delayed. B-212684, Mar. 13, 1984.

b. Discharge upgrade without restoration to duty

A service member's discharge absolutely terminates his entitlement to military pay and allowances, and subsequent upgrading of the character of the discharge does not change the date of the former member's separation from service, nor does it create any right to military pay for periods after the date of discharge; therefore, a former Marine Corps member given a bad conduct discharge on September 7, 1956, gained no entitlement to active duty pay for periods after that date as a result of action taken later to upgrade the discharge from bad conduct to general (honorable conditions). To be entitled to military pay and allowances for the period following a discharge to the end of the enlistment in which the former member was serving, his service records must reflect not only the upgrading of the discharge, but also a voiding of the original discharge and a determination that he remained on active duty. B-207041, Sept. 8, 1982. See also B-203752, Mar. 2, 1982; B-201944, Mar. 26, 1981; and B-198168, Apr. 16, 1980.

c. Separation—record correction—change in nature of discharge

Discharge of service member terminates his entitlement to military pay and allowances and subsequent change in nature of discharge from dishonorable to general does not affect member's status in regard to his separation and does not create entitlement to pay and allowances after period of discharge. B-198168, Apr. 16, 1980.

d. Record correction after court-martial

The correction of a military record to show a general discharge which does not otherwise change a court-martial sentence under which a dishonorable discharge was issued creates no entitlement in the member to receive pay and allowances forfeited pursuant to the court-martial. B-198168, Apr. 16, 1980.

e. Ineffective discharge

A discharge of an enlisted man, which was to be held in abeyance in the event that further hospitalization was required for a new disability not present when the member went before the Physical Evaluation Board but which, nevertheless, was effected, even though prior to the effective date of the discharge the member was hospitalized for a new disability, is a conditional discharge which does not terminate the member's active status and, therefore, the enlisted member is entitled to active duty pay until subsequent placement on the temporary disability retired list. 39 Comp. Gen. 766 (1960).

f. Invalid discharge

Bad conduct discharge of a former Marine in 1972 was found to be invalid. Valid discharge was executed in 1984. The former member claims backpay from the date of the invalid discharge to the date of the valid discharge. The general rule is that a member is entitled to pay and allowances from the date of the invalid discharge. See Clackum v. United States, 61 Ct. Cl. 34, 36 (1963). Richard M. Baske, B-219060, Feb. 19, 1986.

g. Ordered home to await retirement

A member who is ordered to his home in an awaiting order status pending action on whether he will be placed on the temporary disability retired list is entitled to active duty pay and allowances until official advice that he has been retired. B-183625, Aug. 20, 1975. Compare 42 Comp. Gen. 158 (1962).

h. Active duty performed due to failure to receive retirement orders

While the retirement of a Navy officer placed on the retired list voluntarily for length of service pursuant to section 6 of the Act of February 21, 1946, is effective on the first day of such month as the President may designate, an officer who did not receive notice of such retirement until after the effective date thereof and who currently was paid active duty pay and allowances may be regarded as having been in a de facto status and entitled to retain such pay and allowances or recover any amounts which may have been refunded less any retired pay received. 30 Comp. Gen. 195 (1950). See also 35 Comp. Gen. 225 (1955) and 49 Comp. Gen. 429 (1970).

i. National Guard member; implied consent to remain on active duty

A member of National Guard who was court-martialed for offenses committed after terminal date of his active duty for training is entitled to pay and allowances for period subsequent to such terminal date, including period of confinement, except as forfeited under court-martial sentence, since consent to remain on active duty (constructive extension) may be implied from totality of circumstances. B-184829, Apr. 15, 1976.

j. After expiration of active duty period; hospitalization

The general rule is that pay and allowances do not accrue to an enlisted man held beyond the expiration date of his enlistment or scheduled tour of duty unless such holding is for the convenience of the government or for the purpose of making good time lost. Therefore, an enlisted reservist who subsequent to the scheduled termination of his active duty tour under 10 U.S.C. § 263 note, was declared mentally incompetent due to an illness that existed prior to the tour of duty and retained as hospital patient until honorably discharged for physical disability without severance pay is not entitled to active duty pay and allowances or leave credit for any period after the termination of his active duty in the absence of a statute providing otherwise. 43 Comp. Gen. 380 (1963).

k. After expiration of enlistment

(1) Hospitalization for disability—An Army enlisted man who, incident to an injury reported to be due to his own misconduct, is hospitalized for a period subsequent to the expiration of his term of enlistment is nevertheless entitled to pay and allowances for the period. An administrative determination was made under 10 U.S.C. § 1216 that the physical condition of the member, which resulted from corrective surgery at an Army hospital at the time of the injury, was a disability incurred or aggravated during active service, not the result of misconduct and incurred in line of duty. Also the member having executed the medical and hospitalization care affidavit required by 10 U.S.C. § 3262, and having been recommended for physical disability retirement, may be regarded as being retained in the service for medical treatment and hospitalization within the meaning of section 3262 so as to entitle him to pay and allowances for the period of hospitalization following the expiration of his enlistment. 47 Comp. Gen. 351 (1967). See also 40 Comp. Gen. 664 (1961) and 54 Comp. Gen. 33 (1974).

(2) Court-martial review pending—Army enlisted member sentenced by court-martial to confinement for life and forfeiture of all pay and allowances, was retained in confinement after expiration of his enlistment pending review of his sentence. On appeal his sentence was reversed and rehearing held, which resulted in his conviction for lesser offense involved in earlier conviction. Reversal did not entitle him to “restoration” of pay and allowances under 10 U.S.C. § 875(a) for period subsequent to expiration of his enlistment since his lack of entitlement to pay during that period was due to expiration of his enlistment, not execution of court-martial sentence. B-192082, Dec. 21, 1978. See also Kenneth A. Glover, B-246495, July 29, 1992.

(3) While in parole status—A service member whose enlistment expired while in confinement pending appellate review of his court-martial sentence is not entitled to pay and allowances for period of confinement subsequent to expiration of his enlistment unless the conviction is completely overturned or set aside. Where it is so overturned or set aside and a portion of confinement time is served in a parole status, since the military exercises constraints on parolee’s action, even though to a lesser degree than actual confinement, such constraints are just as real. Therefore, the individual is entitled to pay and allowances for his parole period. Compare Cowden v. United States, 220 Ct. Cl. 490 (1979). 59 Comp. Gen. 12 (1979).

l. Parole status—civilian earnings

The rules governing parole of a service member confined by military authorities as a result of a court-martial sentence require as prerequisite to that parole that the parolee will have gainful employment. Therefore, in the absence of a statute so authorizing, it would be improper to set off civilian earnings against military pay due for a parole period which becomes a period of entitlement to pay and allowances, unless the earnings are from federal civilian employment which is considered incompatible with military service. 59 Comp. Gen. 12 (1979).

m. Members retained after eligible for retirement

The authority vested in the Secretaries of the military departments to retain members of the uniformed services on active duty or in one of certain reserve components under 10 U.S.C. § 676 after the members have qualified for retired pay under Title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948, 10 U.S.C. § 1331 et seq., was intended to have limited application to permit the Secretaries to

order a member retained in the service because of some special qualification, ability, or situation. However, in those cases where members have been retained after qualification and there is a doubt as to whether retention was effected by a specific order or instruction, no question will be raised. 38 Comp. Gen. 648 (1959).

n. Change in type but not date of discharge

Claim for active duty pay from date of discharge under other than honorable conditions, the date claimant would otherwise have retired, and for retirement pay thereafter based on court ordered change in characterization of discharge to general is denied since court of appeals decision did not render discharge "null and void" but merely directed a change in the character of the discharge not a change in its date. Without change in the date of discharge, no additional rights to active duty pay accrued. B-181904, Dec. 24, 1974.

o. Extension of active duty—medical expenses incurred

A former Army member's military records were corrected to extend his term of active duty. In the interim between his earlier discharge and later discharge he was injured in an accident caused by another party. His claim for reimbursement of his medical expenses due to the accident is denied since he received an insurance settlement which was intended in part to pay his medical expenses. Kerry J. Dodge, B-245956, Apr. 3, 1992.

C. Restored to Active Duty

1. Pay and allowances

When an Army member is found to have been erroneously separated from active duty and is retroactively restored to active duty status under the provision of law authorizing the correction of military records, 10 U.S.C. § 1552, he may properly claim the military "pay, allowances, compensation, emoluments or other pecuniary benefits," which he lost during the interim period. Payment may not be made on any additional claim he may bring for compensatory damages which may have resulted from his erroneous separation from active military service. In addition, his interim civilian earnings must be deducted from that award of military readjustment pay and allowances in the settlement of his military pay accounts incident to the records correction proceedings. B-224946, Sept. 25, 1987.

2. Severance payments

When an Army member is involuntarily separated from but later retroactively restored to active duty under the statute authorizing the correction of military records the monetary claims settlement to be concluded under that statute depends upon the member's legal entitlements and liabilities based solely upon proper application of the pertinent laws and regulations to the corrected record. Thus, in the claims settlement the member is entitled to military backpay but is liable to refund any severance payments previously received under the corrected record showing he was not separated from active duty. B-195558, Jan. 6, 1981.

3. Interim civilian earnings

Army members separated from but later retroactively restored to active duty by administrative record correction action thereby become entitled to retroactive payment of military pay and allowances. While interim civilian earnings may properly be set off against amounts due such members, such civilian earnings are deductible only from net balance due members after setoff of their debts to the government and are not recoupable in excess of the net balance. 56 Comp. Gen. 587 (1977), 57 Comp. Gen. 554 (1978).

4. Date for claim settlement purposes

When service members are restored to active duty by the Army Board for Correction of Military Records, backpay claim settlements are by statute to cover all periods of constructive active duty arising "as a result" of the correction. The period of constructive active duty from the date of the Board's determination to the date of actual restoration to duty arises directly from the correction action and, as such, should be included with other periods of constructive active duty covered by the claim settlement, with appropriate deduction of all interim civilian earnings. Hence, claim settlements are to be predicated on the date of actual restoration to duty rather than the earlier date of the Board's determination. B-213883, May 30, 1984.

5. Reserve pay

Army members separated from extended active duty, who thereafter earn military pay and allowances as members of Reserve components, but whose records are corrected to reflect continued active duty with no

break in service, are liable to repay such interim Reserve pay and allowances. 56 Comp. Gen. 587 (1977).

6. Interim military pay and medical care

When an Army member is found to have been erroneously separated from active duty and is retroactively restored to active duty status under the provision of law authorizing the correction of military records, he thereby becomes entitled to retroactive payment of his interim military active duty pay and allowances, and also to reimbursement of his ascertainable interim medical expenses covering the period when he was deprived of free military medical care. 10 U.S.C. § 1552(c) (1976). B-195558, Dec. 14, 1979. See also, B-195129, Apr. 28, 1980.

7. Value of commissaries, recreational facilities, etc.

An Army member involuntarily separated from but later retroactively restored to active duty by administrative record correction action, may not be reimbursed on account of his being deprived on the use of military commissaries, exchanges, and entertainment facilities during the interim period, since the value of the privilege of using those facilities cannot be definitely ascertained and reduced to a sum certain. 10 U.S.C. § 1552(c) (1976). B-195558, Dec. 14, 1979.

8. Job hunting expenses

An Army member's claims for indemnification for job hunting expenses and compensation for hardships experienced in civilian employment following his erroneous separation from active military service, are claims sounding in tort premised on the wrongful acts of government agents in causing his severance from military service in contravention of a statute or regulation. Such claims are not payable under 10 U.S.C. § 1552(c) incident to a correction of the member's military record retroactively restoring him to active duty. B-195558, Dec. 14, 1979.

9. Taxes on interim earnings

An Army member involuntarily separated from but later retroactively restored to active duty through the correction of his military records under 10 U.S.C. § 1552, does not under that or other provisions of federal law thereby become entitled to compensation from federal funds for state income taxes he paid on his interim civilian earnings. The state tax

consequences of a military records correction action under 10 U.S.C. § 1552 are matters for consideration by the concerned state authorities. B-195558, Dec. 14, 1979.

The federal and state tax consequences of military records correction proceedings concluded under 10 U.S.C. § 1552 are matters primarily for consideration by the concerned revenue authorities; hence, if a retired Army member's records are corrected nullifying his retirement and retroactively restoring him to active duty status, his application for a tax refund believed due for Social Security (FICA) taxes debited against the active duty military backpay credited to him in the settlement of his military pay accounts would be a matter for submission to the United States Internal Revenue Service. B-195129, Apr. 28, 1980.

10. Deduction of interim civilian earnings

If an Army member is involuntarily separated from but later retroactively restored to active duty through the correction of his military records under the authority of 10 U.S.C. § 1552, his interim earnings from civilian employment do not thereby become a debt that the member owes to the government. However, under applicable regulations the gross amount of those interim civilian earnings must be deducted from the retroactive military pay and allowances due to him, as mitigation of the government's monetary obligations in such circumstances. B-195558, Dec. 14, 1979. See also, B-195129, Apr. 28, 1980. And compare B-207299, Oct. 6, 1982.

11. Uniform allowances

If an Army officer is separated from active service but is later retroactively restored to active duty under the statute authorizing the correction of military records (10 U.S.C. § 1552), he thereby becomes entitled to credit for active duty military backpay covering the period of his nullified separation from service. However, he is not entitled to credit for uniform allowances authorized for officers newly entering on active duty in connection with his actual return to Army service after his records are corrected to show that he had never been separated from active duty. B-195129, Apr. 28, 1980.

12. Collection of VA payments

When an Army member is separated from but later retroactively restored to active duty status through administrative military records correction proceedings, and this causes the Veterans Administration (VA) to

recompute the VA educational assistance benefits he received following the interim period at reduced "in service" rates, the member's resulting indebtedness to the VA may properly be collected by setoff of the debt against any military backpay due to him. Any disagreement the member might have concerning the validity or amount of the debt would be a matter for consideration by VA authorities. B-195129, Apr. 28, 1980.

13. Interest on backpay

Provisions of statutory law contained in 10 U.S.C. § 1552 governing military records correction proceedings contain no authority for the payment of interest on backpay awards. Hence, interest does not accrue on military backpay due to a service member on account of a correction of his records under 10 U.S.C. § 1552, since interest on unpaid accounts may not be assessed against the United States in the absence of express statutory authority. B-195129, Apr. 28, 1980.

14. Interim erroneous payment

If an erroneous overpayment of military pay and allowances is made to an Army member at the time of his separation from active duty, and that separation from service is later nullified through the correction of his records under the authority of 10 U.S.C. § 1552, the erroneous overpayment should be included as a debit to be set off against credits for military backpay due the member in the monetary settlement concluded under 10 U.S.C. § 1552, and it should not be collected through deductions from the member's current pay and allowances. B-195129, Apr. 28, 1980.

15. District court recovery limitation \$10,000

Air Force member who successfully sues in federal district court for reinstatement to active duty and damages may not recover on an administrative claim for backpay in excess of \$10,000 jurisdictional limitation of district court under 28 U.S.C. § 1346(a)(2). Since claim filed concerns the same parties and issues, including amount of damages, as decided by district court, doctrine of res judicata precludes consideration of this claim. 59 Comp. Gen. 624 (1980).

D. Cadets or Midshipman
Disenrolled From Service
Academies

1. Cadet or midshipman who resumes his enlisted status

A cadet or midshipman pursuant to 10 U.S.C. § 516(b) "resumes his enlisted status" when separated for any reason other than appointment as a commissioned officer or for disability, and he is required to complete the period of service for which he enlisted or for which he is obligated, unless sooner discharged. Therefore, a disenrolled service academy cadet or midshipman who returns home to await reassignment to active duty as an enlisted man is entitled to active duty pay and allowances from the date his separation is approved and his reassignment orders are issued to the date he receives notification of the action. Although the member while at home awaiting orders will not be subsisted at government expense, he is entitled pursuant to 37 U.S.C. § 402(d) to a basic allowance for subsistence. 49 Comp. Gen. 407 (1969).

2. Cadet or midshipman awaiting transfer to reserves

A disenrolled service academy cadet or midshipman who while awaiting transfer by the Secretary concerned under 10 U.S.C. §§ 4348(b), 6959(d), and 9348(b), to a Reserve component returns home, is not entitled to pay and allowances until he is required to comply with new active duty orders. The transfer had the effect of discharging the cadet or midshipman from his enlisted contract and, therefore, the member is not in an active duty status for pay and allowances purposes until he complies with his new orders. His rights to pay and allowance would commence on the day he departed from home by the means of transportation authorized, and should the member's orders reach him while visiting in the vicinity of the base, pay and allowances would commence on the ordered reporting date. 49 Comp. Gen. 407 (1969).

E. Members in a Missing,
Interned, Etc., Status

1. General rule

When a member of the uniformed services enters a missing or other status covered by the Missing Persons Act, as amended, 50 U.S.C. App. §§ 1001-1015, permanent items of pay and allowances, except temporary allowances, may continue to be credited to his account provided no change occurs in conditions of entitlement. Section 2 of the act authorizes the same basic, special and incentive pay, basic allowances for subsistence and quarters, and station per diem allowances, not to exceed 90 days, for a period of absence that a member was entitled to at the beginning of his

absence. 44 Comp. Gen. 657 (1965). See 37 U.S.C. §§ 551-559 for current provisions.

2. Change of allotment designation

A member of the Air Force designated his father, who was not dependent upon him for support, to receive an allotment of all his pay and allowances in case he became missing. After the member became missing the Secretary of the Air Force had authority under the Missing Persons provisions to change the allotment when he determined it was in the interest of the member to put pay and allowances into the Uniformed Services Savings Deposit Program rather than pay them over to the father. B-196808, July 17, 1980.

3. Members killed in action

The father of a member in a missing status is not entitled to the accrued pay and allowances, including amounts deposited in the Uniformed Services Savings Deposit Program (USSDP), when the member is determined to have been killed in action, even though he was designated to receive an allotment of 100 percent of the member's pay and allowances if he went in a missing status, since the Secretary concerned has the authority under 37 U.S.C. §§ 551-558 to discontinue such an allotment. The amounts accruing to member's account, including deposits in the USSDP are then distributed in accordance with 10 U.S.C. § 2771, in this case to the designated beneficiaries, his sisters. B-196808, July 17, 1980.

See also Chapter 8, Subchapter II, A.3 of this title.

F. Induction or Enlistment

1. Erroneous induction; voidable status

The reclassification and immediate induction of an individual because he failed to keep his draft board informed and, therefore, he was declared delinquent, does not make the induction void but merely voidable. Therefore, upon discharge from the Marine Corps, under honorable conditions by reason of erroneous induction, a member who was absent without authority in a nonpay status for in excess of 1 year, is considered a de jure member of the Corps until his discharge for pay purposes. He is entitled to the full pay and allowances credited to his account and remaining unpaid subject, of course, to 37 U.S.C. § 503(a). 52 Comp. Gen. 542 (1973).

Where an individual has been held by a military court to be outside the jurisdiction of the Uniform Code of Military Justice, and the validity of the individual's enlistment has not been administratively determined to be invalid, the individual's military pay and allowances may be continued until the administrative determination is made. 57 Comp. Gen. 132 (1977).

Decision by a military court that it does not have personal jurisdiction over an individual for purposes of military law because the government has failed to prove that the individual was validly enlisted does not automatically void the enlistment for purposes of determining the person's entitlement to pay and allowances. 57 Comp. Gen. 132 (1977).

2. De jure enlisted status

a. Constructive enlistment

Constructive enlistment may arise for purposes of pay and allowances generally when individuals "otherwise qualified" to enlist enter upon and voluntarily render service to the Armed Forces and the government accepts such services without reservation. A member serving under a constructive enlistment is regarded as being in a de jure enlisted status and entitled to pay and allowances. 57 Comp. Gen. 132 (1977).

b. Waiver of defect in enlistment

When an enlistment contract is found to be voidable by either the government or the individual because of a defect in the enlistment, either the government or the individual may waive the defect and affirm the enlistment so as to confer upon the individual de jure member status for pay and allowances. 57 Comp. Gen. 132 (1977).

3. Medically unfit person inducted

A member of the uniformed services who, after having performed active duty, is found to have been medically unfit at the time of entry into the service is not deprived of the right to military pay and allowances or of the status of being entitled to basic pay because of the administrative failure to discover his physical condition, absent an affirmative statutory prohibition against the induction of persons on the basis of physical or mental disqualification. 50 U.S.C. App. § 454(a) provides that no person shall be inducted into the armed services until his acceptability has been satisfactorily determined, and section 456(h) prescribes that a physical or

mental condition constitutes a basis for deferment from induction rather than an absolute disqualification. 48 Comp. Gen. 377 (1968). See also 49 Comp. Gen. 77 (1969) and 54 Comp. Gen. 291 (1974).

4. Persons judicially declared insane inducted or enlisted

Although there is no prohibition against the induction of insane persons into the military service similar to the prohibition against enlistment of insane persons (10 U.S.C. §§ 3253, 5532), inductees should be treated in the same manner as enlistees who do not acquire any right to pay and allowances when an existing judicial adjudication of mental incompetence is not discovered until after enlistment. Therefore, persons enlisted or inducted who, after having performed active duty for some time, are discovered to have been declared mentally incompetent by a court prior to entrance into the military service are not entitled to pay and allowances through the date determination of mental competency is made or until release from military control or to any unpaid pay and allowances for such periods. However, such persons who, after having received active duty pay and allowances, are discovered to have been declared mentally incompetent by a court prior to entrance into the military service are entitled to retain the pay and allowances received under the rule that a person who can establish that he received pay and allowances in a de facto status may retain the pay and allowances received if the payments are otherwise proper. 39 Comp. Gen. 742 (1960). See also 54 Comp. Gen. 291 (1974).

5. Mentally incompetent persons (not judicially declared) inducted or enlisted

Persons who after induction or enlistment in the uniformed services, are found by qualified medical doctors to have been mentally incompetent on the date of enlistment or induction may not be regarded as insane persons, the same as persons who have been judicially determined by a court to be insane prior to enlistment or induction. Therefore, such persons are regarded as members of the uniformed services until the date of release from military control and are entitled to pay and allowances, paid and unpaid, and to travel and transportation allowances authorized for members who are discharged on account of a mental condition. Also, such members are liable for debts due the United States at the time of release. 39 Comp. Gen. 742 (1960). See also 54 Comp. Gen. 291 (1974).

6. Underage enlistments

a. General

The enlistments of individuals enlisted below the minimum statutory age, who are still below that age when that fact is discovered, are void and upon a definite determination of such facts the individual's pay and allowances are to be stopped and he should be released from military control. However, if that fact is not discovered until after the individual has reached the minimum age, he enters a voidable status and his enlistment may be avoided at the option of the government. 54 Comp. Gen. 291 (1974). See also 39 Comp. Gen. 860 (1960).

b. Discharged upon application of parent

Under 10 U.S.C. § 1170, a member enlisted between the ages 17 and 18 years and who is discharged upon application of parent or guardian made within 90 days of enlistment, is entitled to pay and allowances through the date of discharge. 54 Comp. Gen. 291 (1974). See also 39 Comp. Gen. 860, 867 (1960).

7. Fraudulent enlistments

a. General

Members who fraudulently enlist (voidable enlistments) are entitled to receive pay and allowances until the fact of the fraud is definitely determined, at which time either the fraud should be waived and the member continued in the service with pay and allowances, or the enlistment should be avoided by the government and the member released from military control with no entitlement to pay and allowances beyond the date of determination of the fraud. The date of determination of the fraud and the date of the decision to either waive the fraud or avoid the enlistment and release the individual from military control should be contemporaneous or as close to contemporaneous as possible so as to avoid retaining control over an individual whose status as a military member is void. Regulations may be changed in line with 47 Comp. Gen. 671 to place the authority to waive fraud in enlistment on the same level as the authority to determine the fact of a fraudulent enlistment. 54 Comp. Gen. 291 (1974). See also 55 Comp. Gen. 1421 (1976) and 47 Comp. Gen. 671 (1968).

An individual who enlisted in the service using his brother's name after having been discharged under conditions other than honorable under his

own name was retired for disability. Since he was serving under a void enlistment he never attained military status and therefore is not entitled to receive retired pay for disability unless the fraud is waived. Manuel Cravalho, B-214983, Jan. 14, 1985.

b. Fraudulently concealed prior dishonorable discharge

An enlisted member of the Army who fraudulently concealed a prior dishonorable discharge upon enlistment, and who was given a dishonorable discharge after discovery of the fraud, is not entitled to pay and allowances for any period served under the fraudulent enlistment even though he may have been temporarily restored to duty for several days prior to the date of the dishonorable discharge. 30 Comp. Gen. 528 (1951).

c. Fraudulently concealed criminal record

An enlisted member of the Army who on entry into the service fraudulently concealed a criminal record which disqualified him for enlistment, and who was discharged under other than honorable conditions upon discovery of the fraud, is not entitled to pay and allowances for the period served under the fraudulent enlistment, even though the discharge was changed to a discharge under honorable conditions. 30 Comp. Gen. 18 (1950).

G. Termination of Officer's
Commission for Holding
Civil Office

1. Regular military and civil office are incompatible

Whether a position is a civil office within the meaning of 10 U.S.C. § 973(b) is not determined by the importance of the duties alone or whether the duties can be performed by a military officer without interfering with his military duties, since the statute makes the two offices (Regular military and civil) incompatible as a matter of law. B-172783.149, Oct. 9, 1975. See also 44 Comp. Gen. 830 (1965), 29 Comp. Gen. 363 (1950), 25 Comp. Gen. 377 (1945), and 20 Comp. Gen. 885 (1941).

2. Civil office defined

Since later statutory amendments may have affected the cases in this section, we suggest the current statutes, particularly the citation 10 U.S.C. § 973(b), be examined by reader to determine whether a decision requested is necessary to clarify the matter.

a. Special policeman at Library of Congress

An officer of the Regular Army who while in an excess leave program attending law school accepts a temporary appointment as a special policeman in the Library of Congress under 2 U.S.C. § 167 is regarded as having a position which is created by statute with prescribed duties and which requires some exercise of sovereign powers so that such a position is considered as a "civil office" within the civil office prohibition under 10 U.S.C. § 3544(b), (repealed—see 10 U.S.C. § 973) regardless of the temporary nature of the appointment. Therefore, the officer not only forfeits his Regular Army commission but he also loses his entitlement to pay and allowances upon recall to active duty on termination of the school term. 44 Comp. Gen. 830 (1965).

b. State notary public

The office of notary public in the state of Colorado is a civil office within the meaning of 10 U.S.C. § 973(b) in that it is created by law and has certain duties imposed by law which involve some exercise of sovereign power. An Air Force officer stationed in Ohio went to Colorado on leave, accepted Colorado notary public appointment admittedly for purpose of terminating his military commission under 10 U.S.C. § 973(b), and returned to Ohio. In view of certain Colorado constitutional and statutory provisions and a federal district court decision in similar case, the Comptroller General will not object to continuing officer's military pay and allowances since substantial doubt exists as to his notary public status. B-173783.149, Oct. 9, 1975. See also B-173783.191, Mar. 1, 1976; and B-127798, June 8, 1956.

c. Commissioner of Roads for Alaska

A Regular officer who accepts appointment as Commissioner of Roads for Alaska, a position established administratively and not by statute, which does not require an oath of office or have compensation or title fixed by law does not vacate his commission or hold a "civil office" within the meaning of section 1222, Revised Statutes, and may continue to draw his active duty pay and allowances while so assigned. 29 Comp. Gen. 363 (1950).

d. Member of Alaskan engineering commission

Under the provisions of section 1222, Revised Statutes, an Army officer who accepts a regular appointment from the President as a member of the Alaskan Engineering Commission thereby vacates his Army commission

and is not entitled to pay as an Army officer while serving as a member of that commission. 1 Comp. Gen. 499 (1922).

e. Public Health Service officer appointed to interstate commission

The Act of April 9, 1930, assimilating Public Health Service officers with Army Medical Corps officers, did not subject the former to rules of military discipline and status, so that, unless detailed to the Army, a Public Health Service officer is not precluded by the prohibition in section 1222, Revised Statutes, against an Army officer accepting a civilian office, from accepting, and taking the oath of office under an appointment by the President without compensation as a member of the Interstate Commission on the Potomac River Basin. 11 Comp. Gen. 356 (1932), distinguished. 20 Comp. Gen. 885 (1941).

f. Assistant to the President

The position of Assistant to the President created by 3 U.S.C. § 106 meets the criteria for a civil office within the meaning of 10 U.S.C. § 973(b). The exercise of the functions and duties of such an office by a Regular Army officer on active duty would terminate his military appointment. B-150136, Feb. 7, 1974. See also B-150136, July 2, 1974.

g. Assistant Secretary and Deputy Assistant Secretary of Defense positions

The Deputy Assistant Secretary of Defense positions which are created administratively and not by statute are not civil offices within the meaning of 10 U.S.C. § 973(b) and, therefore, Regular military officers serving in such positions would not be in violation of that statute. However, the Assistant Secretary of Defense positions are civil offices and if a Regular military officer on active duty were to exercise the functions of such an office, he would be in violation of 10 U.S.C. § 973(b). See B-146890, Mar. 13, 1975, and June 6, 1975.

h. Civil office while on terminal leave

Should a commissioned officer of the Regular Air Force on terminal leave pending retirement accept a civil office under a state government or perform the duties of the office during such leave, the sanctions of 10 U.S.C. § 973(b), which provides for termination of his military appointment, would apply to him. Since the civil office is under a state government, the provisions of 5 U.S.C. § 5534a which authorizes dual employment during terminal leave in other circumstances, would not exempt the member from those sanctions. 56 Comp. Gen. 855 (1977).

H. Additional
Pay—Limitations

1. Acceptance of payments from government

a. Medical officers receiving medicare fees

The acceptance by Navy medical officers under a fee-splitting arrangement with civilian physicians of a portion of the fees paid from "Medicare" funds under the Dependents' Medical Care Act of 1956, 10 U.S.C. §§ 1071-1085, for medical services furnished dependents of Navy and Marine Corps members in civilian hospitals is the acceptance of additional compensation for the same work and duties which the doctor officers were required to perform and for which they received pay as Naval officers. Therefore, the acceptance of the additional compensation violates 5 U.S.C. § 70 (now codified as 5 U.S.C. § 5536), and the fact that the Medicare funds are placed in the checking accounts of the civilian doctors before payment to the Navy medical officers does not change the character as government funds nor cure the illegality of the fee-splitting arrangement. 41 Comp. Gen. 741 (1962). See also B-207109, Nov. 29, 1982.

b. Medical and dental officers receiving Veterans Administration fees

Fee-basis medical services rendered to an eligible veteran for disabilities by a military physician on active duty with the Armed Forces, who is engaged in limited medical practice after hours with the permission of his commanding officer, may not be paid by the Veterans Administration in the absence of statutory authority under the rule that concurrent federal civilian employment and active duty military service are incompatible. 47 Comp. Gen. 505 (1968). See also B-207109, Nov. 29, 1982, to the same effect concerning dental officers.

c. Medical officers receiving fees from Social Security Administration

An active duty Public Health Service Commissioned officer provided medical consulting services for which he was paid on an hourly basis under personal service contracts with the Social Security Administration over a period of 13 years. The officer was not entitled to receive compensation for the services rendered under those contracts since he occupied a status similar to that of a military officer and the performance of services for the government in a civilian capacity was incompatible with his status as a commissioned officer. Thus, he is indebted to the government for the compensation paid to him for services rendered to the Social Security Administration. Public Health Service Officer, 64 Comp. Gen. 395 (1985).

d. Personal expenses incident to training or military duties

(1) Meals and lodgings at headquarters—Service members not in a travel status incurred personal expenses at their permanent duty station for meals and lodgings incident to their military duties during a snowstorm and seek reimbursement. The entitlement of members of the armed services to be so reimbursed for expenses incident to their military service is contained in title 37, United States Code. In the absence of specific authorization, there is no legal basis upon which this Office may authorize reimbursement. B-194499, Oct. 31, 1979.

Expenses of meals and snacks for civilian employees and uniformed service member participants at a Personnel Officers Training Conference sponsored by Coast Guard Headquarters may be paid as a training expense under 5 U.S.C. § 4109 for civilian employees and 14 U.S.C. § 469 for uniformed members since the meals were incidental to a formal conference that extended outside the meal session; the participants attendance at the meals was necessary to full participation in the business of the conference; and the participants were not free to partake of meals elsewhere without being absent from an essential part of the program. B-244473, Jan. 13, 1992.

e. Expenses to secure commission as a notary

In the absence of legislation an enlisted member of the Air Force who is ordered to secure a commission as a notary public in connection with his military duties is not entitled to be reimbursed for any expenses associated with becoming one since these expenses are personal and are to be paid by the member. B-196533, Apr. 22, 1980. However, 10 U.S.C. § 936

authorizes certain members of Armed Forces to perform duties of a notary.

f. Costs of installing and maintaining telephone in residence

Although official duties of the District Commander of the Seventh Coast Guard District require that he be available 24 hours a day to respond to problems arising from the Cuban Refugee Freedom Flotilla, 31 U.S.C. § 679 (now 31 U.S.C. § 1348) prohibits the District Commander from being reimbursed by the government for the costs associated with installing and maintaining a telephone in his residence. 59 Comp. Gen. 723 (1980). Compare also 60 Comp. Gen. 490 (1981) and 56 Comp. Gen. 767 (1977).

g. Awards for superior accomplishments

Section 503 of title 14, United States Code, does not provide authority similar to 5 U.S.C. § 4503 to pay monetary incentive awards for superior accomplishments to military members of the Coast Guard who were members of a group comprised of military members and civilian employees that was given a group award. Coast Guard, 68 Comp. Gen. 343 (1989).

2. Acceptance of payments from sources other than the government

a. Reserve officers on active duty as interns in private hospitals

Naval Reserve officer on active duty as an intern in a municipal hospital who is paid compensation for the performance of the service required of him as a Reserve officer on active duty, receives the compensation incident to his duties for the benefit of the United States, and therefore, the compensation should be collected from the officer and covered into the Treasury as miscellaneous receipts. 32 Comp. Gen. 454 (1953). See also 30 Comp. Gen. 246 (1950).

b. Honorarium for lecture given by active duty officer

A check which was received by an Army officer as an honorarium for a lecture he was designated to give in his capacity as an officer on active duty constitutes earnings, in excess of regular pay and allowances, belongs to the United States as employer. Therefore, the officer is required to endorse the check for deposit into the Treasury. 37 Comp. Gen. 29 (1957).

c. Fees for jury duty

A military member on active duty receiving full pay and allowances served as juror in a state court. He received \$35 in fees for his jury duty. The member may not keep the fees because he was not in a leave status and he is therefore receiving additional compensation for performing his duties presumably during normal working hours. B-207034, Nov. 4, 1982.

I. Active Duty for Part of a Month—Computation of Pay

1. Member obligated to serve 30 days or more but released early—payment basis

A member of a uniformed service, who was obligated to serve on active duty for 30 days or more but who was released from the service before performing such active duty for at least 30 days, is entitled to receive pay and allowances on a day-to-day basis including the 31st day of the month, computed in accordance with the provisions of 37 U.S.C. § 1004 (1970) and not under the provisions of 5 U.S.C. § 5505, since these latter provisions establish the general rule relative to the computation of pay for those individuals who performed such active duty for 30 days or more before being released. 54 Comp. Gen. 952 (1975).

2. Member on active duty for part of a month—payment basis for 31st day of the month

A regular Army officer who during a 6-calendar-month period performed active duty for part of each month, reported for duty on other than the first day of the month and attended a civilian educational institution on excused leave for the other part of the month, is entitled to pay and allowances for the 31st day of a month. This is so because 37 U.S.C. § 1004 prescribes for "a member of a uniformed service" pay and allowances for each day of a continuous period of less than 1 month's service, including the 31st, at 1/30 of the monthly amount of pay and allowances. 46 Comp. Gen. 100 (1966). See also 47 Comp. Gen. 575 (1968).

Nonpay or Reduced Pay Status

A. Civil Arrest or Confinement

1. Member restricted to the state by civilian authorities

Navy member who while on authorized leave was arrested by civilian authorities and then restricted to state of South Dakota while awaiting trial, at which he was convicted, and who apparently performed no duties commensurate with grade or specialty, is not entitled to pay and allowances during period subsequent to authorized leave, as absence was result of own misconduct and was not excused as unavoidable. B-179866, July 31, 1974.

2. Administrative determination as to whether absence is unavoidable is necessary

A Marine Corps enlisted member was charged with a crime by civilian authorities and placed in civil confinement pending trial. At trial he was found not guilty by reason of insanity and transferred to a state mental institution for an indefinite period of time. An administrative determination should be made in each individual case of absence from duty while in civil confinement as to whether it is to be excused as unavoidable as required by the Military Pay and Allowances Entitlements Manual. Payment for the period in question may be made if an administrative determination favorable to the individual is made. B-194949, Nov. 7, 1979.

3. Indicted but released due to mental incompetency

A Marine Corps member while in an authorized absence status was confined and later indicted by civilian authorities, and on the basis of a court finding of mental incompetency was retained in a medical center for federal prisoners until discharge of the indictment and his return to military control, is not entitled to credit in his final military pay record with pay and allowances for the period of absence. This result is because the Commandant of the Corps determined that the absence may not be excused as unavoidable, and that the member's absence in the hands of the civil authorities must be considered "time lost" for pay purposes. 48 Comp. Gen. 792 (1969).

4. Paroled to custody of military authorities

A member of the uniformed services under a sentence of confinement by civil authorities who while paroled to the custody of military authorities performed duties with his unit in accordance with the court's work release

recommendation, satisfactorily serving in a position commensurate with his grade, military specialty, and length of service, is, pursuant to 37 U.S.C. §§ 204(a) and 101(18) (which govern entitlement to basic pay), eligible to receive pay and allowances commensurate with his grade and specialty for each day of full-time duty performed while paroled to the military authorities. 52 Comp. Gen. 317 (1972). Distinguish B-191301, May 17, 1978, in which an Army member—under sentence of civil confinement for 6 months, but only had to serve sentence on weekends—was held not entitled to pay and allowances for weekends while under effective control of civil authorities.

5. Confined or restricted for foreign civil offense

a. Pretrial custody at U.S. installation for foreign authorities

A service member charged with commission of a civil offense on foreign soil is entitled to his pay and allowances for any pretrial custodial period at a U.S. military installation where the decision to incarcerate or to merely restrict the member to duty station and assign him to perform duties on full-time basis remains with installation commanders. However, a service member charged with commission of civil offense on foreign soil is to be considered constructively absent from duty and not entitled to pay and allowances when member is actually incarcerated on the basis of request for incarceration by foreign civilian authorities under the provisions of a treaty or other international agreement. 55 Comp. Gen. 186 (1975). See also 51 Comp. Gen. 380 (1971) and 45 Comp. Gen. 766 (1966).

b. Civil arrest

Where incarceration in U.S. military correctional facility is at request of Japanese authorities, no discretionary authority exists in military installation commander to incarcerate or merely to restrict to installation. The member is deemed to be constructively absent during period of actual incarceration following indictment and, other than to extent that such time is covered by unused accrued leave, no entitlement to pay and allowances accrues. B-169366, Nov. 29, 1977, sustaining 51 Comp. Gen. 380. Cf. 55 Comp. Gen. 186.

6. Absence from duty due to foreign judicial proceedings

A service member charged with commission of a civil offense on foreign soil is not entitled to pay and allowances for period when actually absent

from military installation for purposes of judicial proceedings by foreign civil authorities unless such absence is excused as unavoidable. 55 Comp. Gen. 186 (1975).

B. Confined for Military Offense

See also Chapter 1, B.2 of this title.

1. Member in "full duty" status

"Full duty" for purposes of 10 U.S.C. § 972 is attained when member, not in confinement, is assigned useful and productive duties (as opposed to duties prescribed by regulation for confinement facilities) on a full-time basis which are not inconsistent with his grade, length of service and military occupational specialty (MOS). While placement in the same MOS is not essential, the decision to place a member in that MOS or to assign him available duties consistent with his grade and service is a question of personnel management best left to judgment of appropriate military commander. Full duty status for purposes of 10 U.S.C. § 972, once attained, cannot be lost by virtue of restraint short of confinement; accordingly, assignment to useful and appropriate service either after release from confinement or in lieu of confinement pending trial could constitute full duty status for purposes of the statute. 54 Comp. Gen. 862 (1975). See also 37 Comp. Gen. 228 (1957). Compare B-173065, July 7, 1971.

2. Member returned to military control assigned full-time duties

Navy enlisted member, who voluntarily returned to military control from absence without-leave status, was assigned appropriate full-time duties in lieu of confinement pending trial, convicted by court-martial, confined, and reassigned to further duties after release until date of discharge, is entitled to pay and allowances for both pre- and post-confinement periods of duty, since assignment to full-time duties consistent with member's rank and service is deemed "full duty" for purposes of 10 U.S.C. § 972 and implementing Department of Defense regulations. 54 Comp. Gen. 862 (1975). See also 37 Comp. Gen. 228 (1957).

3. After expiration of enlistment

a. Court-martial review pending

Army enlisted member sentenced by court-martial to confinement for life, and forfeiture of all pay and allowances, was retained in confinement after

expiration of his enlistment pending review of his sentence. On appeal his sentence was reversed and rehearing held, which resulted in his conviction for lesser offense involved in earlier conviction. Reversal did not entitle him to "restoration" of pay and allowances under 10 U.S.C. § 875(a) for period subsequent to expiration of his enlistment since his lack of entitlement to pay during that period was due to expiration of his enlistment, not execution of court-martial sentence. B-192082, Dec. 21, 1978. Compare 59 Comp. Gen. 12 (1979), for rule when conviction completely set aside.

b. While in parole status

A service member whose enlistment expired while in confinement pending appellate review of his court-martial sentence is not entitled to pay and allowances for the period of confinement subsequent to the expiration of his enlistment unless the conviction is completely overturned or set aside. Where it is so overturned or set aside and a portion of confinement time is served in a parole status, the individual is entitled to pay and allowances for his parole period. This is because the military exercises real constraints on a parolee's action, even though to a lesser degree than actual confinement. Compare Cowden v. United States, 220 Ct. Cl. 490 (1979). 59 Comp. Gen. 12 (1979). Modified and amplified in 59 Comp. Gen. 595 (1979). See also 63 Comp. Gen. 25 (1983).

c. Second sentence provides for forfeiture of pay

A former enlisted member of the United States Army whose general court-martial conviction and sentence were set aside on appeal, and whose original sentence included a forfeiture of all pay and allowances that was executed, is not entitled to recover the forfeited pay and allowances when a valid second sentence also includes forfeiture of pay and allowances. The member receives any credit available for the original forfeiture under the second sentence. Kenneth A. Glover, B-246495, July 29, 1992. See discussion in case of Keys v. Cole, 31 M.J. 228 (CMA 1990), and related United States Code provisions.

d. Not restored to duty

Enlisted member who returns to military control after deserting and whose term of enlistment had expired prior to his return to duty is not entitled to pay and allowances until he is officially restored to duty for the

purpose of making good time lost during the period covered by the contract of enlistment. 54 Comp. Gen. 862 (1975).

e. Restored to duty

Enlisted member who deserted, was returned to full duty, tried by court-martial, convicted, and confined but whose court-martial conviction did not include a forfeiture of pay is entitled, in accordance with paragraph 10316b(4) of the Department of Defense Military Pay and Allowances Entitlements Manual, to pay and allowances for the period of confinement. 54 Comp. Gen. 862 (1975). B-192082, Dec. 2, 1975.

4. Pay of absent member begins upon placement under military control

A Marine Corps reservist who upon failing to report on March 1, 1964, for involuntary active duty for training is apprehended and placed under the jurisdiction of military authorities in the area of his home on March 6, and delivered into custody at his duty station on March 14, is entitled to pay from March 6, in accordance with paragraph 044250-1 of the Navy Comptroller Manual which provides that a member absent without authority is entitled to pay from the date he returns to the jurisdiction of the Armed Forces, and the delay in transferring him to his assigned duty station after he was placed under military control is considered to have been for the convenience of the government. 44 Comp. Gen. 80 (1964).

5. On duty while court-martial sentence under appeal

An enlisted man who is sentenced by a court-martial to dishonorable discharge, forfeiture of all pay and allowances and confinement at hard labor for 5 years, and who is retained in the service after the expiration of enlistment and released from confinement and "restored to duty pending completion of appellate review," pursuant to a court-martial order which provided that the portion of the sentence adjudging forfeitures was not applicable to future pay and allowances, is entitled to pay while performing duty after such date, even though, upon appellate review, the sentence of dishonorable discharge is ordered executed. 33 Comp. Gen. 281 (1953). See also 36 Comp. Gen. 564 (1957).

6. Time lost made good

a. Time lost due to court-martial conviction

A Marine Corps enlisted man who, while in confinement imposed by a general court-martial, made application to make good time lost by reason of the conviction, and whose application was approved on the date his enlistment normally would have expired, is entitled, upon restoration to full duty status after completion of the sentence, to pay and allowances from the date of restoration. 34 Comp. Gen. 390 (1955). See also 37 Comp. Gen. 380 (1957).

b. Confinement period during "making-up" lost time period

The enlistment time of an enlisted man who is restored to duty to make up lost time as provided by 10 U.S.C. § 972, having resumed his obligated service contract, extends beyond the normal expiration of his term of service to include the make good days. This fixes a new termination date, even though a period of confinement may have commenced during the extended period. However, the restoration to duty status to make up lost time does not continue indefinitely when a status changes from duty to confinement. Therefore, a member who was placed in pretrial confinement during a make good lost time period extending from the date his enlistment expired to the adjusted expiration date is not entitled to pay and allowances subsequent to the new termination date. 47 Comp. Gen. 487 (1968).

C. Absence Without Leave

1. Administratively excusing absences

a. Absence excused—mental incompetency

For an absence without leave of a mentally incompetent enlisted member of the uniformed services to be excused as unavoidable under section 4(b) of the Armed Forces Leave Act of 1946, (now 37 U.S.C. § 503), as amended, the absence not only must be unavoidable insofar as the enlisted man is concerned but it must be unavoidable insofar as the government is concerned. The test is whether the absence could have been prevented by the member or by the military authorities' exercise of due diligence in attempting to discover, apprehend, and return the member to military control. Therefore, when an unauthorized absence of an incompetent enlisted member could not have been prevented by the member or the military authorities and is excused as unavoidable, the member is entitled

to pay and allowances for the excused leave periods. 40 Comp. Gen. 366 (1960). See also 62 Comp. Gen. 157 (1983).

b. Absence unexcused—civilian psychiatric treatment

Member's claim for pay and allowances for period in which he was in an unauthorized leave status (part of which he was under psychiatric treatment in civilian hospitals) is disallowed since the administrative determination required by 37 U.S.C. § 503(a) (1970) was not made that the absence was excused as unavoidable, a determination which is primarily administrative and based on the actual facts involved. B-187272, Nov. 4, 1976. See also 47 Comp. Gen. 214 (1967) and 55 Comp. Gen. 186 (1975).

Individual who is in "absence without leave" status for more than 30 days, even though it is determined by medical authority that he is medically incompetent, is not entitled to pay and allowances for that absent period unless absence is excused as unavoidable (37 U.S.C. § 503(a)) by officer exercising general courts-martial jurisdiction. B-192444, Oct. 30, 1978. Compare 40 Comp. Gen. 366 (1960) and 55 Comp. Gen. 186 (1975).

2. Change in type of discharge—absence unexcused

Although the undesirable discharge given an enlisted man for reasons including absence without leave was, upon later disclosure of the circumstances, corrected to an honorable discharge for the convenience of the government by a Naval Board of Review, Discharges and Dismissals pursuant to section 301 of the Servicemen's Readjustment Act of 1944, such enlisted man is nevertheless not entitled to receive pay for the period of the unauthorized absence. 29 Comp. Gen. 339 (1950).

3. Criminality versus misconduct

The question of whether sufficient grounds exist for excusing absences of members of the uniformed services as unavoidable under section 4(b) of the Armed Forces Leave Act (now 37 U.S.C. § 503) is primarily for administrative determination based on the individual facts. There may be cases where absences of members are not due to any misconduct on the part of the member but result from events beyond the member's control, such as, if following detention by civil authorities members are released without trial upon agreement to make reparation for the civil offense. In such cases excusing the absence as unavoidable, so forfeiture of pay and allowances would not be necessary, would be justified. The basis for

Forfeitures and Collections of Pay

Subchapter I—Forfeitures of Pay and Allowances by Court-Martial Sentence

A. Execution of Sentence

1. Effective date of forfeiture

A Marine Corps officer's sentence for violating the Uniform Code of Military Justice on November 22, 1972, was approved as to the forfeiture of pay and allowances, but not as to dismissal, and finally executed on December 18, 1972. The officer was detached from duty and ordered to travel to his home of record without entitlement to active duty pay and allowances. He was released on December 31, 1972, and transferred to the Reserves with 45 days' unused leave. The officer is entitled to pay and allowances through December 17, 1972, pursuant to the interpretation of 10 U.S.C. §§ 857 and 871 that the day of the execution of a sentence controls. Also he is entitled to mileage for authorized travel by privately owned automobile as provided by paragraph M4157 (now, U5125) of the Joint Travel Regulations (now JTR), but not to payment for the unused leave as the forfeiture imposed was "all pay and allowances." 52 Comp. Gen. 909 (1973).

2. Accrued pay prior to court-martial sentence

In the absence of court-martial conviction and sentence which includes forfeiture of accrued but unpaid pay and allowances, that which accrues but is unpaid at the time the member enters absent without leave status may be paid following his return to military control. B-192444, Oct. 30, 1978.

3. Sentence set aside by appellate review

A court-martial sentence which was set aside by appellate review prior to the execution of the pay and allowance forfeiture provisions of the sentence may not be considered a valid sentence for forfeiture purposes. Pay and allowances may accrue to the member until approval of the second court-martial sentence which required forfeiture of pay and allowances accruing thereafter. 36 Comp. Gen. 512 (1957).

Where United States Court of Military Appeals orders court-martial finding and sentence set aside and charges dismissed, member is entitled to pay and allowances of grade from which that sentence purported to reduce him. B-190761, Mar. 31, 1978.

4. Two or more forfeitures

The deferment of the execution of the forfeiture of pay provisions of a second court-martial sentence until the expiration of the forfeiture provisions of a previous court-martial sentence may be approved by the convening authority under Article 71(d) of the Uniform Code of Military Justice, 10 U.S.C. § 871(d), in the absence of a statutory requirement that two or more sentences of forfeiture of pay and allowances run concurrently. Although the deferment is not for probationary purposes within the meaning of United States v. May, 10 USCMA 358, 27 C.M.R. 432 (1959), and United States v. Cecil, 10 USCMA 371, 27 C.M.R. 445 (1959), in view of Article 57(a) of the Code, 10 U.S.C. § 857(a), providing for application of a forfeiture of pay or allowances on “or after” the date of approval of a court-martial sentence, the convening authority may direct that the second forfeiture sentence apply when the currently existing sentence has been fully executed. He may not direct the interruption of the previous sentence of forfeiture until the new sentence has been satisfied. 42 Comp. Gen. 279 (1962). See also 36 Comp. Gen. 755 (1957).

5. Restoration to duty awaiting appellate review

The restoration of an enlisted member to duty awaiting appellate review of a court-martial sentence of forfeiture of all pay and allowances makes inoperative the total forfeiture sentence, and the member is entitled to pay and allowances on restoration to duty. 37 Comp. Gen. 591 (1958).

6. Second court-martial sentence—inclusion of forfeiture of pay

A former enlisted member of the United States Army whose general court-martial conviction and sentence were set aside on appeal, and whose original sentence included a forfeiture of all pay and allowances that was executed, is not entitled to recover the forfeited pay and allowances when a valid second sentence also included forfeiture of pay and allowances. The member receives any credit available for the original forfeiture under the second sentence. Kenneth A. Glover, B-246495, July 29, 1992. See discussion in the case of Keys v. Cole, 31 M.J. 228 (CMA 1990), and related United States Code provisions.

B. Computation and Collection of Forfeiture

1. Amount which may be forfeited without punitive discharge

The ruling of the United States Court of Military Appeals in United States v. Jobe, 10 USCMA 276, 27 C.M.R. 350, on March 13, 1959, that imposition of total forfeitures by a general court-martial without a punitive discharge is not expressly forbidden by the Uniform Code of Military Justice has the effect of declaring a sentence of total forfeiture of pay and allowances without a punitive discharge a legal sentence. Thus, the right of a service member to have reserved one-third of the pay and allowances for the period covered by a sentence of a general court-martial to total forfeitures but not including a punitive discharge is too doubtful to warrant payment. The disbursing officers may not effect payment in such cases. 39 Comp. Gen. 46 (1959), modified. 39 Comp. Gen. 637 (1960).

2. Debts incurred after forfeiture is effective

The marriage and establishment of a class Q allotment by an enlisted member of the armed services, after the effective date of a forfeiture of two-thirds of his rate of pay in the pay grade to which reduced under a court-martial sentence, does not affect or increase the pay the member is entitled to as a result of the court-martial sentence. Therefore, a refund of the amount withheld in excess of two-thirds of the basic pay of the member after deduction of the mandatory monthly contribution to the class Q allotment may not be authorized, the member not having been subject to class Q allotment deductions on the effective date of the pay forfeiture. The pay to which he became entitled as a result of the court-martial sentence is not affected by the allotment deductions. 44 Comp. Gen. 633 (1965).

3. Types of debts for recovery

The deductions of amounts due for the reimbursement of government which are required to be made from forfeitures or fines imposed by courts-martial sentences applies as well to an indebtedness due a government instrumentality, and to advances of pay or travel expenses or allowances, but does not apply to an income tax liability, payment of which does not constitute a "reimbursement of Government." 42 Comp. Gen. 486 (1963). See also 39 Comp. Gen. 46 (1959).

4. Forfeiture—loss of entitlement to pay

A forfeiture of pay imposed on a member of the uniformed services under the 1951 Manual for Courts-Martial constitutes a loss of entitlement to pay rather than an indebtedness to the United States, and such forfeitures now take precedence over other items of indebtedness. 36 Comp. Gen. 79 (1956).

5. Government failure to collect forfeiture

The failure of the government to collect a court-martial forfeiture from an enlisted member of the uniformed services during the period of the sentence does not give rise to an administratively ascertained debt which may be canceled or remitted under 10 U.S.C. §§ 4837(d), 6161(d), and 9837(d). While the uncollected forfeiture is considered as an erroneous payment of basic pay, such debt remission authority does not extend to a remission of a punishment adjudged by court-martial. However, where a forfeiture may not be extended beyond the period fixed in the sentence, there is no unexecuted forfeiture which may be remitted so that all that remains due from the member is the amount of the forfeiture that must be transferred for the support of the Soldiers' Home under 24 U.S.C. § 44. 41 Comp. Gen. 269 (1961).

While an uncollected court-martial forfeiture is not an administratively ascertained debt under the military debt remission provisions in 10 U.S.C. §§ 4837(d), 6161(d), 9837(d), the failure to reduce the enlisted member's pay as required by the court-martial sentence results in an erroneous payment. Thus, where the court-martial sentence is not timely remitted under 10 U.S.C. § 874(a), and the member's pay account is not timely reduced, the resulting indebtedness may be involuntarily collected in monthly installments under authority of the Act of July 15, 1954, 5 U.S.C. § 46(d) (now 5 U.S.C. § 5514), governing collection of erroneous payments from enlisted members. 41 Comp. Gen. 269 (1961).

6. Ambiguous sentence—nullity

A court-martial sentence issued on January 22, 1959, which reduced a master sergeant, pay grade E-7 because of the changes in titles and pay grades effected by the Act of May 20, 1958, is at least an ambiguous sentence, and under the rule that an ambiguity in a court-martial sentence should be resolved in favor of the accused, the purported reduction must be regarded as a nullity. 40 Comp. Gen. 79 (1960).

C. Review of Sentences

1. Sentence partially affirmed

Action of a general court-martial review board which did not affirm a Navy enlisted man's bad conduct discharge but did affirm one of the charges of disobedience may not be regarded as an acquittal to entitle the member to pay and allowances after the expiration of his enlistment while he was in a confinement and restricted status. 37 Comp. Gen. 228 (1957).

2. Sentence set aside prior to expiration of enlistment

An enlisted member in the grade of sergeant first-class who was confined pending appellate review of a court-martial sentence which included dishonorable discharge, forfeiture of pay and allowances and confinement to hard labor and who had the action of the convening authority set aside on the basis that it erred in the consideration of the sentence did not have an executed forfeiture of pay. Therefore, from the date of the action of the first convening authority until the date of the normal expiration of enlistment, the member was entitled to accrue pay and allowances in the grade of sergeant first-class in the absence of an approved sentence as used in Executive Order No. 10652 which would effect a reduction in grade. 39 Comp. Gen. 42 (1959). B-190761, Mar. 31, 1978.

3. Sentence set aside after expiration of enlistment

An enlisted member of the uniformed services who was confined beyond the normal date of expiration of enlistment pending review of a court-martial sentence which included dishonorable discharge, forfeiture of all pay and allowances and confinement to hard labor, and who had the action of the first convening authority set aside is not entitled to pay and allowances beyond the normal date of expiration of enlistment until restored to duty. 39 Comp. Gen. 42 (1959). B-192082, Dec. 21, 1978.

4. Sentence approved

An enlisted member of the uniformed services in the grade of sergeant first class whose court-martial sentence, which included dishonorable discharge, forfeiture of all pay and allowances, and confinement to hard labor, was approved by the second convening authority on July 7, 1958, after the member had been restored to duty pending appellate review is entitled to pay and allowances of a sergeant first class until July 6, 1958. Thereafter the reduction in grade to private automatically became effective as prescribed in Executive Order No. 10652 and the member is

entitled only to the pay and allowances of a private or a higher grade, if subsequently promoted, until date of discharge or until the sentence was ordered executed, whichever occurred first. 39 Comp. Gen. 42 (1959).

5. Member dies after expiration of enlistment pending appellate review

An enlisted member of the uniformed services who dies subsequent to the expiration of his enlistment and while a prisoner in confinement pending appellate review of an unexecuted court-martial sentence is regarded as having his enlistment expire by operation of law rather than as the result of the imposition of the court-martial sentence. Thus, the issuance after the member's death of a court-martial order by the Secretary of the Army to restore the rights, benefits, privileges, and property of which the deceased may have been deprived by virtue of the findings of guilty and sentence could not have the effect of placing the member in a pay status after the expiration of the enlistment to permit payment of arrears of pay for the following period of confinement or payment of the death gratuity. 40 Comp. Gen. 202 (1960).

6. Commanding officer's authority to restore grade and pay

Upon restoration 11 months subsequent to reduction from staff sergeant to sergeant under Article 15, Uniform Code of Military Justice, the member of the uniformed services reduced in grade is entitled to the difference in basic pay and allowances between the grades E-5 and E-6 for the period of the reduction, notwithstanding restoration was made by the successor of the commanding officer who imposed the sentence. The reference in paragraph 134, Addendum to the Manual for Courts-Martial to a 4-month period for the exercise of a commander's authority to set aside a punishment imposed under Article 15, prescribes a guideline and not a limitation on the authority to restore all rights, privileges, and property affected by a reduction in grade. 46 Comp. Gen. 880 (1967).

7. Effective date of restoration

An enlisted member of the uniformed services who is reduced in grade for misconduct or inefficiency and then restored to his former grade is entitled to retroactive restoration if the reduction was imposed as a punishment which would entitle the member to redress under Article 15(d) of the Uniform Code of Military Justice, authorizing the setting aside of any punishment, and restoration to all rights affected by the punishment. If the reduction is a "wrong," the member's redress is under

Article 138, which merely requires the superior officer to take measures for redressing the wrong and does not authorize restoration to all rights affected, and therefore the restoration to the higher grade is effective only from the date the restoration action is taken. 36 Comp. Gen. 137 (1956).

Subchapter II—Debt Collections From Pay

A. Debts Owed the United States

1. Statutory authority required to withhold from enlisted member's current pay

In the absence of specific statutory authority for withholding current pay of members of the uniformed services to liquidate general debts due the United States, the only action which may be taken with respect to an indebtedness resulting from loss or damage to government property, under 31 U.S.C. §§ 89, 90 (now 31 U.S.C. § 3531), by a Marine Corps enlisted man, who disputes the debt and declines to make arrangements for debt liquidation, is to note the debt in the member's service record so that setoff may be made from the final pay due on separation from the service. 37 Comp. Gen. 353 (1957). See also 42 Comp. Gen. 619 (1963), 58 Comp. Gen. 501 (1979), and 37 U.S.C. § 1007.

2. Service member receiving early discharge

A service may withhold from pay due a member with the member's consent, amounts expected to become due to the United States because of paid bonuses and advance leave which are expected to become unearned bonuses and excess leave due to the member receiving an early separation from the service. However, such amounts may not be withheld from current pay without the member's consent since no actual debt exists until the member is discharged. Any collection for advance leave which becomes excess leave on discharge must be computed based on pay received by the member at the time the leave was taken and not on pay rates in effect at time of the member's discharge. 60 Comp. Gen. 51 (1980).

3. Court-martial fine

A court-martial fine, like any general indebtedness to the United States, may not be collected by involuntarily withholding the current pay due an

Army officer in the absence of statutory authority for withholding of current pay and compensation—as distinguished from final pay—from military and civilian personnel without their consent. 38 Comp. Gen. 788 (1959).

4. Marine's debt to nonappropriated fund activity

The debt owing a commissioned officer's mess by an enlisted man of the Marine Corps, the situation giving rise to the debt having occasioned his bad conduct discharge upon conviction by special court-martial that he had violated Article 121 of the Uniform Code of Military Justice, may not be offset against the final pay due the member. An indebtedness to a commissioned officer's mess—a nonappropriated fund activity—is not equivalent to an indebtedness due the United States. Thus, there is no basis for withholding the member's final pay as an involuntary setoff against the debt in the absence of a statutory provision authorizing deductions from pay that is similar to the authority in 37 U.S.C. § 1007(c) and (d) granted to the Departments of the Army and Air Force. 43 Comp. Gen. 431 (1963).

5. Civilian when debt incurred—military officer when collected

Under 5 U.S.C. § 82 (now 5 U.S.C. § 5512) which states that “no money” shall be paid to any person for his “compensation” who is in arrears to the United States, the compensation subject to withholding is not limited to remuneration received as an incident to the position held when the arrearages occurred. Therefore, the fact that an individual who becomes indebted while serving as a civilian deputy to a disbursing officer is later called to active military duty as an officer does not affect application of the statute, as restricted by 10 U.S.C. § 2772 (repealed but now covered by 37 U.S.C. § 1007). Whether the stoppage of his military pay is total or partial is dependent on whether the arrearage is admitted by the officer or shown by a judgment of a court, in which case it would be total, or is effected by order of the Secretary concerned, in which case it would be total or partial as indicated in such order. 42 Comp. Gen. 83 (1962). See also 37 Comp. Gen. 344 (1957).

6. Accountable officer's debts

The discretionary authority vested in the Secretaries of the military departments in 10 U.S.C. § 2772 (repealed but now covered by 37 U.S.C. § 1007) to withhold parts of the pay and allowances of military officers for

debts to the United States for which they are accountable applies only where there is no admission of the debt or a judgment of a court. Therefore, in the case of an accountable officer who admits a debt or is subject to a judgment of a court, it is mandatory that the total compensation be withheld until the debt is satisfied. 42 Comp. Gen. 83 (1962). See also 37 Comp. Gen. 344 (1957).

7. Debt for health profession scholarship

Doctor participating in Armed Forces Health Profession Scholarship Program received medical school assistance, including cost of tuition and books, and \$400 in monthly stipends in return for active service obligation on graduation. He applied for and was granted conscientious objector discharge after graduation before fulfilling any of service obligation. Doctor must reimburse the Navy for full amount of financial assistance he received, including monthly stipend. Monthly stipend payments are included in term "other education costs" that he agreed to repay when he was accepted into program, if he did not fulfill his service commitment. B-190935, Jan. 25, 1979.

8. Member bankrupt

The deductions from the pay of an enlisted member of the uniformed services without his consent after he had filed a petition in bankruptcy listing his debt to the government for the excess cost of shipping a house-trailer on his schedule of debts were improper. The pending bankruptcy proceedings, which later terminated in a discharge, provided legal protection for the bankrupt against any action to recover the debt. The amount collected from the member subsequently discharged under other than honorable conditions for failure to pay just debts, should be refunded to him. However, a debt to the government incurred after the filing of the bankruptcy proceedings and not included in the discharge may be collected by setoff against the final account, the bankruptcy proceedings having no bearing on the liquidation of subsequent debts. 45 Comp. Gen. 342 (1965).

9. Setoff of United States debts to bankrupt members

Member of the Navy filed a voluntary petition in bankruptcy in which he listed the government as a creditor. Prior to the date the petition was filed the United States was indebted to the member for accrued leave rations. Before the petition was filed the government deducted the amount owed

for leave rations from an outstanding debt the member owed the government. The filing of the petition did not affect the government's action to set off and that action effectively constituted payment of the amount due the member and reduction of his debt prior to the date the petition in bankruptcy was filed. B-195066, Sept. 22, 1980.

B. Remission

1. Reserve members not on active duty

Remission and cancellation of debts of enlisted members of the Armed Forces specifically authorized under 10 U.S.C. §§ 4837(d) (Army), 6161 (Navy), and 9837(d) (Air Force), may not be extended to cover debts of members of Reserve components not on active duty. B-187078, Mar. 28, 1977.

2. Member retired

A retired Air Force chief master sergeant requests reimbursement for excess transportation costs deducted from his retirement pay. The costs were incurred when he shipped his mobile home from his duty station in Massachusetts, to his home in Michigan. The claim is denied since debts of enlisted members of the Air Force, which occurred during active duty, may not be remitted or canceled by the Secretary of the Air Force under 10 U.S.C. § 9837(d), after the member has retired. B-205218, Mar. 19, 1982.

Grade or Rank Affecting Pay

Subchapter I—Pay Is Generally Based on Grade or Rank to Which Member Assigned

A. General

Claimant's contention that Air Force was unjustly enriched because, for almost 3 years, he assumed duties reserved for officers but received compensation only in enlisted pay grades is rejected, since military members are only entitled to pay and allowances authorized by statute for their grade and years of service, not according to their duties, under 5 U.S.C. §§ 5535(b)(1) and 5536. B-181788, Nov. 11, 1974.

A petty officer's reduction from first class E-6 to second class E-5 for incompetency to perform the duties of the higher grade was based on two special evaluations rather than on the required waiver of the condition precedent to a reduction—"the evaluation of a member for at least two consecutive marking periods." The member is not entitled upon advancement to E-6 to the rate of pay of that grade for the period of reduction in the absence of a correction of records pursuant to 10 U.S.C. § 1552. Reduction orders issued by competent authority are valid even though not issued in strict conformity with administrative regulations and, therefore, under 37 U.S.C. § 204(a) the member is entitled only to pay and allowance of grade E-5 while serving in that grade, unless his record warrants correction. 48 Comp. Gen. 416 (1968).

B. Officer Serving in Certain Positions/Grades

1. Army Chief of Staff

Upon retirement, effective July 1, 1968, an Army Chief of Staff whose appointment to a 4-year term on July 3, 1964 expires July 2, 1968, may be recalled to active duty in his retired grade pursuant to 10 U.S.C. § 3504, assuming confirmation under 10 U.S.C. § 3962, to complete the 4-year term as Chief of Staff, and he may be paid as Chief of Staff for July 1 and 2, 1968. 47 Comp. Gen. 696 (1968).

2. Navy assistant judge advocates

Court of Claims in *Selman v. United States*, 204 Ct. Cl. 675 (1974) held that naval officers ordered to serve in positions of Assistant Judge Advocates General are entitled to at least the pay of a rear admiral (lower half) while serving in such positions whether they were “detailed” or “assigned” to such positions. Our decision at 50 Comp. Gen. 22 which determined that such officers were not entitled to pay of rear admiral (lower half) will no longer be followed. Consequently, the successors to the plaintiffs in *Selman* in the statutorily created positions are also entitled to receive the pay of rear admiral (lower half). 55 Comp. Gen. 58 (1975). But see B-204267, Mar. 19, 1982, affirmed in B-204267, Mar. 1, 1983, concerning the 1981 repeal of extra pay for these officers.

3. Navy Rear Admiral retained on active duty

A naval officer, who at the time that he was placed on the retired list and retained on active duty had served more than 2 years in the grade of rear admiral of the lower half, may not have the 2 years of active duty performed prior to retirement regarded as qualifying service for active duty pay or subsequent retired pay of the upper half under 37 U.S.C. § 202(e) and 10 U.S.C. § 6487, which require that the 2 years of qualifying service be performed after rather than prior to retirement. Therefore, if the officer is retained on active duty for 2 years after placement on the retired list he will be entitled to the pay and allowances and subsequent retired pay for a rear admiral upper half. 44 Comp. Gen. 93 (1964).

4. Coast Guard “extra numbers” Rear Admirals

Coast Guard officers serving on active duty as “extra numbers” in the grade of rear admiral under the authority of 14 U.S.C. §§ 432 and 433 who are specifically excluded, pursuant to 14 U.S.C. § 42(e), in determining the authorized strength of that grade are, nevertheless, entitled to receive the active duty basic pay of a rear admiral of the upper half in the order of their seniority in the grade. Under the unqualified provision of 37 U.S.C. § 202(f), that one-half the number of officers on the active list of rear admirals are entitled to the basic pay of a rear admiral of the upper half, the extra numbers officers are considered rear admirals within the meaning of that section and should be included in determining the number of rear admirals on the active list of the Coast Guard entitled to receive the basic pay of the upper half. 44 Comp. Gen. 317 (1964).

5. Navy officers whose special appointments expire

Naval officers whose appointments or details to offices, which entitle them to a higher rank and pay while so serving, expire or terminate in the month preceding the effective date of voluntary retirement are not entitled by reason of the provision in the Uniform Retirement Date Act of April 23, 1930, 5 U.S.C. § 47a(a), (now 5 U.S.C. § 8301) to a continuation of the higher active duty pay and allowances after the expiration or termination of the office or detail. 38 Comp. Gen. 543 (1959).

6. Surgeon General, Public Health Service

The provision in section 206(a) of the Public Health Service Act (1944) that the Surgeon General of the Public Health Service (PHS) "during the period of his appointment as such, shall be of the same grade, with the same pay and allowances, as the Surgeon General of the Army" does not require the promotion of the PHS Surgeon General to pay grade 0-9 (lieutenant general) on the basis the Army Surgeon General was advanced by Public Law 89-288 (1965) to the grade of lieutenant general and assigned to pay grade 0-9. The assimilation requirement of the 1944 act was impliedly repealed by the assignment of the PHS officer to pay grade 0-8 by section 201(b) of the Career Compensation Act of 1949. The codification of the 1949 act then eliminated the phrase "with the same pay and allowances" from section 206(a) of the 1944 act and the term "grade" no longer relating to "pay grade," there is no basis for promoting the PHS officer to pay grade 0-9. 49 Comp. Gen. 722 (1970). B-169262, Mar. 22, 1978.

7. Army warrant officer accepting appointment as commissioned officer in Air Force

Army warrant officer accepted an appointment as a commissioned officer in the Air Force following his completion of training at the Air Force Officer Training School. Under the revised language of 37 U.S.C. § 907 he is entitled to saved pay as a warrant officer, notwithstanding the fact that he began officer training 6 days after he was released from active duty in the Army and the fact that he was paid as a staff sergeant while attending Officer Training School. B-203401, Mar. 18, 1982.

C. Retired Members
Recalled to Active Duty

1. Naval Reserve temporary Rear Admiral

An officer of the Naval Reserve holding the temporary grade of rear admiral whose name was placed on the United States Naval Reserve

Retired list pursuant to the retirement benefit provisions of Title III of the Act of June 29, 1948, as amended. He would be entitled, under the Act of March 17, 1949, as amended by section 408 of the Armed Forces Reserve Act of 1952, on recall to special active duty for training, to receive the pay and allowance prescribed for a rear admiral of the upper half, provided an officer of the active list of the line of the Regular Navy, junior to him, is in the upper half of the list of rear admirals. 33 Comp. Gen. 406 (1954).

2. Navy captain advanced on retired list to "Honorary" Rear Admiral

Orders which were issued to a Navy captain prior to his retirement and contemporaneous advancement on the retired list to the honorary rank of rear admiral directing a continuation on active duty after placement on the retired list, are construed as continuing the officer on active duty as a captain, and the officer should receive active duty pay as captain until released from active duty. 35 Comp. Gen. 557 (1956).

3. Navy captain advanced to "Honorary" Admiral grade serving on active duty based on orders

A retired Navy captain was advanced on the retired list pursuant to section 12(1) of the Act of June 23, 1938, to the rank of rear admiral and recalled to active duty as a captain. The active duty orders stated that he would "continue to serve on active duty in the rank of rear admiral." Since he served in such rank, he is entitled to active duty pay of a rear admiral only from the date of the subsequent orders. 34 Comp. Gen. 387 (1955).

4. Member holding higher reserve grade recalled in AUS grade

A disability retired officer who was recalled to active duty in the grade currently held in the Army of the United States (colonel) but held the higher Reserve rank of major general, which was recognized in an amendatory order may not be regarded as having been called to or as serving on active duty in the higher grade. Even though the higher grade may be considered in the computation of retired pay, it does not entitle the member to active duty and pay and allowances based on the higher grade. The amendatory orders may not be regarded as a promotion but merely as recognition of the higher grade for retired pay purposes. 38 Comp. Gen. 398 (1958).

Subchapter II—Promotions to Higher Grade or Rank

A. Effective Date of Promotion

1. Appointment made with advice and consent of Senate

An appointment (dated March 31, 1961) of a Coast Guard officer to the permanent rank of rear admiral under 14 U.S.C. § 222 to be effective on a prior date (March 24, 1961) the officer to have such rank from an earlier date (February 1, 1961) on which a vacancy in the grade occurred, is an appointment required by 14 U.S.C. § 221 to be made by and with the advice and consent of the Senate. In the absence of some specific statute the appointment comes under the long-standing rule that presidential appointments made by and with the advice and consent of the Senate do not become effective until a commission has been issued after Senate confirmation. Therefore the officer's promotion may not be considered effective prior thereto. That date may be considered the effective date for pay purposes even though the commission was not received until a later date. 41 Comp. Gen. 43 (1961).

2. Appointment delayed pending investigation

No basis exists for payment of difference in pay between that of pay grade 0-5 and 0-6, when officer's promotion is delayed under 10 U.S.C. § 3363(e) even though President has signed promotion list but hereafter returns it to the Secretary of the Army pursuant to his request prior to submission to Senate for confirmation. The Secretary has authority to delay promotion at any time prior to completion of promotion process if investigation is in progress. In any event President clearly had such authority, and return of list prior to forwarding to the Senate is tantamount to agreement with Secretary. B-187759, Feb. 17, 1978.

3. Reservist promoted by letter while on active duty

A letter of appointment of a Reserve Army officer to a higher grade is an "order" announcing a promotion within the meaning of the Act of October 14, 1942. Therefore an officer ordered to active duty for training as a lieutenant colonel, Army Reserve, who by letter of appointment while on such duty was promoted to a colonel in the Army Reserve effective the date of the letter is entitled to the pay of the higher grade for active duty

training performed on and after the date of said letter, however, a new oath of office is required unless the officer's service has been continuous from the date of taking an earlier oath. 33 Comp. Gen. 612 (1954).

4. Reservist notified of temporary promotion but disabled before acceptance

A Marine Corps Reserve officer who was notified of a temporary appointment after having been examined and found physically qualified for promotion, but who, before acceptance of the appointment, suffered a disability in line of duty, is entitled to the pay and allowances of a lieutenant colonel, retroactive to date of eligibility for promotion pursuant to section 408(a) of the Reserve Officer Personnel Act of 1954. 35 Comp. Gen. 649 (1956). Compare 33 Comp. Gen. 349 (1954).

5. Removal of officer's name from promotion list after approval

Action by Secretary of the Army under 10 U.S.C. § 3363(f) removing member's name from promotion list on basis of investigation revealing that Reserve officer seeking unit vacancy promotion under 10 U.S.C. § 3384, did not intend to serve in unit but contemplated being ordered to active duty, appears to be within authority of Secretary although officer had not yet accepted active duty orders. B-187759, Feb. 17, 1978.

6. Retroactive promotion of Reserve officer

The retroactive promotion of a first lieutenant in the Air Force Reserve under 10 U.S.C. § 8363(f) to the grade of captain for a period that included service in the Air National Guard of the United States by reason of the federal recognition of the Air National Guard of the state of Washington, 10 U.S.C. §§ 101(13), 8351(a), was ineffective to change the status of the officer as a member of the Air National Guard of the United States. He may not be paid the difference in the pay and allowances between the two grades for that period of service and—the officer not having been promoted to the grade of captain in the Washington Air National Guard by the Governor under 10 U.S.C. § 8379 and not having been recognized as a captain in the Air National Guard of the United States—his Air Force Reserve promotion did not affect his right to pay for the training assemblies attended as a member of the state Air National Guard. 42 Comp. Gen. 340 (1963).

7. Orders purporting to retroactively place officer on active duty in higher grade

A first lieutenant of the Air Force Reserve while on extended active duty was promoted as a Reserve officer to the grade of captain under authority of 10 U.S.C. §§ 8360 and 8366. Subsequent orders purported to retroactively change his active duty orders to show his grade as of the effective date of those orders as that of captain instead of first lieutenant. He is only entitled to the pay and allowances of the higher grade prospectively from the date of the amendatory orders, notwithstanding that section 8363(f) provides that a Reserve officer on extended active duty may be promoted to a higher Reserve grade before, on, or after the date of the order. Section 8380(a) continues the pay and allowances of such officer at the lower grade unless he is ordered to serve on active duty in the higher Reserve grade or is temporarily promoted to the higher grade. Although the amendatory orders purporting to change the officer's active duty orders to refer to him as captain are not retroactively effective to create the right to the pay and allowances of the higher grade, they are prospectively effective. 42 Comp. Gen. 445 (1963). See also 43 Comp. Gen. 400 (1963). Compare 46 Comp. Gen. 121 (1966).

8. Navy Dental Corps officer appointment

A dentist who accepted an appointment as lieutenant (junior grade) in the Navy Dental Corps upon graduation from dental school (June 4, 1958) and who was assigned a line officer as running mate who was eligible for promotion to lieutenant 3 days prior to the date of appointment may not have the initial appointment regarded as erroneously made in the junior grade rather than in the grade of lieutenant. Initial appointments of dental graduates are required to be made in the junior grade and under paragraph (f) of section 201 of the Army-Navy Public Health Service Medical Office Procurement Act of 1947, assignments of line running mates are required to be made in the same grade (junior grade). However, since the officer accepted an appointment as lieutenant on July 3, 1958, as a result of the vacancy, the officer's right to pay of that grade from the date the line officer who should have been assigned a running mate was promoted will not be questioned. 41 Comp. Gen. 406 (1961).

9. Temporary promotions of Navy ensigns and Marine second lieutenants

To meet the problems arising by reason of the absence in 10 U.S.C. § 5784, authorizing the temporary promotion of Navy ensigns and Marine Corps

second lieutenants, of language similar to that contained in section 5787 entitling temporarily promoted Navy and Marine Corps officers to the pay and allowances of the higher grade from the date the promotion is made, and providing that upon the termination or expiration of the temporary appointment, the officer shall have the grade he would hold if he had not received a temporary promotion, will require remedial legislation. This should be retroactively effective to the extent, at least, of rectifying any legal deficiency in superseding appointment actions issued under section 5784 to the officers serving under prior promotions effected pursuant to section 5787. 47 Comp. Gen. 587 (1968).

10. Promotion resulting from correction board action

The Correction of Military Records Board on April 11, 1969, directed a change of records pursuant to 10 U.S.C. § 1552, to show that an Air Force captain had not been twice passed over for promotion to the temporary grade of major, and that if selected for promotion by the next regularly scheduled board, the promotion was to be effective from the date the first selection board convened, although at the same time denying his request for promotion. That action does not entitle the officer promoted pursuant to 10 U.S.C. §§ 8442 and 8447(b) on June 27, 1969, effective February 20, 1958, to increased pay prior to June 27, 1969. Until promoted, no date could be established for the commencement of higher pay, and the Correction Board is limited to making changes in an existing record. Its attempt to control the future contingent event of a promotion is not within the purview of 10 U.S.C. § 1552. 50 Comp. Gen. 125 (1970).

Coast Guard member whose service records were changed by Board for Correction of Military Records to show he had retired on July 1, 1971, in grade of warrant officer (W-3) rather than petty officer (E-7), and who accepted amount tendered to him in satisfaction of his claim incident to that change in his records, may not be allowed additional amounts based on his theory that had he actually been a warrant officer in 1971 he would not have retired and would later have been promoted to W-4, since correction board actions are "final and conclusive" and member's acceptance of amounts tendered "fully satisfies" his claim in the matter. 10 U.S.C. § 1552 (1976). B-198266, May 9, 1980.

B. Promotions While in Missing Status

1. Requiring "acceptance" of promotion defeats purpose of Missing Persons Act

Although an acceptance is required to make a temporary promotion under 10 U.S.C. § 5784 legally effective for the purpose of receiving the pay and allowances of the higher grade, to deny Navy ensigns and Marine Corps second lieutenants in a "missing status" the benefits of the temporary promotions prescribed by section 5784 on the basis of the acceptance requirement would defeat the objective of the Missing Persons Act. Therefore, the pay account of a Marine Corps second lieutenant temporarily promoted under section 5784 to first lieutenant while in a missing status may be credited with the increased pay and allowances of the higher grade from the date administratively determined under the authority of 37 U.S.C. § 556 to be the date the officer would have accepted the promotion. 47 Comp. Gen. 587 (1968).

2. Promotion to sergeant while missing—later reenlisted as private

A redetermination of grade of an Army enlisted man under the provisions of the Missing Persons Act, as amended, promoting him to the grade of first sergeant while in a missing in action status may not operate to entitle him to pay of such higher grade under a reenlistment contract in the grade of private first class voluntarily entered into subsequent to the date he was returned to military control. 31 Comp. Gen. 118 (1951).

3. Promotions while in missing status—effective for all purposes

Any amounts due a member of the Marine Corps who when he entered a missing status, as defined by 37 U.S.C. § 551(2), on April 30, 1967, was a private first class E-2, and who by September 10, 1971, the date his death was established as April 30, 1967, had been promoted successively to sergeant E-5, are payable at the rate in effect on September 10, 1971. Pursuant to Public Law 92-169, the promotion of a member while in a missing status is "fully effective for all purposes," notwithstanding 10 U.S.C. § 1523 or any other provision of law and even though the Secretary concerned or his designee under 37 U.S.C. § 556(b) determines the member died before the promotion was made. 51 Comp. Gen. 759 (1972).

C. Temporary Promotions and Saved Pay

1. Navy enlisted man appointed warrant officer—later promoted in enlisted grade

Under the provisions of section 302(e) of the Officer Personnel Act of 1947 saving to regular Navy or Marine Corps personnel the pay and allowances to which entitled at the time of temporary promotion, an enlisted man of the regular Navy temporarily appointed a warrant officer under said act whose duty assignment did not change after the temporary appointment may continue to receive the pay and allowances of his enlisted grade if greater than those of the warrant officer grade. 31 Comp. Gen. 180 (1951).

2. Coast Guard—temporary grade service

When a Coast Guard officer who is advanced in grade under the temporary promotion system authorized in 14 U.S.C. § 275 reverts to his permanent promotion system grade, the time in the temporary service grade, absent specific legislation, may not be used as time in a grade higher than the permanent grade from which originally appointed for temporary service. When read together, sections 275(h) which prescribes that upon the termination or expiration of a temporary appointment, “the officer shall revert to his former grade,” and 257(b) which provides that service in a temporary grade is service “only in a grade that the officer concerned would have held had he not been so appointed,” permit only the counting of the temporary service as time in the officer’s permanent grade held immediately preceding the temporary service appointment. 48 Comp. Gen. 390 (1968).

3. Enlisted member temporarily appointed warrant officer

A member of the uniformed services in the permanent enlisted grade E-8, when temporarily appointed a warrant officer elected to receive saved pay pursuant to 10 U.S.C. § 5596. Therefore, when assigned overseas he is not eligible to receive hostile fire pay, family separation allowance, and cost-of-living allowance, nor the statutory increase in pay grade E-8 that became effective after his temporary promotion. He may not be paid the difference between the saved pay and the pay of his permanent grade which would have accrued to him if he had not received his appointment as a temporary officer. However, notwithstanding the member’s election, 37 U.S.C. § 204 requires that when and if the pay and allowances of the temporary grade equal or exceed those of his permanent grade saved under 10 U.S.C. § 5596(f), the member must be paid the pay and allowance

of the temporary grade. 47 Comp. Gen. 491 (1968). Compare 45 Comp. Gen. 763 (1966).

Note: The reader should check any amendments to 10 U.S.C. § 5596, as they may affect this paragraph and paragraphs 4 through 6, below.

4. Enlisted member appointed temporary officer

A Navy enlisted member appointed as a temporary officer under 10 U.S.C. § 5596 may not receive an incentive bonus authorized for officers under 37 U.S.C. § 312c in addition to the "saved pay and allowances" of an enlisted member. Such bonus is only an item of pay of the temporary officer grade to which the member is appointed or promoted. However, if his pay and allowances in his officer status, including the bonus, exceeds his pay and allowances as an enlisted member (under saved pay) he is entitled to be paid as an officer including the Nuclear Career Annual Incentive Bonus. 57 Comp. Gen. 643 (1976).

5. Warrant officer temporarily appointed lieutenant—later assigned overseas

A warrant officer in the Navy who was not transferred to an overseas duty station until some time after he received a temporary appointment as lieutenant (junior grade) entitling him to saved pay and allowances may not have the saved pay and allowance provisions in 10 U.S.C. § 5596(f) construed as authorizing a subsequent increase in the amount of saved pay and allowances by reasons of the changed conditions of overseas duty and, therefore, although cost-of-living allowances and family separation allowances are for consideration in computing saved pay, the member, upon transfer overseas, is not entitled to a cost-of-living allowance and family separation allowance in addition to the saved pay and allowances he was entitled to at the time of the temporary promotion, but is only entitled to such allowances as a part of the pay and allowances of his temporary grade. 44 Comp. Gen. 121 (1964).

6. Warrant officer in public quarters—temporarily appointed lieutenant

A Navy chief warrant officer who, when given a temporary appointment as lieutenant, was occupying public quarters so that his monthly take-home pay, without the quarters allowance, is greater than the pay and allowances of the temporary grade is entitled to have the actual conditions of the service considered in determining the amount of total compensation

under the savings provisions of 10 U.S.C. § 5596(f) as well as under the temporary appointment. Therefore, he may continue to receive the greater take-home pay under his permanent grade until such time as public quarters are no longer available and it is to his advantage to elect the pay and allowances of a lieutenant. 42 Comp. Gen. 750 (1963).

7. Chief warrant officer appointed temporary lieutenant—saved pay

Coast Guard member was appointed as a temporary lieutenant O-3E after serving as a temporary chief warrant officer (W-4) with the permanent grade of chief warrant officer (W-3). Because the pay and allowances of a lieutenant were originally more advantageous the member did not receive saved pay under 14 U.S.C. § 214 and 37 U.S.C. § 907. The member now has completed 26 years of service and at that length of service the entitlements of a W-4 are more advantageous than that of the lieutenant O-3E. The member is entitled to revert back to saved pay at his former temporary grade of chief warrant officer (W-4) under 14 U.S.C. § 214(d) (1982). Lieutenant Samuel B. Bromley, USCG, B-232042, July 11, 1989.

Subchapter III—Erroneous Appointments or Promotions

A. May Retain Pay Received in a de Facto Status

1. Second lieutenant erroneously serving as first lieutenant

Second lieutenant in a Reserve component of the Army who erroneously served on active duty in higher grade of first lieutenant under color of authority and without knowledge, either actual or constructive, of the fact that he had been ordered to such active duty in a grade higher than actually held by him as a Reserve commissioned officer in the Army, is entitled to retain the pay and allowance received in good faith for service in that capacity. 33 Comp. Gen. 475 (1954). See also 34 Comp. Gen. 266 (1954), and 31 Comp. Gen. 335 (1952).

2. Serving under erroneous promotion

A Naval Reserve officer's name—without other identifying data—appeared on a Navy promotion list announcing that the President had appointed certain officers to a higher temporary rank. Subsequently he was notified that the promotion applied to another officer of the same name. The officer is entitled to retain the higher pay and allowances received by him in good faith—while serving, without knowledge of the defect in his appointment in such higher rank under the color of a valid appointment—from the date of the appointment to the date notice of the improper appointment was received by the officer. 27 Comp. Gen. 730 (1948).

B. Erroneously Serving in Higher Grade—Not in De Facto Status

A de facto officer is one who serves under an appointment which he was justified in believing was competent to invest him with such office. A captain in the Reserves who continued to receive the pay and allowances of that grade after he had accepted an appointment in the Regular Army, under orders expressly providing that acceptance of appointment as a second lieutenant would automatically terminate his appointment in the Reserves, may not be considered as having served in good faith on active duty in the grade of captain and entitled to retain such payments. 34 Comp. Gen. 132 (1954). See also 34 Comp. Gen. 263 (1954).

C. Ineligible Officer—De Jure Status

A person was appointed and ordered to active duty as a major in the National Guard of the United States under section 111 of the National Defense Act, as amended. Subsequent to going on active duty he was determined to be ineligible to hold that grade and was tendered an appointment as captain, which he accepted. He was in a de jure status while on active duty as a major and entitled to the pay and allowances of major until acceptance of the appointment as a captain. 32 Comp. Gen. 414 (1953).

Service Credit—Basic Pay Purposes

A. Officers With Enlisted Service

1. Enlisted training duty

The inclusion of active duty for training in the definitions of “active duty” and “active service” in 10 U.S.C. § 101 justifies the crediting of enlisted training duty in the computation of service to entitle officers who have over 4 years’ active service as enlisted members to the increased rates of pay provided in section 201(a) of the Career Compensation Act of 1949, as amended by Pub. L. No. 85-422, effective June 1, 1958. 38 Comp. Gen. 68 (1958).

2. Enlisted members—temporary officers

Enlisted members of the Navy and Marine Corps continued to serve under enlistment contracts when temporarily appointed to officer status but were paid as officers and received credit for active service as officers have an inactive enlisted status. The member cannot be credited with such enlisted service in the computation of active enlisted service to entitle officers who have over 4 years’ active enlisted service to the increased rates of pay provided in section 201(a) of the Career Compensation Act of 1949, as amended by Pub. L. No. 85-422, effective June 1, 1958. 38 Comp. Gen. 68 (1958).

B. Enlisted Members With Officer Service

1. Warrant officer service is not enlisted service

The placement of warrant officers of the uniformed services in a separate category from enlisted members in legislation and in custom and practice precludes regarding warrant officer service as enlisted service. Therefore, an officer may not have warrant officer service added to enlisted service to bring him within the category of an officer with over 4 years’ active enlisted service for the special pay rate provided by section 201(a) of the Career Compensation Act of 1949, as added by section 1 of the Act of May 20, 1958. 38 Comp. Gen. 497 (1959).

2. Officer service not includable for enlisted grades E-8 and E-9

The term “enlisted service” in section 1(3) of the Act of May 20, 1958, which amended section 201(c) of the Career Compensation Act of 1949, to provide for the placement of enlisted members in pay grades E-8 and E-9 after completion of at least 8 years or 10 years of cumulative enlisted service, precludes inclusion of active service as a commissioned or warrant officer in the computation of cumulative enlisted service.

However, for certain purposes enlisted members are entitled to count officer service as enlisted service. 38 Comp. Gen. 598 (1959).

C. Time on the Temporary Disability Retired List

In determining the number of years of service creditable under Section 202(b) of the Career Compensation Act of 1949 in computing the rate of monthly active duty basic pay for members of the uniformed services restored to active duty in conformity with 10 U.S.C. §§ 1210(f) and 1211, the time spent on the temporary disability retired list after the expiration of the 5-year period prescribed in 10 U.S.C. § 1210(b) may be included. Section 202(b) authorizes accrual of additional service credits for basic pay purposes for periods the members were on a temporary disability retired list, without regard to whether the period extends beyond the 5-year limitation prescribed in 10 U.S.C. § 1210(b). 42 Comp. Gen. 52 (1962). See also 37 Comp. Gen. 823 (1958).

D. Cadet, Midshipman Service

1. U.S. Naval, Military, or Coast Guard Academy

a. Status of midshipmen

The monthly pay of midshipmen at the U.S. Naval Academy is not basic pay within the meaning of that term as used in Chapter 61 of Title 10 and Title 37, United States Code. Thus, a Navy officer may not have included in his disability rating, for retired pay purposes, the percentage of disability existing or incurred while he was a midshipman since such disability was not incurred as a member entitled to basic pay as required by 10 U.S.C. § 1201. B-213238, May 9, 1984.

b. Time between graduation from U.S. Military Academy and commissioning

Army officer, prior to graduation from United States Military Academy, was determined to be physically disqualified for Regular Army appointment but, nevertheless, was permitted to graduate. After an operation which removed the disqualification, he received a commission. He is entitled to count service as a graduated cadet from graduation to acceptance of commission in the computation of basic pay. 35 Comp. Gen. 630 (1956).

c. Time between graduation from Coast Guard Academy and commissioning

Notwithstanding that members of the Coast Guard Academy graduating class of 1927 were permanently detached from the Academy on the day of graduation, given duties normally performed by commissioned officers, and authorized to wear the uniform of an ensign, such members continued in their cadet status for administrative reasons pending receipt of their commissions. They did not acquire a de facto status as ensigns so as to include such cadet service under section 202(a) of the Career Compensation Act of 1949 in the computation of their cumulative years of service for pay purposes. 30 Comp. Gen. 228 (1950).

2. Non-Naval Academy midshipman service

A naval officer who served as a midshipman under the authority of the Act of August 10, 1956, 10 U.S.C. § 6903 (for current authority, see 10 U.S.C. §§ 2101-2111), is not entitled to credit for such service in determining his active duty basic pay rate. The midshipman service did not come within the purview of section 202 of the Career Compensation Act of 1949 (37 U.S.C. § 205), providing for crediting "all periods of active service as an officer, Army field clerk, flight officer, or enlisted member of a uniformed service." Absent authority to allow credit for midshipman service in determining the rate of basic pay to which a member is entitled, the officer's entry base date may not be adjusted to include credit for his midshipman service. 43 Comp. Gen. 577 (1964). See also B-171519, Mar. 11, 1971; and 40 Comp. Gen. 473 (1961).

3. NROTC midshipman service

An officer's pay entry base date as a matter of law may not be adjusted to include credit for any service based solely on service as a midshipman in the Navy Reserve Officers' Training Corps. B-185451, Feb. 20, 1976. See also 29 Comp. Gen. 331 (1950).

4. Aviation cadet service

In view of the specific authority for regarding active service as an aviation cadet as commissioned service for computing increases in pay for length of service of officers of the uniformed service under the laws in effect prior to September 30, 1949—the day before the effective date of the Career Compensation Act of 1949—and the absence of any provision for crediting inactive service as an appointive aviation cadet, such inactive

cadet service may not be credited for longevity pay purposes under section 202(a)(6) of the 1949 act. That section provided that all service creditable under laws in effect on the date of the Career Compensation Act of 1949 was authorized to be credited for longevity pay purposes. 41 Comp. Gen. 141 (1961). Compare 31 Comp. Gen. 3 (1951).

5. Midshipmen, Merchant Marine Reserve service

a. Service not creditable for officers

Time during which cadets at the United States Merchant Marine and State Maritime Academies held appointments as midshipmen, Merchant Marine Reserve, U.S. Naval Reserve, not being creditable in the case of officers for longevity pay purposes under the Pay Readjustment Act of 1942, is not creditable for basic pay purposes under the Career Compensation Act of 1949. 38 Comp. Gen. 797 (1959). See also B-172053, Apr. 16, 1971.

b. Service creditable for enlisted members

In view of the authority for enlisted members of the uniformed services to have active and inactive Naval Reserve service credited in the computation of years of service for longevity purposes contained in section 9 of the Pay Readjustment Act of 1942 and the savings provisions in section 202(a)(6) of the Career Compensation Act of 1949, service as a midshipman, Merchant Marine Reserve, Naval Reserve, may be included in the computation of service for basic pay purposes for enlisted personnel. No service may be credited for any period during which a Naval Reserve status did not exist, unless a status otherwise recognized for longevity purposes existed. 38 Comp. Gen. 797 (1959).

E. Constructive Service

1. Reserve commissioned nurses

Army Air Reserve commissioned nurses who on the basis of letters of appointment erroneously showing credit for "years of service in an active status" received the basic pay of a first lieutenant (0-2) with over 4 years of service are not entitled to retain the difference between the basic pay received and that of a first lieutenant (0-2) with no years of service, notwithstanding the overpayments were accepted in good faith, 10 U.S.C. § 3353, authorizing credit upon appointment with service performed in an active status that reflects combined years of experience and education, and such other qualifications as the Secretary of the Army may prescribe

by regulation, have no application to cumulative years of service for basic pay purposes. Section 205, Title 37 of the United States Code, prescribes that only active federal service may be counted for the purpose of computing the basic pay of a member of the uniformed services, and the officers not entitled to constructive credit for experience and education are indebted for the overpayment received. 44 Comp. Gen. 764 (1965).

2. Coast Guard Reserve officer law specialist

Constructive service authorized by section 201, Reserve Officer Personnel Act of 1954, 14 U.S.C. § 773, for promotion purposes may not be counted in the computation of basic pay. B-167666, Aug. 22, 1969.

3. Medical and dental officers

a. 1981 repeal of constructive credit for basic pay purposes

The Defense Officer Personnel Management Act, Pub. L. No. 96-513, repealed 37 U.S.C. § 205(a)(7) and (8), which had authorized constructive longevity of service credit for medical and dental officers of the uniformed services based on their years of professional education. The constructive service credit was terminated because the Congress had concluded that it resulted in an anomalous receipt of elevated basic and retired pay by medical and dental officers, and inaptly encouraged their early retirement. Also, the Congress had developed a special pay system for all uniformed health professionals to increase their current income, and it was concluded that the constructive service credit for medical and dental officers was therefore no longer appropriate. 61 Comp. Gen. 461 (1982).

b. Saving provision

The Defense Officer Personnel Management Act repealed constructive longevity of service credit for medical and dental officers of the uniformed services effective September 15, 1981, and it contained a saving clause with plain and unambiguous language specifically preserving the credit only for service members who on that date were enrolled in the Uniformed Services University of the Health Sciences or the Armed Forces Health Professions Scholarship Program (10 U.S.C. ch. 104 and 105). The saving clause may not be extended to participants in the National Health Service Corps Scholarship Program or the Senior Commissioned Officer Student Training and Commissioned Officer Student Training and Extern Program

(42 U.S.C. §§ 284t, 218a) since there is no justification for a conclusion that their omission was clearly inadvertent. 61 Comp. Gen. 461 (1982).

F. Civilian Service

1. Women's Medical Specialist Corps

A member of the Women's Medical Specialist Corps is entitled to credit for pay purposes under section 110 of the Army-Navy Nurses Act of 1947, as amended by the Act of May 16, 1950, for civilian War Department service as an occupational therapist. 32 Comp. Gen. 24 (1952).

2. Member of Armed Forces serving under the Foreign Assistance Act

A member of the Armed Forces when assigned to duty outside the United States under section 625(d)(1) of the Foreign Assistance Act of 1961, is entitled only to the compensation, allowances, and benefits prescribed for the Foreign Service Reserve and Staff by the Foreign Service Act of 1946. The suspension of his active duty military pay and allowances during the period of assignment does not terminate his membership in the Armed Forces of the United States, and such period is creditable for subsequent computation of military pay when the officer resumes a pay status under the Career Compensation Act of 1949, as amended. 42 Comp. Gen. 296 (1962).

G. Absences—Service Credit

1. Reserve officer absent while serving as enlisted member

Since officers of the uniformed services may have periods of absence while serving on active duty credited for pay purposes, inactive service as an officer in a Reserve component during the same period the member, while serving on active duty as enlisted man in the Regular Army, was absent because of sickness in line of duty need not be excluded in the determination of years of creditable service for basic pay purposes. 38 Comp. Gen. 553 (1959).

2. Officers absent due to their own misconduct

Commissioned and warrant officers who lose time from active duty because of sickness due to their own misconduct, absence without leave, or absence because of confinement while awaiting trial, as distinguished from enlisted members absent under similar circumstances, may not, in the absence of additional legislation, have such lost periods excluded from determinations of creditable service for basic pay. 38 Comp. Gen. 352 (1958).

H. Illegal or Improper Service

1. Service prohibited by law

a. Reservist inadvertently retained on active duty

The active military duty performed in good faith in a de facto status that is not prohibited by law is creditable service for basic and retired pay purposes and for determining retirement eligibility. This applies in all cases similar to that of an Air Force officer who was inadvertently retained on active duty for approximately 6 months after he should have been released from the temporary appointment he held under section 515(c) of the Officer Personnel Act of 1947. 44 Comp. Gen. 277 (1964).

b. Discharged member inadvertently ordered to active duty

Person who enlisted in Marine Corps Reserve and was discharged, without having performed any active duty, but who, notwithstanding such discharge, was subsequently ordered to and did go on extended active duty may be considered as having performed such duty in a de facto status. He is entitled, upon subsequent enlistment in Regular Marine Corps, to count such service in computing his cumulative years of service for pay purposes. 32 Comp. Gen. 397 (1953).

c. Dual enlistments—different services

An enlistment in the Naval Reserve prior to discharge from an Army enlistment was in violation of section 4 of the Naval Reserve Act of 1938, 52 Stat. 1176, which provided that no member of the Naval Reserve should be a member of any other naval or military organization except the Naval Militia. However, the member's action, after his discharge from the Army, in notifying the commandant of the naval district concerned of his change of address and his subsequent tour of active duty in the Naval Reserve may be construed as a ratification by the member of his enlistment contract as of the date of notification of change of address. Therefore, the member may be credited for longevity pay purposes with service as an enlisted member of the Naval Reserve from and after the date of such notification. 40 Comp. Gen. 428 (1961).

d. Illegal service—alien

Alien who enlisted in Marine Corps Reserve at time the law required that the Reserve be composed of “male citizens of the United States” and who served on active duty is not entitled, upon subsequent legal enlistment in Regular Marine Corps, to service credits for period of illegal service. 32 Comp. Gen. 397 (1953).

2. Retired Reserve member—serves on active duty in National Guard

A member of the uniformed services whose retention on the retired list, after advancement in grade, is terminated by transfer to the Retired Reserve and who subsequently is appointed and serves on active duty in the Army National Guard of the United States on the basis of federal recognition in a state National Guard under 10 U.S.C. § 3351 may not be regarded as a person retained on active duty or in service in a Reserve component under 10 U.S.C. § 676. Therefore, credit for the active service after retention on the retired list following qualification for age and service retirement was terminated by transfer to the Retired Reserve is too doubtful for authorization of additional service credit. 41 Comp. Gen. 118 (1961). Also see Chief Warrant Officer Manuel H. Jarvis, USAR (Retired), B-239269, Feb. 21, 1991, and Rear Admiral Grace C. Hooper, USNR (Retired) (Recalled), 65 Comp. Gen. 774 (1986). Cf. Captain Larry J. Haynes, USMCR, 68 Comp. Gen. 1 (1988).

I. Certain Coast Guard Service

1. Lighthouse service

Members of the Coast Guard Reserve who were formerly in the Lighthouse Service are entitled to credit for such Lighthouse Service in determining length of service for basic pay purposes. 35 Comp. Gen. 675 (1956).

2. Temporary member of Coast Guard Reserve

Since active duty performed as a temporary member of the Coast Guard Reserve was considered creditable for longevity purposes on September 30, 1949, the day preceding the effective date of the Career Compensation Act of 1949, it may also be credited for purpose of computing basic pay under section 202(a) of the Career Compensation Act of 1949, 37 U.S.C. § 233(a) (now 37 U.S.C. § 205). 37 Comp. Gen. 838 (1958).

J. Computing Service Credit—Lost Time

1. Time lost which has been made up

In computing length of service for pay purposes when time lost has been made up to complete enlistment contracts pursuant to 10 U.S.C. § 629a (now 10 U.S.C. § 972), the time should be accounted for on a day-for-day basis in those cases where the 30-day month method would not be to the member's advantage by virtue of service in months with less or more than 30 days. 37 Comp. Gen. 455 (1958).

2. Members required to make up lost time

In the computation of length of service for enlisted members of the uniformed services who are required to make good time lost to complete their enlistment contracts, a proposed rule which would permit the computation of time lost and not made good on a day-for-day basis would be in conflict with the Act of June 30, 1906, 5 U.S.C. § 84, (now 5 U.S.C. § 5505) which requires computation of service on a 30-day month basis. 38 Comp. Gen. 824 (1959).

Active Duty Pay for Reserves

A. Duty Status

1. Status dependent on advance written or verbal orders

A National Guard member may not be placed in a duty status in the absence of advanced written or verbal orders, nor may he issue such orders to himself. Hence, an Air National Guard officer who stated that he planned to perform military duty on October 20, 1978, may not be regarded as being in a duty status at the time of his death on that date where no advanced orders authorizing the performance of such duty had been issued. B-194189, Jan. 7, 1980.

2. Written confirmation of verbal orders

Army National Guard members, for whom written orders were requested but not received prior to duty period, performed annual training on verbal orders of unit commander. Since the oral orders were subsequently confirmed in writing within a reasonable time by The Adjutant General, who had

authority to order the annual training, payment may be made to the individual members for the duty performed. B-208346, Nov. 9, 1982. However, confirmatory written orders are invalid if issued after an unreasonable and unexplained period of delay. 43 Comp. Gen. 281 (1963).

B. Entitlement to Pay Based on Statute

1. Some action by member required

Member of an Army Reserve unit who was given general discharge which was later upgraded to honorable and who was told not to attend inactive duty drill periods or active duty for training while discharge proceedings were in progress is not entitled to pay for the period in which he did not attend the drill periods and the active duty for training. A military member's entitlement to pay is based on statute and the relevant statutes, 37 U.S.C. §§ 206(a), and 204(a)(2), require a Reserve member to attend meetings or perform other equivalent duty or be ordered to active duty or active duty for training in order to be paid. See B-187167, Dec. 23, 1976. B-196462, May 5, 1980.

2. Combined active duty and inactive duty pay

Air Force reservist who served 355 days of active duty and 10 periods of inactive duty training in fiscal year 1981 is entitled to receive pay for all service performed. Although active duty pay is paid on a daily basis,

inactive duty pay is paid for drill sessions which may be less than a day. Therefore, in the absence of regulations to the contrary the total pay need not be restricted based on the combined total. B-207339, Feb. 8, 1983.

3. Agreed duty without pay

a. Retroactive change

Orders of an Army reservist, who agreed to perform inactive duty training and active duty without pay, may not be amended to retroactively place the member in a pay status if the intent was clearly that his orders were for duty in a nonpay status. The general rule is that only when orders are incomplete or ambiguous or when a provision is omitted through error or inadvertence, may they be amended retroactively to increase the liability of the government. B-216466, Nov. 14, 1984.

b. Lack of funds

Assurances by superior officers to an Army reservist that if funds became available he would be paid for duty, when orders are to the contrary, are not a basis for allowing a claim for pay since, absent specific authority, the United States is not liable for the erroneous advice given by its officers, agents, or employees even though given in the performance of their official duties. B-216466, Nov. 14, 1984.

4. Eligibility—acceptance of lower grade

A captain in the Army Reserve accepted a position as a chief warrant officer. He is not entitled to continue the pay level and allowances of a captain, since 37 U.S.C. § 907 does not protect the pay and allowances of a member who accepts a lower grade. Chief Warrant Officer Steven C. Baker, USAR, B-245028.2, June 4, 1992.

5. Training expenses—disenrolled

An officer candidate in the Baccalaureate Degree Completion Program of the Naval Reserve was disenrolled. Under his service agreement he resumed his active duty status as an enlisted member while he awaited reassignment to recruit training. Although he spent several months performing no military duties before he received his orders, he is entitled to pay and allowances from the date of his disenrollment until his entry into recruit training. Carlton C. Brock, B-248274, June 10, 1992.

C. Inactive Duty Pay
(Drill Pay)

1. National Guard—federal recognition requirement

a. Federally recognized officer entitled to pay

Under the Career Compensation Act of 1949, a federally recognized officer of the National Guard—as distinguished from the National Guard of the United States—is entitled to pay for armory drills and field training actually attended while in a federally recognized status, even though the officer may not have held a commission as a member of the National Guard of the United States during the period involved. 31 Comp. Gen. 482 (1952).

b. Duty performed after recognition expired—entitled to pay as de facto officer

A person who was appointed as a captain in the Army National Guard received temporary federal recognition. Since he performed training duty after the period of temporary federal recognition had expired under color of authority and without knowledge, either actual or constructive, of the fact that the temporary federal recognition had expired, he is entitled to retain the pay and allowances received by him in good faith for the service as a de facto officer. B-215037, Sept. 18, 1984.

c. National Guard engineer transferred to Air National Guard

A federally recognized National Guard engineer officer, who transferred to the Air Force National Guard and assumed the duties of the Air Force position although not at that time federally recognized as an Air Force officer, is not entitled to federal pay under the National Defense Act, as amended, for any drills or field training performed in the new position prior to the date he was federally recognized as an officer in the Air Force National Guard. 30 Comp. Gen. 199 (1950).

d. Voluntary relinquishment of federally recognized rank

An officer in the Illinois National Guard who voluntarily relinquishes his federally recognized commission as colonel upon the acceptance of a commission as brigadier general is not entitled to federal pay for armory drill and performance of administrative functions as a colonel for the period subsequent to his promotion in which no duties were performed as a colonel. 34 Comp. Gen. 273 (1954).

2. Duty in lieu of drills (equivalent training)

a. Drill pay not authorized—attending service school

A regularly scheduled drill of a National Guard officer's unit which takes place while he is attending a service school may not be regarded as a "regularly scheduled drill or assembly" of his unit for appropriate duty pay. The performance of appropriate duty in lieu of a regularly scheduled drill which an officer has missed, due to attendance at a service school for which he received basic pay, cannot qualify the officer for appropriate duty pay under the provisions of subsection 501(a) of the Career Compensation Act of 1949. 34 Comp. Gen. 679 (1955). Compare 37 Comp. Gen. 193 (1957), below.

b. Drill pay authorized by regulations and orders—attending service school

National Guard officer who performs equivalent training in lieu of drills held by his unit while he is on active duty for training at a service school may have such duty considered for pay purposes under current regulations which do not preclude payment for equivalent training for active duty training, provided the officer is in an armory drill status and written orders authorized such training. 37 Comp. Gen. 193 (1957).

c. Equivalent training not performed within prescribed time period

National Guard member who performed equivalent training in October and November 1972, in lieu of scheduled assembly on January 14, 1973, is not entitled to pay for such equivalent training since subparagraph 4-13(f) of AR 140-1, September 15, 1972, provides that equivalent training must be performed within 60 days of training assembly for which it is being substituted. B-180921, Sept. 5, 1974.

3. Computation of drill pay

a. Training period of over 8 hours—two drills

A Reserve training period of more than 8 hours instead of two training periods scheduled for the next payroll quarter, may be considered as two drill assemblies for pay and allowance purposes rather than as duty in lieu of attendance at training assemblies, which is required by regulation to be held within the same payroll quarter. 36 Comp. Gen. 46 (1956).

b. Drill pay in lieu of retired pay

Since retired pay accrues on day-to-day basis, member entitled to retired pay who performs duty which entitles him to compensation under 37 U.S.C. § 206(a), may elect to receive that compensation in lieu of retired pay pursuant to 10 U.S.C. § 684. Also, although he may be entitled to the equivalent of 2 days' pay for duty performed in 1 calendar day, he is required to waive only 1 day's retired pay. B-179882, Dec. 4, 1974.

4. Evidence of attendance at training assemblies

a. Erroneous records not promptly corrected

A DA Form 1379—United States Army Reserve Unit Record of Reserve Training—containing entries of training omitted or erroneously entered on a previous month's DA Form 1379 is acceptable for pay purposes where the corrective entry is promptly made and is supported by a full and complete explanation of the cause of the error. Payment may not be made, however, under supplemental payrolls to an officer for attendance at training assemblies which were recorded 4 months subsequent to the training without explanation for the delayed recording, or contemporaneous corroborating evidence to support the correction. The unexplained correction is not acceptable as supporting evidence to validate payment of the inactive duty training. 43 Comp. Gen. 281 (1963). See also 34 Comp. Gen. 146 (1954).

b. Verbal orders—confirmation delayed

A Reserve officer who attended inactive duty training assemblies under verbal orders which were confirmed after an unreasonable delay and without explanation may not be paid for the assemblies he attended from the date of the verbal orders. The delayed written orders, constituting retroactive orders, are without effect to increase or decrease the vested rights of the officer, and are not proper assignment orders to authorize payment for the assemblies attended from the date of the verbal orders. 43 Comp. Gen. 281 (1963). See also B-161187, May 3, 1967. Compare B-208346, Nov. 9, 1982.

5. Missing, interned, captured while on inactive duty for training

a. Not entitled to credit for pay while missing

A reservist who becomes missing while on inactive duty training is not entitled to credit for pay and allowances under the Missing Persons Act. 35 Comp. Gen. 422 (1956).

b. Member subsequently determined to have died

A reservist who is in a missing status while on inactive duty training and is subsequently determined to have died under conditions which do or do not establish that death resulted from injuries incurred in line of duty is not entitled to have his account credited retroactively with pay and allowance from date of commencement of absence and up to date of determined death under the Missing Persons Act. 35 Comp. Gen. 422 (1956).

6. Waiver of VA disability compensation

a. Retroactive waiver

A Reserve member is required to waive disability compensation paid by the Veterans Administration in order to receive compensation for inactive duty training. 10 U.S.C. § 684. If retroactive waivers of disability compensation are acceptable under laws and regulations administered by the Veterans Administration, resulting in recoupment of payments made for periods of inactive duty training performed and for which compensation has been paid, the Comptroller General does not object to the member's retention of pay received for training duty. B-207913, Apr. 15, 1983.

b. Failure to execute waiver

If the waiver of disability compensation required by 10 U.S.C. § 684 is not executed, payment of compensation for inactive duty training may not be made. Any payments for inactive duty training in the absence of such waiver are erroneous payments and must be collected from the member unless a retroactive waiver of disability compensation may be accepted by the Veterans Administration. B-207913, Apr. 15, 1983.

Note: For waiver cases under 10 U.S.C. § 2774, see Chapter 7 of this title.

**D. Reserves—Active Duty
or Active Duty for Training**

1. National Guard called to active duty

a. Member on detached service until discharged by physical disqualification

A member of the National Guard who under competent orders reported for active military service of the United States at an assigned station where he was on detached service until discharged because of physical disqualification for federal service is entitled under section 201(e), Career Compensation Act of 1949, to receive active duty pay for the period between date of reporting for active duty and date of discharge from service. 29 Comp. Gen. 402 (1950), modified, 34 Comp. Gen. 369 (1955).

b. Federal civilian employees—members of National Guard

Civilian employees, who were members of the Arkansas National Guard when it was federalized pursuant to Executive Order No. 10730, are not entitled to military pay and allowances until the date they actually report to the unit point of assembly or, if absent from the vicinity, from the date they began direct travel to the duty station. 37 Comp. Gen. 655 (1958).

2. Active duty for physical examination

a. Physical exam incident to active duty for more than 30 days

A reservist ordered to active duty to take a physical examination incident to being ordered to active duty for more than 30 days is entitled to pay and allowances for the period of the examination and travel time to and from the examination, provided orders place the member in an active duty status. B-181762, July 18, 1975.

b. Pay during travel to first duty station after passing physical exam

A reservist, who passes a physical examination incident to being ordered to active duty for more than 30 days, is entitled to pay and allowances for travel time to his first duty station when later ordered to active duty for more than 30 days. B-181762, July 18, 1975.

c. Pay of reservist who fails physical exam

A reservist, who does not pass the physical examination given incident to being ordered to active duty for more than 30 days, is entitled to pay and allowances for the period required for the examination and travel time to and from the examination, provided orders place the member in an active duty status. B-181762, July 18, 1975.

d. Physical exam not incident to active duty

The calling up of a reservist for the sole purpose of physical examination to determine his fitness for retention in the Reserve or for medical treatment, when such examination or treatment is not incident to the performance of active duty, does not constitute "active duty" for the purpose of entitlement to pay and allowances. B-181762, July 18, 1975. See also 44 Comp. Gen. 521 (1965), 27 Comp. Gen. 490 (1948), 26 Comp. Gen. 107 (1946), and 21 Comp. Gen. 781 (1942).

3. ROTC cadets/midshipmen—pay while traveling to summer training

Cadets or midshipmen appointed under 10 U.S.C. § 2107, or persons enrolled in the advance training program prescribed by 10 U.S.C. § 2104, receiving scholarship assistance pursuant to the Reserve Officers' Training Corps Vitalization Act of 1964, who as members of a Senior Reserve Officers' Training Corps participate in the field training and practice cruises provided by section 2109 are not entitled to pay and allowances for travel time to and from summer training. The 1964 act amending 37 U.S.C. § 209(c) to authorize pay to the members of the Corps while "attending field training or practice cruises," using language substantially the same as that used in the prior authority for training under which active duty pay for travel to and from training was not paid, is to be given the same application absent an indication in the 1964 act that pay for travel was intended. Therefore, pay may be authorized only from the day of arrival at the camp or practice cruise to the day of relief from duty. 45 Comp. Gen. 664 (1966).

4. Release from active duty

a. Member late picking up orders

A Naval Reserve officer who was detached from active duty training at the commencement of a day so that he could have departed and reached home the same day by taking the first available air transportation—the mode of

transportation used—but who did not pick up his orders in time to depart by the first available air flight may not receive additional pay and allowances for another day's travel time. 37 Comp. Gen. 792 (1958).

b. Member dies prior to expiration of travel time

Under the Career Compensation Act of 1949, as amended by the Act of July 12, 1955, a Reserve member of the armed services may be paid pay and allowances for travel time incident to release from active duty prior to departure for home from the last duty station. If the member dies prior to expiration of the travel time, the member's right to pay and allowances ceases on the day of death and any overpayment should be collected from the member's estate. 37 Comp. Gen. 103 (1957).

c. Member delayed in returning home due to weather, etc.

A regulation to authorize additional active duty pay to reservists who are delayed in returning to their home upon release from training duty because of weather conditions or mechanical failure of public or government transportation facilities, without the necessity for issuance of amendatory orders, would be effective under Navy and Marine regulations, which clearly limit pay for active duty for training to the period covered by the orders plus the time necessary for travel, without a release date being stated in the orders. Under Army and Air Force procedures which provide for ordering personnel to an overall training period between specified dates, including to and from travel time, there is no basis for computation of necessary or constructive travel time and, therefore, the regulation would be without effect unless the procedures were changed to accord with those of the Navy and Marine Corps. 41 Comp. Gen. 56 (1961).

d. Member departed duty station prior to termination date in orders

A Reserve officer who, upon completion of a training assignment, departed from the duty station and arrived home prior to the termination date specified in the assignment orders, is entitled to pay and allowances through such termination date. 35 Comp. Gen. 387 (1956).

e. Late delivery of orders modifying orders releasing member from active duty

Orders modifying prior orders releasing a Naval Reserve officer from active duty recalled the officer to active duty, but, even though issued in ample time, were not delivered prior to the expiration of his terminal leave under his original orders. The officer may not be considered as having been on continuous active duty so as to be entitled to active duty pay and allowances during the period between the date of expiration of his terminal leave and the date of compliance with the modifying orders. 26 Comp. Gen. 40 (1946).

f. Release from active duty orders modified prior to expiration of terminal leave

A Naval Reserve officer proceeded to his home under orders providing for release from active duty upon expiration of his terminal leave. Prior to the expiration of his leave, he received and complied with modifying orders directing travel to a naval hospital for observation and treatment. The officer is to be regarded as in a continuous active duty status under such orders as modified and entitled to active duty pay and allowances from the time his terminal leave would have expired to the date he subsequently was released from active duty. 26 Comp. Gen. 40 (1946).

5. Computation of reserves active duty pay

a. Actual days served—less than 30

A reservist of the Armed Forces who serves on active duty for training from February 1 through 28, in a non-leap year is not entitled under A-71273, March 2, 1936, to a full month's active duty pay and allowances without deduction for the two constructive days at the end of February. The rule in the 1936 decision that reservists ordered to duty for a period of less than 30 days are not within the scope of the Act of June 30, 1906, which prescribe a 30-day calendar month for computing the pay of persons paid on an annual or monthly basis. They are therefore only entitled to pay for the actual number of days served, including the 31st day of the month. The rule was not changed by the codification in 37 U.S.C. § 1004 of the governing statutes and the decision of March 2, 1936, is affirmed. 47 Comp. Gen. 515 (1968).

b. Day on which pay begins for reservist called to active duty

The law and regulations contemplate that the date on which pay should begin for a Reserve member called to active duty will be based on a determination of the date he necessarily was required to begin the travel from his home by the mode of transportation authorized and actually used so as to arrive at his duty station on the designated reporting date. B-172856, July 7, 1971. See also 52 Comp. Gen. 482 (1973).

c. Day on which pay terminates for reservist called to active duty

A Reserve officer ordered to active duty training (ADT) with a reporting date of 8 a.m., October 16, 1978, traveled by air on October 15 to Washington, D.C., and completed his duty assignment by 6:30 p.m. on October 16. Using the directives of the DODPM, constructive travel by air from Washington, D.C., to St. Louis could have been completed before 12 p.m. on October 16, 1978. He is not entitled to an additional day of active duty pay and allowances for October 17 for return travel to his home. B-194938, Oct. 26, 1979.

d. Leave credit for active duty without pay

A Navy Reserve officer claims pay for 2-1/2 days of accrued leave on the basis that he performed 30 days of active duty for training. However, during 13 of those days he was in voluntary nonpay status. The regulations that implement the applicable leave statute require that a member perform 30 consecutive days of active duty while in a pay status in order to be entitled to leave. Since that regulation is reasonably consistent with the purpose and intent of the statute, it is not overly restrictive, and the member is not entitled to leave pay. B-214534, Sept. 5, 1984.

6. Entitlement based on waiver of retired pay

a. Generally

Retired members of armed services who perform Reserve duty, active or inactive, on the 31st day of a calendar month must waive 1 day's retired pay (or other compensation received on account of their prior service) in order to be entitled to active duty pay or inactive duty pay which would otherwise accrue for that day. This is required by 10 U.S.C. § 684. 62 Comp. Gen. 266 (1983).

b. Waiver of retired pay by retired Air Force officers serving in the Air National Guard

Retired officers of the Regular Air Force who are duly appointed as Reserves of the Air Force for service in the Air National Guard of the United States are entitled to the pay and allowances prescribed by law for duty performed under their Reserve appointments, provided that they waive their military retired pay on the days for which they claim National Guard pay and allowances. Although current Air National Guard regulations limit this arrangement to the position of Adjutant General or Assistant Adjutant General of a state, if the Secretary of the Air Force concludes that retired members of the Regular Air Force should be eligible for appointments to other positions in the Air National Guard, the Secretary may amend the regulations to authorize such additional appointments. B-227435, Sept. 25, 1987.

c. Statutory pay rate limitation—civilian technicians

Civilians employed by the Army and Air Force as technicians for the support of certain Reserve component programs are required to maintain a concurrent military status as reservists. A statutory provision limiting the combined military and civilian compensation of these technicians to the rate payable for Level V of the Executive Schedule should have been applied on a biweekly pay period basis rather than an annual basis. 65 Comp. Gen. 78 (1985).

The statutory limitation of the combined military and civilian compensation of National Guard technicians was applicable to the full amount of a National Guard officer's combined civilian technician salary and military basic pay even though the officer was on a detail to a state government under an arrangement providing for partial state reimbursement of his technician's salary, since he retained his federal civil service and military status. B-221416, Mar. 12, 1986.

Several thousand military Reserve technicians received overpayments of compensation between December 1981 and December 1982 as the result of an error in the application of a statute limiting their combined military and civilian compensation to the rate payable for Level V of the Executive Schedule. It is also reported that several thousand Army members have been overpaid because of minor errors made in fixing the constructive date to be used in determining their length of federal service. No collection action is necessary since the individual overpayments are small, the administrative costs of attempted collection would be excessive, and all

overpayments would be eligible for waiver on an individual case basis. B-206699, B-206699.2, Sept. 15, 1988.

7. Reservist on duty as chief warrant officer—pay retention

A captain in the Army Reserve accepted a position as a chief warrant officer. He is not entitled to continue the pay level and allowances of a captain, since 37 U.S.C. § 907 does not protect the pay and allowances of a member who accepts a lower grade. Chief Warrant Officer Steven C. Baker, USAR, B-245028.2, June 4, 1992.

E. Reservists Injured or Ill
on Duty

Note: Several of the statutory provisions in this section have been either repealed or substantively changed in recent years. For example, 10 U.S.C. §§ 3721, 3722, 6148, 8721 and 8722 were repealed in 1986. Likewise 32 U.S.C. §§ 318 and 502(f) as well as 34 U.S.C. § 855(c)1 have been repealed. Additionally, substantive amendments were made to 37 U.S.C. §§ 204(g) and (h). Therefore, the users of this Manual should not rely on the concepts set forth in the decisions herein without further research and a formal request for decision if deemed warranted. See, generally, notes in 10 U.S.C.A. §§ 1074 and 1074a.

1. Status during hospitalization

A member of the Army National Guard or Army Reserve called or ordered to active duty for a period of 30 days or less under self-terminating orders who is hospitalized under the provisions of 10 U.S.C. § 3721(c) because of an in line of duty injury not due to own misconduct during that time, remains in an active military status only through the last day of duty as prescribed by those orders, with the right to continue to receive pay and allowances thereafter based on disability to perform military duty as authorized by 37 U.S.C. § 204(g)(2). 57 Comp. Gen. 305 (1978). 40 Comp. Gen. 664, modified.

2. Orders purporting to extend active duty

A member of the Army National Guard or Army Reserve was called or ordered to active duty for a period of 30 days or less under self-terminating orders. He was hospitalized due to an in line of duty injury not due to own misconduct. During that time, he would not be placed in a status of being on active duty for 30 days or more even though the period of hospitalization is covered by an amendment to his orders or new orders

issued to extend his period of active duty solely for the purpose of such hospitalization. Such a change in status is not authorized. Thus, such orders would not carry him beyond 30 days for active duty purposes and his rights to be retired for physical disability would remain determinable under 10 U.S.C. § 1204. 57 Comp. Gen. 305 (1978).

3. Pay entitlement while disabled

a. Pay continues while member incapacitated for military duty

A member of the Air Force Reserve who is disabled in line of duty from injury while performing annual training is entitled by law to continued pay and allowances during the subsequent period when the member remains incapacitated for the performance of normal military duties. The determination as to how long the disability continues is left to the exercise of sound administrative judgment. In each case, the service concerned is to determine when the injured member has recovered or determine that such member should be separated for disability. 37 U.S.C. § 204(g)(2) (1976). B-195470, Nov. 14, 1979.

b. Income restrictions from nonmilitary employment—civil service retirement program

A reservist's civil service retirement income is not "earned income from nonmilitary employment" under the dual compensation restrictions of 37 U.S.C. § 204 which requires a reduction in the pay and allowances a member receives while incapacitated if he receives income from nonmilitary employment since civil service retirement income is unrelated to the member's current employment status. Accordingly, it may not be offset against his pay and allowances. Chief Master Sergeant Trente R. Adair, USAF Reserve, 70 Comp. Gen. 350 (1991).

c. Agency retirement contribution

A civilian agency's contribution toward the retirement program of an employee serving as a reservist is not part of the employee's income from nonmilitary compensation. Thus, a reservist who was injured while on active duty and received pay and allowances pursuant to 37 U.S.C. § 204 may not be reimbursed for the retirement program contributions he would have earned from his civilian employer during the period he was unable to work. However, he may be reimbursed his 6 percent retirement

contribution since they are deducted from his monthly pay. Chief Warrant Officer Jerry F. Adams, USA, B-244824, Sept. 21, 1992.

Members of the Reserve components of the Armed Forces who are disabled in the line of duty from injury while performing active duty for training are entitled by law to military pay and allowances during subsequent periods when they are incapacitated for the performance of their normal military duties. A disabled reservist's right to pay and allowances is not limited to the initial period of incapacitation resulting from a line-of-duty injury, but extends to subsequent periods of incapacitation determined to have resulted from a relapse, or recurrence of the original disability. Such determinations are left to the exercise of sound administrative judgment, whenever possible, based upon the findings and conclusions of service medical personnel. In the absence of specific medical personnel, however, it is permissible for the reservist's unit commander to make the necessary administrative fitness-for-duty determination using secondary evidence, including personal observations and interviews of the reservist. B-217652, Mar. 18, 1985.

d. Pay terminates when found fit for military duty

The Act of June 20, 1949, prescribes the same benefits for reservists injured or disabled in line of active duty or training as is accorded Regular members. However, the holding that the ability to resume normal civilian employment is not the standard for determining entitlement to disability pay where contemporaneous service medical data are available must be adhered to. Termination of disability pay is based upon ability to perform military duty or a final disposition of the matter. Decisions that hold physical presence at a regular drill or a conditional temporary assignment to limited duty terminates entitlement to pay and allowances or medical care and hospitalization will no longer be followed, but a member must promptly report injury, disease, and his current disability status to permit action to retire, separate, or refer him to the Veterans Administration. 52 Comp. Gen. 99 (1972). See also 48 Comp. Gen. 1 (1968).

Army National Guard member injured in line of duty during annual training, who was thereby rendered physically unable and—as determined by Army medical personnel—permanently unqualified under Army regulations to perform his normal duties as military policeman, is entitled to disability pay and allowances during period of disability. Entitlement ended when Army authorities acted to change his Military Occupation Specialty from policeman to unit clerk, thus limiting his normal military

duties to activities within range of his reduced physical capabilities. B-187049, Nov. 9, 1976.

e. Member required to promptly report injuries and keep service advised of condition

In implementation of the changes in the administration of the disability benefits program provided by the Act of June 20, 1949, for National Guard members and other reservists, members should be advised to promptly report the incurrance of disability to enable the military services to provide proper medical and hospital care, as well as pay and allowances, to the disabled member. Where a member is not provided medical or hospital care so that a current determination of entitlement to pay and allowances cannot be made, any payment to a member should be supported each month by a report from his civilian physician and by a statement from the member showing the days of military duty or civilian employment together with the name and address of his employer. 52 Comp. Gen. 99 (1972).

f. Failure to report injuries

A member of Ohio Air National Guard underwent surgery for a herniated disc by a civilian physician and asserts entitlement to disability continuation pay and allowances under 37 U.S.C. § 204(h) but did not notify appropriate service authorities until after he was released by his civilian physician nearly 2 years after the injury. Where a member fails to notify appropriate service authorities thereby preventing them from making a contemporaneous investigation of the accident and injury, a determination of his disability and their interconnection, his right to pay and allowances during the period of his disability has not been established and will not be allowed. B-199837(1), Nov. 10, 1980. Compare 47 Comp. Gen. 716 (1968).

g. Member postpones treatment

A member of the National Guard may not by postponing treatment or examination extend the period of entitlement to full pay and allowances thus permitting the continued payment of such compensation when right thereto has not been clearly established by a showing of the continued disability. B-185404, Aug. 2, 1976. See also 47 Comp. Gen. 716 (1968) and B-195470, Nov. 14, 1979.

h. Subsequent injury—intervening cause

A Reserve member claims entitlement to disability pay and allowances under 37 U.S.C. § 204(g)(2) for injury sustained while on inactive duty training. He was not medically examined prior to subsequent injury for which he claimed benefits as a civilian government employee and prior to which he had lost no time from his military duty. Subsequent injury should be treated as intervening cause, and since member fails to demonstrate that disability was direct result of injury sustained in line of duty, military disability pay may not be allowed. B-184867, Aug. 3, 1976.

i. Member resumes civilian occupation while disabled

A non-Regular member of the Armed Forces was disabled by injury incurred while performing active duty training. He may continue to receive the pay and allowances authorized by 37 U.S.C. § 204(g)-(i) when he resumes a civilian occupation, upon the determination, preferably by a service medical personnel and made in accordance with standards established for regular members, that the injury precludes the reservist from performing the normal military duties of his grade or rank. That holds notwithstanding the member is awaiting final action on retirement proceedings, or that he did not resume his normal civilian occupation but because of his disability took other employment. 47 Comp. Gen. 531 (1968).

A member of the National Guard who is also a National Guard technician under 32 U.S.C. § 709 and who is injured in line of duty while performing training under 32 U.S.C. § 502, is entitled in accordance with 37 U.S.C. § 204(h)(2) to receive the pay and allowances of a Regular member of the Army during the period of his disability for military duty. This holds even though he resumes his government civilian occupation since he is not considered to be on active military service during period of receipt of pay and allowances under 37 U.S.C. § 204(h)(2). 54 Comp. Gen. 431 (1974).

j. Injuries not manifest until after release from duty

A member of the uniformed services injured in line of duty while performing annual field training under 32 U.S.C. § 503 was permitted after examination and medical treatment on two occasions to return to duty. Only after release from military service does he learn from a civilian doctor that the nature and extent of his injuries would have prevented the performance of military duty. The claim of the member for pay and allowances to cover the period between date of release from active duty and return to his civilian position may be paid. Neither the existence nor

the extent of the injuries was manifest until after release of the member from active duty. To deny his entitlement to the benefits of 37 U.S.C. § 204(h) because he, in ignorance of the seriousness of his injuries, performed military duty in the interim between injury and release from active duty would in effect deprive him of the benefits Congress intended to grant. 45 Comp. Gen. 54 (1965). See also 52 Comp. Gen. 99 (1972), but see B-199837, Nov. 10, 1980.

4. Disability must be incurred in line of duty

The Acts of June 15, 1936, and June 20, 1949, authorizing pay and allowances to officers and enlisted men of the National Guard for personal injury or disease suffered during periods of training or active duty are applicable only in cases where the disability is suffered in line of duty. An enlisted man of the National Guard who was hospitalized while in attendance with his organization at an encampment for a disease not incurred in the line of duty is not entitled to pay and allowances for a period of hospitalization extending beyond such encampment. 30 Comp. Gen. 301 (1951). See also B-175350, June 19, 1972.

A member of the Army National Guard or Army Reserve called or ordered to active duty for a period of 30 days or less, who is hospitalized for an in line of duty disability not due to his own misconduct, and who suffers an injury in the hospital during the period of active duty covered by the original orders, so long as that injury is administratively determined to be in line of duty and not due to own misconduct, may be considered as being injury or the proximate result of the performance of active duty for the purpose of 10 U.S.C. § 1204. 57 Comp. Gen. 305 (1978).

5. Disability must be incurred while member in duty status

a. Member injured going to or from active duty for training

A National Guard member is in a travel status for medical and disability entitlements for injury incurred while traveling to and from active duty training when he leaves his living quarters with the intention of going directly to the place where ordered to perform such duty and such travel status continues on completion of his tour when he returns directly from his place of duty to his home until he has entered his living quarters. 58 Comp. Gen. 232 (1979).

b. Member injured while on excursion with his family

An Air Force reservist ordered to active duty training in the vicinity of his home, who on the day he is released from duty is injured while on an excursion with his family 70 miles from his home, is not entitled to pay and allowances for the period he is unable to return to civilian employment or to reimbursement for the medical and hospital expenses. The right to the benefits provided by 10 U.S.C. § 8721(2) and 37 U.S.C. § 204(g)(2) exist only if disability occurs while in an active duty status. The Reserve member, no travel being involved, having reverted to a civilian status upon release from military control, is not entitled to pay and allowances and reimbursement for medical and hospital expenses incident to an injury sustained after release from active duty and while engaged in civilian pursuits, notwithstanding that he received pay and allowances for the full day of his release. 44 Comp. Gen. 408 (1965).

c. Members injured returning home during drill period for forgotten equipment

Three National Guard reservists who after reporting for multiple unit training assembly, two incident to the inactive duty training authorized by 32 U.S.C. § 502(a)(1), answering the roll call, and participating for 65 minutes in the first assembly, were ordered home to pick up equipment, and who while traveling in a privately owned car were in a collision in which two members were killed and one injured, passed out of military control when they ceased to perform inactive duty training. Since their 65 minutes of scheduled training does not create eligibility for pay under 37 U.S.C. § 206(a), and the members were not in training for the purposes of 32 U.S.C. § 318(2) (repealed in 1986) and 37 U.S.C. § 204(h)(2), the situation of the deceased does not meet the requirements of 10 U.S.C. § 1481(a)(3), authorizing the disposition of remains, nor entitle the injured member to medical care and pay and allowances. 52 Comp. Gen. 28 (1972). See also 43 Comp. Gen. 412 (1963), and B-164204, July 12, 1968.

d. Member injured after dismissal—effect of standby status

National Guard members are entitled by law to pay and allowances and other benefits when called to active duty and disabled by injury “while so employed.” They are ineligible for these benefits, however, based on injuries sustained when engaged in civilian pursuits and when no longer “employed” in a military capacity following their release from military control on the last day of an active duty period. Hence, an Air National Guard sergeant may not be allowed pay and allowances for an injury he

sustained while engaged in private civilian employment subsequent to his release from military duty and control earlier the same day, notwithstanding that he was in a "standby" status subject to a possible recall to duty during the remainder of that day. B-215512, Dec. 3, 1984.

e. Member injured after dismissal—return home under travel orders

An Army Reserve member injured in an automobile accident while returning to his permanent station after attending inactive duty training at a training site away from his unit headquarters under travel orders is not entitled to the medical benefits of 10 U.S.C. § 3721(2), since he had completed the training duty involved and he was not under military control employed in inactive duty training at the time of the accident. B-214806, July 23, 1984.

f. Member ordered home during drill to get records

Military member who during attendance at multiple unit training assembly two (MUTA-2) was instructed by his first sergeant to take the most direct route home to obtain his clothing records and return to the armory, and who was injured on return trip when he lost control of his motorcycle, is entitled to disability pay and allowances since his return home was not due to an omission on his part with respect to the training schedule. 52 Comp. Gen. 28 (1972), distinguished. 54 Comp. Gen. 165 (1974). See also 43 Comp. Gen. 412 (1963) and B-156628, June 1, 1965.

6. Members disabled while serving without pay

a. Disabled from disease during active duty period in excess of 30 days

Members of Reserve components of the Armed Forces who, with their consent, are called or ordered to active duty without pay for periods in excess of 30 days under authority of section 240 of the Armed Forces Reserve Act of 1952 and who, while so employed, suffer disability in line of duty from disease are entitled, under the Act of June 20, 1949, to pay and allowances during hospitalization, or from the date disease is contracted. 33 Comp. Gen. 411 (1954).

b. Disabled from injury during active duty for any period

Members of Reserve components of the Armed Forces who, with their consent, are called or ordered to active duty without pay for any period of time under authority of section 240 of the Armed Forces Reserve Act of 1952, and who, while so employed, suffer disability in line of duty from injury are entitled, under the Act of June 20, 1949, to pay and allowances during hospitalization, or from date of injury. 33 Comp. Gen. 411 (1954).

Waivers

A. In General

Reserve veterinary and optometry officers of the uniformed services, who were wrongly advised about their basic and special pay entitlement and who were then mistakenly overpaid, may receive favorable consideration under the statute authorizing waiver of claims arising out of such erroneous payments. However, overpayments received by an officer after he received notice of the error may not properly be waived, since upon notice the officer would become partially responsible for correcting the error, at least to the extent of setting aside subsequent overpayments for eventual return to the government. 10 U.S.C. § 2774. 56 Comp. Gen. 943 (1977).

An active duty commissioned officer of the Public Health Service who illegally performed personal service under contract for the Social Security Administration is not entitled to retain compensation he received for the performance of those services on the basis of de facto employment or quantum meruit. His debt may not be waived in the absence of clear and convincing evidence that he performed the civilian government services in good faith. Public Health Service Officer, 64 Comp. Gen. 395 (1985).

B. Specifics

1. Member not without fault

a. Excess leave upon retirement or separation

A member, who upon retirement had excess leave charged to him totaling a number of days in excess of the number of days pay to which he was entitled, should not have expected to receive the payment erroneously made to him at retirement. Since the member is not without "fault," he may not be granted waiver for the debt under 10 U.S.C. § 2774. Petty Officer Robert R. McGhee, Jr., USN (Retired), B-196226, Aug. 30, 1984.

A former Air Force member was erroneously overpaid for 26 days of leave upon separation from the service. The member is not entitled to waiver of the overpayment because he should have been aware of his approximate leave balance and therefore should have questioned the accuracy of the separation payment. Donald J.D. Hays, Sr., B-247943, June 4, 1992.

b. Failure to deduct allotment

A former Coast Guard member received erroneous payments due to failure of the Coast Guard to deduct a dependency allotment and an appropriate amount for a bond allotment from his pay. As a result his biweekly net pay increased by \$100 during a period when there was no increase in his

entitlements. This should have alerted him to the fact that his pay may have been erroneous. Since he failed to make prompt inquiry of the appropriate finance officials when he received an unexplained increase in pay, he is partially at fault for the erroneous payments thus precluding waiver of the government's claim against him. Brian P. Happy, B-214932, May 29, 1984.

Where a former member received successive allotments for savings subsequent to his discharge from the United States Navy, his request for waiver of collection of the erroneous overpayments may be granted for the overpayment he received at the time of separation since he may not have reasonably known what amounts he was entitled to. But collection of the second erroneous pay allotment may not be waived where the member failed to question the payment after it appeared on his credit union statement. Timothy R. Snelling, B-243882, Oct. 11, 1991.

c. Erroneous allowances

A Navy member received erroneous payments of a Basic Allowance for Quarters due to administrative error during a period when he was occupying government family quarters. His Leave and Earnings Statements during the period clearly showed he was receiving Basic Allowance for Quarters. Although he initially questioned the accuracy of his pay, he did not advise finance personnel that he was receiving the quarters allowance while living in government quarters until 7 months after the erroneous payments began. Therefore, he was partially at fault in the matter in failing to promptly notify the finance officer that he was occupying government quarters and not entitled to Basic Allowance for Quarters, thus precluding waiver of the government's claim against him for refund of the overpayment. Ronald W. Dvorak, B-214770, May 14, 1984.

When the Navy remitted a portion of erroneous overpayments of Base Allowance for Quarters with Dependents and Variable Housing Allowance with Dependents based upon a member's statements that he supported his wife during the time the payments were made, a request for full waiver is denied where additional evidence of nonsupport was received from his wife which was not considered when the initial waiver was granted and he has submitted no additional proof of support payments. Construction Electrician 1 David M. Lehman, USN, B-244478, Oct. 24, 1991.

Air Force member received family separation allowance (FSA) beyond the period when he was separated from his family. His request that the debt

arising from the erroneous payment be waived is denied, where the payment was reflected as a discrete item on the member's Leave and Earnings Statement (LES), so that he had reason to know of the overpayment and should have questioned it. Lieutenant Colonel David O. Chastain, B-248558, June 18, 1992.

Member of the Navy who continues to accept housing allowance during pendency of his challenge to a determination he was not entitled to them cannot obtain a waiver of his debt to repay them, when his nonentitlement to them is subsequently confirmed. Member knew or should have known that continued entitlement to allowances was in doubt. Erroneous information initially provided to him by the Navy does not provide a basis to allow waiver. Accordingly, waiver must be denied. Lieutenant Commander Bernard R. Hess, USN, B-247264, Sept. 8, 1992.

d. Overpayment of basic pay

Where Air Force officer was overpaid basic pay totaling \$20,089 over 23 months because of error in computing of service, waiver of government's claim is denied for all but \$4,469 of amount incurred in first 6 months of military service, because the officer could have detected subsequent overpayments by comparing his leave and earnings statement to standard pay chart he had been provided. Captain Charles E. Marunde, USAF, B-247263, July 23, 1992.

Member of the uniformed services received his regular active duty pay for the month after he had retired from the service. He claims that since the amount was directly deposited he was unaware of the overpayment. Since members have an obligation to verify their bond statements and since the member did not do so, nor did he take any action to have the matter corrected, waiver is denied. Chief Petty Officer Manolo D. Gullaba, USN (Retired), B-244513, Dec. 10, 1991.

2. Upon records correction action

Acceptance of settlement by an Army member incident to the administrative correction of his military records would not operate to bar his subsequent request for waiver of erroneous payments of military pay and allowances shown as debits to his account in the settlement statement. The gross amount of such erroneous payments could be considered for waiver under 10 U.S.C. § 2774. 57 Comp. Gen. 554 (1978).

3. Failure to liquidate advance payments

A discharged service member's request for waiver of his debt arising because of failure to liquidate advance payments made of pay and allowances may not be considered for waiver under 10 U.S.C. § 2774 since only erroneous payments of pay and allowance may be considered under that statute and these payments were valid when made. Resuming regular payments prior to liquidation of the advance does not change the regular payments or the advance into erroneous payments. Andrew J. Jossis, B-236270, Jan. 26, 1990.

A discharged service member's request for waiver of his debt arising from advance pay made to him upon his reenlistment may not be considered for waiver under 10 U.S.C. § 2774 since only erroneous payments may be considered under that statute. When payments such as advance pay are legal and valid, they are not erroneous for purposes of the waiver statute and subsequent decision by the member to request discharge does not affect the character of the payment. Steven G. Dodge, B-244977, Mar. 23, 1992.

4. Bonus payments

Waiver under 10 U.S.C. § 2774 may not be granted where an enlisted member of the Navy Reserve should have known he was not entitled to retain bonus payments received after he was commissioned as an officer. Member signed a reenlistment contract which states that his bonus entitlement would end if he became "separated from the selected reserve for any reason as an enlisted person" prior to the fulfillment of his obligation. The Comptroller General is authorized by 10 U.S.C. § 2774 to waive a claim of the United States arising from an erroneous payment of pay and allowances. The portion of a debt arising from a bonus that was proper at the time it was paid is not a debt arising out of an erroneous payment, even though the portion was subsequently deemed to be unearned. Accordingly the waiver statute does not apply, and waiver may not be granted. Patrick J. Gavigan, B-248781, Sept. 29, 1992.

5. Direct bank deposits

A former member who was overpaid by direct deposit on two occasions subsequent to his separation, who questioned the overpayment when he examined his bank statement but was advised to wait until he heard from the Navy Finance Center, may not have the claim against him waived. He was aware of the error and should have set aside the amounts for eventual repayment. Daniel N. Koharski, B-244882, Nov. 15, 1991.

6. Final pay and leave

A former Air Force enlisted member who was voluntarily discharged early received a large unexpected payment upon discharge for final pay and leave, when he knew or should have known he was in debt to the service for the unearned portion of his reenlistment bonus. He is not without fault in the matter so as to permit waiver of the final pay overpayment. Further, financial hardship alone resulting from collection is not sufficient reason for a member to retain the payment that he should have known did not belong to him. Barry L. Wells, B-228828, Mar. 23, 1988. See also Mark K. O'Brien, B-247744, Mar. 16, 1992.

7. Statutes of limitation

Member was erroneously overpaid due to incorrect pay entry basis date. He was notified in 1984 of the debt but did not file request for waiver until 1988, when collection action began. Since member did not file his request for waiver within the 3-year time limit under 10 U.S.C. § 2774, the Claims Group's denial of the waiver was proper. Major Robert D. Gentile, USA, B-244217, Dec. 19, 1991.

Special Pay

A. Incentive Pay for Hazardous Duty

1. Aerial flights

a. Orders requirements

(1) Orders required—It is the general rule that in order to be eligible to receive incentive pay for hazardous duty under 37 U.S.C. § 301, such duty must be performed under orders issued by competent authority. Verbal orders or performance of duty without orders is not sufficient. B-173497, Oct. 27, 1971.

(2) Performance without competent orders—Performance of aerial flights without having been directed by an officer with authority to do so cannot constitute performance of flight duty pursuant to competent orders and a member is not entitled to flight pay therefor. B-173497, Oct. 27, 1971.

(3) Verbal orders—Entitlement to flight pay is dependent upon the existence of competent orders placing a member in a flight status during those periods as well as evidence establishing that the member met minimum flight requirements during the period. Verbal orders will be recognized as competent orders only when they are properly confirmed in writing within a reasonable time after they are issued. Confirming orders issued 21 months to 2 years after the purported verbal orders may not be considered sufficient to meet the requirements of this rule. B-173497, Oct. 27, 1971.

(4) Failure of physical exam—Suspension of flight pay absent orders directing the suspension of flying duties is ineffective and member is entitled to flight pay until the date flying status is officially terminated notwithstanding member failed physical to qualify for flight pay. 48 Comp. Gen. 81 (1968).

(5) Falsification of flight physical examination to qualify—An Army officer, who was found to have fraudulently qualified for flight pay and Aviation Career Incentive Pay by submitting falsified flight physical examination records, is not entitled to such pay under applicable statutes and regulations. The de facto rule will not be applied to allow retention of flight pay and Aviation Career Incentive Pay received by an officer who fraudulently qualified for such pay. Therefore, collection action should be taken to recover these payments. B-214584, Nov. 14, 1984.

b. Continuation while injured

(1) Aviation accident—Section 10 of Executive Order No. 10152 which authorizes continuation of incentive pay for 3 months for members in flying status who are incapacitated as a result of aviation accident, contemplates that such incapacity results from performance of aerial flights. Therefore a member who is captured by the enemy while in a flight status, and who upon release from captivity is incapacitated for flying because of privation and hardship suffered while a prisoner, may not be granted incentive pay for periods immediately following release, during which he did not participate in aerial flights. 33 Comp. Gen. 436 (1954). See also B-168082, Dec. 11, 1969, in which it was held that authorizing hazardous duty pay in such situations could not be accomplished by amending the executive order but that legislation would be required.

(2) Incapacity periods—Members who receive flight pay and who become physically incapacitated for flying for any reason other than as a result of a performance of hazardous duty may, by regulation, be permitted to continue to receive flying pay for 3 months. However, the matter of suspension from flight status at the end of such period is not required under Executive Order No. 10152 (superseded by Executive Order No. 11157), but is left to the discretion of the individual Secretaries. 39 Comp. Gen. 604 (1960).

(3) Non-aviation accidents—Members who are suspended from flight requirements and who become incapacitated for flying duty as a result of a nonaviation accident may be authorized by regulation to receive flight pay for a 3-month period provided that such member becomes available for and is physically requalified for flying duty prior to the expiration of the 3-month period. However, the right to flight pay for any part of such period shall be lost when such members remain incapacitated at the expiration of such period. 41 Comp. Gen. 173 (1961).

c. Qualifying duties

(1) Enlisted members retained on flight status—Air Force policy, which in unusual cases retains enlisted members on flight status by distributing flight duty among more enlisted members than necessary so as to prevent termination of flight status and incentive pay without 120 days notice is questionable administrative practice. It may not be said, however, as a matter of law that members in such cases are not entitled to incentive pay. 55 Comp. Gen. 121 (1975).

(2) Jumpmasters—The detailed explanation of a jumpmaster's duties during a typical project flight does not establish that he may in fact be classified as a crew member of the aircraft as opposed to his regular designation and rating as a parachutist. Therefore, no basis exists for entitlement to flight pay rather than parachute pay in connection with duties performed by a jumpmaster. B-164186, Aug. 15, 1969.

(3) Voluntary flying during active duty for training—Reserve officer flying voluntarily during active duty for training is not entitled to aviation career incentive pay since he is not performing aviation service on a career basis as is defined in the Department Military Pay and Allowances Entitlement Manual. B-193563, Apr. 17, 1979.

d. Flight requirements

(1) Minimum flight requirements—The regulations implementing the statutorily authorized waiver of minimum flight requirements for members of the uniformed services while attending a course of instruction of 90 days or more or while serving under certain overseas assignments may be amended to include periods of travel, leave, and temporary duty not in excess of 90 days in cases of consecutive duty assignments between schools and remote places. However, the rule of 34 Comp. Gen. 243 (1954) should continue to be applied to travel to the first of such assignments and the return from the last of such assignments. 51 Comp. Gen. 95 (1971).

(2) Flight deficiencies—An officer failed to meet the minimum flight requirements for 3 months because he was in a proceed, leave, travel, and temporary duty status after departure from an overseas station where officers were not exempted from meeting flight requirements. He does not come under the provision which permits flight pay to members whose assignment outside the United States makes it impracticable to participate in regular aerial flights, nor under regulations applicable to areas where the commander determines that due to operations or the unavailability of aircraft, flight requirements cannot be met. Therefore, the member is not entitled to flight pay for the 3-month period when the minimum flight requirements were not met. 41 Comp. Gen. 507 (1962).

Flight pay may not be paid to member who does not qualify for such pay. Thus, a Coast Guard officer who participated in a flight crew program as a non-crew member and flew only enough hours to qualify for 1 month in an 18-month period is indebted to the government for flight pay he received

during the months he did not qualify, despite his assertion he did not know he had not qualified for flight pay. B-217241, Apr. 9, 1985.

(3) Inactive duty flight credit—Flying time performed during any short tour of active duty for training within the same calendar month may be applied toward the flight requirements for any prior or subsequent short tour of active duty or active duty for training performed within the same calendar month provided the member is under continuous flight orders for the calendar month involved. 37 Comp. Gen. 121 (1957).

(4) Deficiencies make-up—The Act which provides for flight pay to officers assigned to duty outside the United States without the necessity of meeting the minimum requirements of Executive Order No. 10152 covers only the period between the date of reporting for duty at the assigned station where required flights are excused and the date of detachment therefrom and does not affect in any other way the operation of the executive order. Therefore, an officer under flying orders assigned to duty outside the United States where aerial flights are impractical is not entitled under the said section to flight pay without performing flights while going to and from the overseas station. 34 Comp. Gen. 243 (1954).

2. Submarine duty

a. Purpose and qualification

(1) Primary duty—A member is not entitled to submarine duty pay on a continuous basis when it is shown that his submarine duty was on an intermittent basis and that his primary duty was in fact elsewhere. B-151075, Aug. 12, 1963.

(2) Staff based ashore—Submarine staff members based ashore or on surface vessels who do not perform a majority of assigned duties on a submarine are not entitled to submarine pay on a continuous basis. 44 Comp. Gen. 241 (1964). See section 605, Pub. L. No. 92-436, 37 U.S.C. § 301(a)(2)(A) (now 37 U.S.C. § 301(c)(a)(5)), which authorized submarine pay to such staff members under certain conditions.

b. Periods for which allowed

(1) Undergoing training—Submarine duty pay may be paid to officers previously qualified in submarines as enlisted members while attending courses of instruction specifically preparing them for positions of

increased responsibility in advanced nuclear submarine fleet. 54 Comp. Gen. 1103 (1975).

(2) Leave status—Submarine crew members who have unbroken periods of combined temporary additional duty (TAD) and authorized leave away from their permanent duty on board submarines, unless absent on TAD in excess of 15 days or on authorized leave exceeding 30 days, are entitled to incentive pay for a leave period not exceeding 30 days if in a submarine pay status when the leave began. 42 Comp. Gen. 266 (1962).

(3) Off-crew members—Off-crew members of a two-crew nuclear-powered submarine who travel under change-of-home-port orders are entitled to submarine pay for the period of travel to the new home port, the continued operation of the submarine requiring the movement of the off-crew as well as the on-crew members to the new home port. The travel other than by submarine does not terminate the rehabilitation and training status of the members. 44 Comp. Gen. 507 (1965).

(4) Periods of absence—The 14-man augmentation to the crew of nuclear-powered attack submarines, which allows members of the submarine to remain in port for periods of training and rehabilitation, is not comparable to the two-crew system as used in nuclear-powered ballistic missile submarines. Nevertheless Public Law 86-635, which amended the law relating to the payment of incentive pay for periods of training and rehabilitation away from the submarine in cases of off-ship crew of two-crew nuclear-powered submarines, is not so restrictive so as to prohibit payments of incentive pay during periods of training and rehabilitation on a continuous basis. Such training and rehabilitation periods must bear a reasonable relationship to periods of duty aboard the submarine and no severe imbalance of assignments is to occur among crew members. 53 Comp. Gen. 762 (1974).

c. Computation: 31st day of the month

The monthly incentive pay authorized in 37 U.S.C. § 301 (now 37 U.S.C. § 301c) for submarine duty being a percentage increase of the annual pay of members of the uniformed services is within the meaning of the Act of June 30, 1906, 5 U.S.C. § 84 (now 5 U.S.C. § 5505), prescribing that in computing compensation for a fractional part of a month, each month shall consist of 30 days, excluding the 31st of any calendar month and treating February as having 30 days. Therefore, an officer in an active duty status for a period in excess of 30 days who performs submarine duty on

the 31st of the month may not be paid submarine pay for that day. Further, the officer serving on extended active duty is not within the purview of 37 U.S.C. § 1004, providing for entitlement to pay and allowances for each day, including the 31st day of the month, when a member serves a continuous period of less than 1 month. 45 Comp. Gen. 395 (1966).

3. Parachute jumping

a. Assignment to duty

(1) Assignment status—Officers trained in parachute jumping and the demolition of explosives, who incident to staff billet assignments evaluate training programs and equipment, entailing the observation of actual training exercises by special warfare forces, are not entitled to the dual hazardous duty incentive pay unless they are assigned to an operational team and actually perform parachute jumping in a jump status or perform demolition duty as a primary assignment. The mere evaluation or observation of operation team activities does not qualify the officers for incentive pay; and, in the absence of proper orders, any parachute jumping or demolition of explosives actually performed by the officers would not entitle them to additional pay. 50 Comp. Gen. 425 (1970).

(2) Rating and performance—The law authorizing parachute duty pay prescribes two requirements for qualification for parachute pay—(1) a parachute rating and (2) the actual performance of duty designated as parachute duty. In the absence of evidence that both requirements have been met, there is no authority for the payment of parachute pay. B-158937, May 25, 1966.

(3) Active duty for training assignment—Under current regulations a member of the Reserves receiving parachute pay while assigned to parachute duty on inactive status is not entitled to receive such incentive pay while assigned to active duty for training where the latter position is not designated as parachute duty. 57 Comp. Gen. 392 (1978).

b. Performance of qualifying jumps

(1) Hostile fire area—When members in a parachute duty status are engaged in combat in a hostile fire area the period for performing minimum parachute jump requirements to qualify for incentive pay may be extended because of the inability of parachutists in combat area to perform parachute jumps. 45 Comp. Gen. 451 (1966).

(2) Requirements as to jumps performed—The jump performed during a period of training may not serve as a basis for paying parachute pay to a National Guard member; and the regulation not so providing, a member is not entitled to have a jump that is used to qualify him for inactive duty parachute pay also used to qualify him for active duty for training parachute pay. 43 Comp. Gen. 619 (1964).

(3) Temporary duty—A member is not entitled to parachute pay for a parachute jump performed while on temporary duty unless he is “on parachute duty” during the period of temporary duty and he cannot be in a parachute duty status during that period unless temporary duty is performed with a military unit cited in the regulations. Where a member was on temporary duty with no military unit during temporary duty performed at the University of Omaha for the purpose of fulfilling the requirements for a degree in economics, there is no authority for the payment of a claim for parachute pay. B-153957, May 26, 1964.

4. Dual hazardous duty

a. Demolition of explosive—parachute jump

Officers trained in parachute jumping and the demolition of explosives are not entitled to dual hazardous duty incentive pay unless they are assigned to an operational team and actually perform parachute jumping in a jump status or perform demolition duty as a primary assignment. Mere evaluation or observation of operational team activities does not qualify the members for incentive pay. 50 Comp. Gen. 425 (1970).

b. Low pressure chamber—aerial flights

Members who perform two types of hazardous duty (1) in a low pressure chamber, and (2) in aerial flight in connection with testing and evaluation of air crew safety equipment, but who perform each one of the duties separate and distinct from the other and at times separated by days or weeks, may not by reason of the fact that they are qualified for both and perform both hazardous duties be entitled to dual incentive payments under 37 U.S.C. § 301(e). 44 Comp. Gen. 426 (1965). This decision was overruled in part by 56 Comp. Gen. 983 (1977).

c. Aviation—parachute duty

An experienced pilot and parachutist of the uniformed services training for or fulfilling the position of forward air controller, whose duties do not qualify him for flying pay or require the performance of parachute jumps to carry out assigned duties, may not be paid the dual incentive pay. Executive Order No. 11120 limits dual payments of incentive pay to those members required by competent orders to perform specific hazardous duties in order to carry out their assigned missions. Therefore, the fact that a member is qualified to perform hazardous duty is not the criterion for entitlement to dual incentive pay. 43 Comp. Gen. 667 (1964).

d. Simultaneous performance not required

A member is entitled to dual payments of hazardous duty incentive pay, provided he is required to perform specific multiple hazardous duties in order to carry out his assigned mission and otherwise meets the criteria established by departmental regulations. 37 U.S.C. § 301(e) and Executive Order No. 11157, June 22, 1964, as amended. However, such duties need not be performed simultaneously or in rapid succession as was stated in 44 Comp. Gen. 426 (1965) and 43 Comp. Gen. 667 (1964) which, to that extent, will no longer be followed. 56 Comp. Gen. 983 (1977).

Air Force pararescue team members may qualify for hazardous duty incentive pay as aerial crew members, provided they are an integral part of an air crew contributing to the safe and efficient operation of an aircraft, and their flight duties are not merely incidental to their duties involving parachute jumpings. 56 Comp. Gen. 983 (1977).

5. Demolition duty

a. Assignment

Military officer who was not assigned by orders to demolition of explosives as his primary duty and whose work with explosives is not shown to have come within the meaning of "duty involving demolition of explosives" under applicable regulations is not entitled to hazardous duty incentive pay on the basis of working with explosives. 63 Comp. Gen. 70 (1963).

b. Training duty

Members who are taught how to set underwater demolition charges may not have such training duty regarded as a primary duty involving demolition of explosives to be entitled to incentive pay for demolition duty, notwithstanding that the duty may be performed under extremely hazardous conditions. 39 Comp. Gen. 731 (1960).

c. Primary duty assignment

If a member is otherwise entitled to incentive pay for demolition duty and actually performs such duty during a portion of a month involved, conditions such as leave while in a pay status will not affect his eligibility for such pay for the month. However, upon permanent change of station where leave is taken en route, a member's entitlement continues only to date of departure from the old station, and the member's entitlement at the new station is dependent upon orders issued and duty performed at the new station. B-147915, Feb. 19, 1962.

6. Diving duty

a. Qualification requirements

To qualify for special pay for diving duty, under 37 U.S.C. § 304(a), an individual must be assigned to, maintain a proficiency in, and actually perform diving duty. Each requirement must be met before special pay begins to accrue. Therefore, where a member was assigned to duty as a student at Officer Candidate School during which he did not actually perform diving duty, although he may have met the other requirements, he may not receive special pay. 37 Comp. Gen. 546, distinguished. 62 Comp. Gen. 612 (1963).

b. Qualification lapse

A Navy regulation, effective August 17, 1961, which precludes members from qualifying for helium-oxygen diving pay after diving qualifications have lapsed must be viewed as superseding the regulations under which members were given a 3-month grace period to make up diving deficiencies. Therefore, members who were prevented until September 1961 from making up diving qualifications which lapsed on July 31, 1961, must be regarded as merely having an inchoate right to make up their diving deficiencies until August 17, 1961. When the regulation was superseded it deprived them of any further right so that the members who

failed to meet the diving requirements for August and who were not entitled under the new regulations to make up diving deficiencies in September 1961 may not be credited with diving pay for the period August 1 to 16, 1961. 41 Comp. Gen. 392 (1961).

B. Professional Pay

1. Medical and dental

a. No medical duties

Where physician at his own request was permitted to remain on active duty an additional 2 months for hospitalization but did not perform medical duties, he was not entitled to special pay for that period. Pesquera v. United States, 133 Ct. Cl. 899 (1965).

b. Service requirements

(1) Extensions—Medical and dental officers whose orders to active duty for periods of less than a year are subsequently amended to extend the active duty period to a total of a year or more have met the 1-year prescribed service requirement for entitlement to special pay from the date the amended orders increase the total active duty to more than 1 year. 38 Comp. Gen. 211 (1958).

(2) Internship—An Army officer who upon graduation from medical school served the 1-year period of military internship prescribed by Army regulations for transfer to the Army Medical Corps is not eligible 1 year after transfer to include the period of internship in the “at least 2 years of active duty” required for eligibility to receive the \$150 per month rate of special medical pay. 43 Comp. Gen. 724 (1964).

(3) Continuous duty—Since the law requires an order to active duty for a period of at least 1 year before its conditions are met, no amount of service under orders to active duty for period of less than 1 year may be added together to fit the statutory requirement. Unless and until a medical or dental officer in a Reserve component is obligated to serve on active duty for a period of at least a year under a proper order, he is not entitled to the special pay. B-149990, Oct. 15, 1962.

c. Entitlement based on statute and regulations

Entitlement to military pay is dependent upon provisions of statute and regulation and may not be established through private negotiation. Thus an Army medical officer paid special additional pay of \$10,000 under statutes and regulations requiring he remain on active duty for a 1-year period is liable to refund the \$10,000 payment he received under an agreement he negotiated with his commander which altered this stipulation, since the agreement did not conform to the governing provisions and was therefore invalid. B-219079, Apr. 3, 1986.

d. Commissioned officers

While the principal purpose for authorizing the additional pay for physicians and dentists was to provide an inducement for qualified medical and dental personnel to serve on active duty in the uniformed services because of the difficulty experienced in securing and retaining on active duty an adequate number of physicians, surgeons, and dentists, such professional people become entitled to the special pay only if they fall within one of the categories of "commissioned officers" who are serving on active duty as medical or dental officers. Although a member remained a commissioned officer in the Retired Reserve subsequent to his release from active duty for age, his subsequent service in the Regular Army under an enlistment for the purpose of acquiring sufficient service to qualify for retirement with pay, could not, in any circumstances, place him in one of the categories of "commissioned officers" entitled to special pay. B-155800, Feb. 1, 1965.

2. Veterinarians and optometrists

a. Entitlement

There is currently no statutory authority for the payment of special professional pay to Reserve veterinarian and optometry officers of the uniformed services who entered on active duty after June 30, 1975; hence, such officers are not entitled to special pay notwithstanding any administrative regulations or recruiters' promises to the contrary. 56 Comp. Gen. 943 (1977). Note: This decision was dated September 8, 1977. On September 30, 1977, Public Law 95-114 was enacted reinstating special pay for veterinarians and optometry officers effective October 1, 1977, at the rate of \$100 per month. Thus, the above decision applies only to that period between June 30, 1975, and October 1, 1977.

b. Longevity credit

The Act which authorized the Armed Forces Health Professions Scholarship Program (HPSP) specifically provided that service performed while a member of the program shall not be counted in determining eligibility for retirement other than by reason of a physical disability incurred while on active duty as a member of the program; or in computing years of service creditable for basic pay purposes other than physicians and dentists. 10 U.S.C. §§ 2120-2127. In view of the clear and unambiguous language of the statute and the contract executed in order to enter the program, we know of no legal basis for the crediting of time spent while participating in the HPSP for longevity pay purposes for veterinarians. B-188594, Apr. 28, 1977.

C. Special Duty Pay

1. Foreign duty pay

a. Effective date

For purposes of foreign duty pay, enlisted members who are in a travel status in an area designated for foreign duty pay but who have not reported to their duty station in the area may not be regarded as on "duty at a designated place" within the meaning of the law and regulations, and therefore, foreign duty pay is not payable prior to the day on which the member in fact reports to his duty station. 44 Comp. Gen. 396 (1965).

b. Off-shore islands

Members who are assigned under permanent change-of-station orders to duty on San Clemente Island and Santa Rosa Island, located off the coast of California, are not regarded as being assigned to duty beyond the continental United States and may not be paid foreign duty pay. 39 Comp. Gen. 540 (1960).

c. Artificial islands (Texas Towers)

In the absence of an authoritative court decision, payment of foreign duty pay to enlisted personnel stationed on an artificial island located approximately 40 miles off the coast of the United States is too doubtful to be authorized. However, if the regulations for special pay for sea duty issued by the President are broadened to include in the definition of sea

duty the type of duty on such an island, payment of special pay would be proper. 40 Comp. Gen. 414 (1961). See also 39 Comp. Gen. 540 (1960).

d. Duty status

An enlisted member, after detachment from an overseas station in an awaiting orders status pending disability retirement, elected to remain in the vicinity of the overseas station and was charged leave to the extent available during the period prior to placement on the temporary disability retired list. The member is regarded as coming within 37 U.S.C. § 502(a), which authorizes pay and allowances to members directed to be absent from duty during action on disability retirement for periods longer than the days of authorized leave. Therefore he is entitled to the housing and cost-of-living allowances and special sea and foreign duty pay which he would receive at that location even though not in a duty status. 42 Comp. Gen. 689 (1963).

2. Sea duty

a. On board vessel

Members were ordered to Harbor Clearance Unit Two (HCU-2) but performed temporary duty aboard the YRST-2, a nonself-propelled service craft with berthing and messing available on board. Since it is not a "vessel" for sea duty pay or for travel entitlement purposes they may not receive sea duty pay. The members, however, are not prohibited from receiving per diem since the temporary duty was, in fact, not performed on-board a vessel. 54 Comp. Gen. 442 (1974).

b. Time limitation

(1) Vessel alteration and repair—For purposes of crediting Navy enlisted members with special sea duty pay during periods when messing and berthing facilities, or both, are temporarily out of operation for vessel alteration and repair under Executive Order No. 10821 (superseded by Executive Order No. 11157), vessel repair and alteration periods not in excess of 90 days may be considered temporary. However, when alterations and repairs will close the messing or berthing facilities aboard a vessel, so that enlisted members will have to be messed or berthed ashore for a continuous period in excess of 90 days, such period may not be considered temporary and no special sea duty pay for any part of the time may be allowed. 40 Comp. Gen. 618 (1961).

(2) Submarine repair

Sea duty pay to Navy enlisted crew members of submarine during the 150-day period the submarine is undergoing alterations and repairs, and berthing and messing facilities aboard the craft are inoperative but available nearby, may not be paid on the basis that, due to peculiarities of construction submarine, overhauls present entirely different problems than those considered in 40 Comp. Gen. 618. A departure from the construction of the term "temporarily" as used in Executive Order No. 10821 to mean a period not in excess of 90 days is unwarranted, as the period of time during which facilities are temporarily out of operation within the meaning of the executive order should not vary on the basis of the type of vessel involved, and also, the extent of the term should be the same for all members whether assigned to vessels or submarines. 42 Comp. Gen. 24 (1962).

3. Administrative function pay—Reserve

When a National Guard or Reserve component is not functioning as a separate unit but is a subordinate part of a larger group, the administrative functions of the organization are, for the most part, normally performed by the headquarters of the larger group. Consequently, in such cases, payment of administrative function pay must be supported by clear showing that commanders of the subordinate group units did in fact perform the administrative functions of their unit. B-147755, Jan. 22, 1962. See also B-185426, Jan. 19, 1976.

4. Hostile fire pay

a. Members missing in action

Payment of hostile fire pay to members captured or missing in action as a result of hostile action, even though the members had not otherwise qualified for such pay immediately prior to that time, is not authorized under 37 U.S.C. § 310 since the legislative history clearly establishes that Congress intended that the special pay not be paid to such members. 44 Comp. Gen. 532 (1965).

b. Member classified as a casualty

Only when a member is classified as a casualty as the result of hostile fire action may he be paid hostile fire pay for a period not to exceed 3 months while hospitalized. 49 Comp. Gen. 507 (1970).

c. Cadets and midshipmen

Since cadets and midshipmen are not entitled to basic pay, they do not qualify for hostile fire pay even though serving in an area subject to hostile fire. 47 Comp. Gen. 781 (1968).

d. Noncombat areas

The Combat Pay Act of 1952, which was repealed by section 9(b) of Uniformed Services Pay Act of 1963, authorized special pay for members of combat units in Korea, provided they were in action for specified periods of time. In 1963, when the hostile fire pay of 37 U.S.C. § 310 was authorized, the hostilities in Vietnam did not involve clearly distinguishable line of demarcation between friendly and enemy forces, as in Korea. Instead, there was the possibility of exposure to hostile fire in almost any area or location in Vietnam or in other areas of Southeast Asia. Thus, the concept of exposure to possible hostile activity was used as the basis for the special pay authorized in 37 U.S.C. § 310, and is less restrictive in that respect than the Combat Duty Pay Act of 1952 which limited combat pay to combat troops in action. B-168403, Mar. 3, 1975.

e. Entitlement to convalescent leave

Only a member who incurs an "illness or injury" while eligible to receive hostile fire pay is entitled to travel at government expense on convalescent leave. B-195234, Oct. 23, 1979.

D. Bonuses

1. Proficiency pay (now special duty assignment pay)

a. Promotion

(1) Enlisted to commissioned grade—Enlisted member of the Navy or Marine Corps, who at time of temporary appointment or promotion to commissioned officer grade was receiving proficiency pay is not entitled to saved proficiency pay unless he continues to meet the eligibility conditions prescribed by regulations. A member does not meet prescribed conditions of eligibility for proficiency pay when as part of his duties as an officer he utilizes the skills of his military specialty for which the pay was authorized in the supervision of other personnel with similar skills. 48 Comp. Gen. 12 (1968).

(2) Eligibility for promotion—Regulations which prescribe eligibility for an award of proficiency pay on the basis of qualifying for promotion to the next higher grade are not consistent with the law, and payments of proficiency pay in superior performance category that do not relate to a member's current pay grade but on eligibility for promotion in grade may not be authorized. 48 Comp. Gen. 86 (1968).

b. Prohibition

The payment under 37 U.S.C. § 307 of superior performance proficiency pay by the Air Force at \$30 per month and by the Army at \$50 per month to senior noncommissioned officers entitled to the special pay rate provided in 37 U.S.C. § 203(a) should be discontinued since Pub. L. No. 90-207, effective October 1, 1967, amended section 203(a) to provide the new special pay rate, regardless of years of service, in lieu of basic pay at the rate of E-9, with appropriate years of service, plus proficiency pay. The improper payments of superior performance proficiency pay having been based on a misinterpretation of the law, and having been accepted in good faith, need not be collected and may be waived under 10 U.S.C. § 2774. 53 Comp. Gen. 184 (1973). See also 37 U.S.C. § 907.

c. Qualifying criteria

Proficiency pay may be authorized for personnel serving in ratings requiring specialized training in a military skill and for superior performance while serving in other military occupational duty assignments involving a military skill for which specialty proficiency pay has been authorized. However, proficiency pay may not be authorized for duty assignments which do not involve any military grade specialty or military occupation of the service. B-160435, Nov. 25, 1968.

d. Training

A member selected for the Marine Corps Associate Degree Completion Program (MADCOP) who will not use his military specialty while attending junior college may only be paid a variable reenlistment bonus and proficiency pay if the major course of study pursued is reasonably related to his critical skill, such as a disbursing man studying data processing, and who upon completion of the studies that enhanced his skills will resume the duties he had performed prior to entering the program. 51 Comp. Gen. 3 (1971).

e. Authority to pay

Section 307 of Title 37, United States Code, confers upon the Secretaries concerned a broad and flexible authority to provide for payment of proficiency pay to enlisted members of the uniformed services. Where a member claims he is entitled to a higher rate of proficiency pay than that awarded by official orders but provides no evidence that payment of the higher rate was authorized by appropriate regulations and no regulations to support the member's claim have been found, the claim must be disallowed. B-187713, Feb. 14, 1978.

2. Enlistment bonus—high school students

Proposed program for a nonprofit corporation which would be formed and funded by private industry for the purpose of making payments to selected high school graduates to induce them to enlist and serve satisfactorily in the Army should not be implemented without additional statutory authority in view of the possible applicability of the prohibitions against enlistment bounties (10 U.S.C. § 514(a)) and receiving extra pay for services (5 U.S.C. § 5536) as well as the rule that extra earnings gained in the course of the soldiers' service to the Army belong to the United States and must be paid into the Treasury. B-200013, Apr. 15, 1981.

3. Reenlistment bonus

a. Extension of enlistment in order to retain status as member of the Armed Forces

Air Force member whose enlistment is extended in 30-day periods for over 24 months while placed on international hold to give him the benefit of retaining his status as a member of the Armed Forces while awaiting the adjudication of his criminal trial and appeal by civilian authorities in a foreign country is not entitled to a reenlistment bonus based on such extensions since he was ineligible for reenlistment during that period and the bonus was not intended to be paid in such circumstances. B-193225, Dec. 29, 1978.

b. Early release

Member who within 3 months of the expiration of his current enlistment or extension thereof, is discharged for the sole purpose of reenlisting, may not have that unexpired term of enlistment or extension thereof considered as "additional obligated service" for the purpose of

determining the multiplier for Selective Reenlistment Bonus computation under 37 U.S.C. § 308. 55 Comp. Gen. 37 (1975). See also B-200974, Mar. 9, 1981; B-106550, Oct. 27, 1982.

Under an Air Force early separation program a group of first-term enlisted members were released up to 5 months before their enlistments expired. Since these members were entirely free to separate from the service, their previously obligated service may be regarded as having been terminated. Therefore, when such a member reenlists immediately rather than separates from the service, the full period of the member's reenlistment may be counted as additional obligated service under 37 U.S.C. § 308(a)(1) for the purpose of computing the member's selective reenlistment bonus. Selective Reenlistment Bonus, 70 Comp. Gen. 67 (1990). This case differs from the cases in the immediately preceding paragraph in that here the members had no option to serve out their enlistments.

c. Matter of Timm

In Matter of Timm, B-206550, Oct. 27, 1982, we held that notwithstanding agency regulations, no recoupment action need be taken when a service member who received a regular reenlistment bonus was discharged early for the purpose of immediate reenlistment for which a selective reenlistment bonus was payable. We effectively held that the recoupment regulations were inconsistent with the governing bonus statute and were therefore void effective on the date of enactment of the statute in 1974. Therefore, the Timm decision is to be applied retroactively, and a service member who had an improper recoupment action taken against him prior to the Timm decision may be refunded the amounts recouped. B-210827, Sept. 21, 1983.

d. Creditable service

Member's period of authorized excess leave pending appellate review of his court-martial is creditable service for computing period served on term of enlistment and, even though court-martial sentence was approved and discharge effected thereafter, period of such leave is to be included in unexpired part of enlistment upon which computation of recoupment of reenlistment bonuses is based. 55 Comp. Gen. 1244 (1976).

e. Special benefits programs

A member of the Marine Corps who enlisted under the Educational Assistance Program is not limited to either the student loan repayment benefit or the education assistance benefit, but may receive both types of benefits if he enlisted under both segments of the program or was otherwise eligible since nothing in the legislative history or implementing guidelines restricts such benefits. B-219059, Mar. 24, 1986.

f. Critical military skill

Member serving in a critical skill at the time of his reenlistment is entitled to a variable reenlistment bonus notwithstanding the fact that he reenlisted for the purpose of being trained and serving in a new critical skill since such new skill was within the same occupational field as the old skill. The new skill would require the use of the old skill plus additional training and, thus, the old skill would continue to be utilized and not lost to the service. 53 Comp. Gen. 794 (1974).

g. Basis of reenlistment bonus

The United States Supreme Court's opinion in *United States v. Larinoff*, 431 U.S. 864 (1977), concerning military reenlistment bonuses, did not alter the fundamental rules of law that (1) a service member's entitlement to military pay is governed by statute rather than ordinary contract principles, and (2) in the absence of specific statutory authority the government is not liable for the negligent or erroneous acts of its agents. Hence, the amount of any reenlistment bonus payable to a service member depends on the applicable statutes and regulations, and in no event can the bonus amount be established through private negotiation or contract between the member and his recruiter. 60 Comp. Gen. 257 (1981).

Where service member reenlists in reliance upon alleged representations that he would receive a certain amount as a Selective Reenlistment Bonus (SRB) and Army correctly pays the lesser SRB, member is not entitled to recover the additional amount promised on this basis since government officers have no authority to contradict or nullify provisions of the statutes or regulations. B-200974, Mar. 9, 1981.

h. Date on which bonus payments are to be based

Selective Reenlistment Bonus payments for extensions of enlistments, authorized by 37 U.S.C. § 308, must be based on the award level multiplier in

effect on the date the extension agreement is executed rather than on the date the extension agreement becomes operative, in accordance with United States v. Larinoff, 431 U.S. 864 (1977). Comptroller General decisions to the contrary should no longer be followed. 58 Comp. Gen. 282 (1979).

If an individual enlists in a Reserve component under the Delayed Entry Program with a concurrent commitment to serve in Regular component for a period of at least 4 years in a skill designated as critical, the award level of the enlistment bonus authorized by 37 U.S.C. § 308a must be fixed on the date of enlistment in the Delayed Entry Program, rather than on the date of entry on active duty. Payment of the bonus must, however, be contingent on the member's qualifying and serving in his designated military specialty. 58 Comp. Gen. 282 (1979).

A member of the Marine Corps who enlisted for 4 years under the Educational Assistance Program and reenlisted 10 months prior to the end of the first enlistment may receive his educational assistance benefits in a lump sum as provided in 10 U.S.C. § 2146 and implementing regulations. Language in the statute which indicates that a member should make the election of lump sum benefits upon reenlistment at the end of the enlistment during which the benefits were earned does not limit the election only to those who reenlist at the end of the first reenlistment. However, payment may not be made until the member completes the initial 4 years of service. B-219059, Mar. 24, 1986.

i. Training for a commission

The variable reenlistment bonus, an additional inducement to first-term enlisted personnel who possess military skills in critically short supply to reenlist so that skills are not lost to the service, is not payable to an enlisted member who was discharged and reenlisted while undergoing training in a program which will ultimately qualify him for admission to one of the service academies. There is no relationship between an enlisted member's critical skill and his successful completion of the academy preparatory program. The fact that a member would revert to enlisted service in his critical skill if he does not successfully complete the program provides no basis to pay him a variable reenlistment bonus. 52 Comp. Gen. 572 (1973).

j. Retraining

A reenlistment that was not for the purpose of continuing the use of the critical skill a member held at the time of his reenlistment but was for the purpose of retraining the member does not create entitlement to the variable reenlistment bonus. The military service will not receive the exact benefit intended from the bonus because it will neither have the continued use of the critical skill possessed nor avoid the necessity of training a replacement in the skill. Therefore, when it is known at the time of reenlistment that a member will not continue to utilize the critical skill upon which payment of the variable reenlistment bonus is based, payments may not be authorized. 52 Comp. Gen. 416 (1973).

4. Medical—dental—variable incentive pay

The Variable Incentive Pay (VIP) provisions in 37 U.S.C. §§ 311 and 313 were repealed in 1980. Therefore, the cases on this subject have been deleted. However, see generally the Special Pay provisions for medical members of the Armed Forces in 37 U.S.C. §§ 302, 302a, 302b, and 303.

E. Incentive Awards

Section 503 of Title 14, United States Code, does not provide authority similar to 5 U.S.C. § 4503 to pay monetary incentive awards for superior accomplishments to military members of the Coast Guard who were members of a group comprised of military members and civilian employees that was given a group award. Coast Guard, 68 Comp. Gen. 343 (1989).

Allowances

A. Basic Allowance for Subsistence (BAS)

1. Officers

Generally an officer entitled to basic pay is entitled to BAS at all times, regardless of grade or dependency status. Officers are not subsisted in kind but are paid a monthly subsistence allowance and are required to provide their own meals. 43 Comp. Gen. 94 (1963). However, officers provided with meals by the United States must pay for such meals either by cash or by collections from pay; and officers who are furnished meals by nonfederal sponsoring agencies in connection with student scholarship programs, and as intern or resident physicians or Nurse Corps officers or candidates, are not entitled to BAS. Table 3-1-1, DOD Pay and Allowances Entitlement Manual. 30 Comp. Gen. 246 (1950). See also 40 Comp. Gen. 169 (1960); 43 Comp. Gen. 94 (1963); and B-188256, Mar. 10, 1977.

2. Enlisted members

a. Generally

Under normal circumstances enlisted members are subsisted in kind and, under the express language of the law, the allowance does not accrue when enlisted personnel are subsisted at government expense. 43 Comp. Gen. 94 (1963).

b. Rations in kind not available or impracticable

(1) Determination of installation commander—The determination of impracticability for subsistence in kind to be furnished by the government is the responsibility of the installation commander, but where such determination is based on improper factors, the General Accounting Office will refuse to recognize the determination as conclusive. 42 Comp. Gen. 558 (1963).

(2) Distance between residence and mess—While distance and availability of government transportation between place of duty and place of mess are factors to be considered in determining the availability of rations in kind, distance between place of residence and place of mess is not a proper factor for consideration. 42 Comp. Gen. 558 (1963).

(3) Member's marital status—An enlisted member's dependency or marital status, in and of itself, does not constitute a proper basis for determining that furnishing of rations in kind would be impracticable. Also, the fact that a member does not utilize government messing facilities because he

desires to dine with his family, which arrangement is necessarily for his own convenience, does not warrant a conclusion that rations in kind are not available or that it would be impracticable for the government to furnish subsistence in kind within the contemplation of the statute and the regulations. 39 Comp. Gen. 614 (1960).

c. Permission to mess separately

Where member applied for separate rations because he intended to live off post with his family, and written orders were issued confirming verbal orders authorizing separate rations more than a year after the purported issuance of such verbal orders, claim for separate rations allowance was properly denied in the absence of full administrative disclosure of all the facts and circumstances surrounding the issuance of verbal orders and the circumstances which prevented a prompt written confirmation. B-169677, May 22, 1970. See also B-197888, Nov. 18, 1980.

d. Retroactive payment of commuted rations

In appropriate circumstances an enlisted member of the Navy may apply to mess separately and receive commuted rations. However, until an application is filed and approved by the appropriate office, the enlisted member has no entitlement to commuted rations, and applicable law and implementing regulations preclude retroactive payments. Thus, a Navy member who claimed retroactive commuted rations for a period in excess of 3 years, but had never had an application approved by the appropriate authority could not receive retroactive payment, notwithstanding that it may appear that such application would have been approved. B-228765, Dec. 4, 1987.

B. Basic Allowance for
Quarters (BAQ)

1. Availability of government quarters

a. Need to use existing quarters

Commanding officers in the assignment or nonassignment of public quarters to members of the uniformed services have the duty to accomplish the maximum practicable occupancy of government quarters and the duty to issue a written statement or certificate to members upon the assignment or nonassignment of quarters; and a member's personal desire provides no basis for the nonassignment of available quarters. However, the commander may be granted some latitude as to whether the

assignment of quarters would be more costly to the government than the payment of BAQ, since there is no requirement that all available quarters must be occupied. Determinations should be made on an individual basis and an approved allowance should be supported by a written certificate or statement. 52 Comp. Gen. 64 (1972). See also 57 Comp. Gen. 194 (1977); B-187222, May 6, 1977; and 37 U.S.C. § 403(b) permitting member without dependents, above pay grade E-6, to elect not to occupy government quarters.

b. Conclusiveness of certificate of nonavailability

Member without dependents who vacated government quarters and secured private quarters of his choice was not entitled to BAQ, even though the installation commander provided him with a certificate of nonavailability of quarters, since in fact adequate public quarters were available to him and the commander's certification was therefore not conclusive. 39 Comp. Gen. 561 (1960).

c. Quarters assigned before household goods arrive

Section 403, Title 37 of the U.S. Code, provides for the payment of BAQ when, because of orders by competent authority, the dependents of a member are prevented from occupying assigned quarters. Nevertheless, where the government arranges for the movement of the household goods of an Army officer to family-type quarters designated adequate and the move is not accomplished by the effective date stated in the assignment orders, payment of BAQ with dependents to the officer may not be continued beyond the effective date of the quarters assignment. The transportation contract does not constitute the "competent authority" required to create entitlement to the allowance after the effective date of the assignment. 50 Comp. Gen. 174 (1970).

d. Family quarters available but dependents do not join member

Member who was assigned public family quarters but whose family later elected not to join the member at his new permanent duty station, was properly terminated from assignment to such quarters. He then became entitled to BAQ as a member with dependents even though adequate government quarters were available at the duty station. 48 Comp. Gen. 216 (1968). See also 59 Comp. Gen. 291 (1980).

e. Quarters aboard ship while traveling

The fact that a member occupies accommodations aboard a ship as a passenger en route to his new permanent duty station does not affect his basic allowance entitlement under 37 U.S.C. § 403 in view of the rule that accommodations furnished members and their dependents while traveling incident to a change of station are not considered the equivalent of public quarters. 48 Comp. Gen. 40 (1968).

f. Occupancy of temporary quarters after PCS

(1) Thirty-day rule, generally—The occupancy by member and his dependents of visiting officers quarters for a period of less than 30 days at his new permanent duty station while awaiting the assignment of suitable on-base housing does not deprive him of entitlement to a basic allowance for quarters for the period of the temporary occupancy. Section 403 of Executive Order No. 11157, dated June 22, 1964, provides for such temporary occupancy without loss of basic allowance for quarters for a period not to exceed 30 days while a member is in a duty or leave status “incident to a change of permanent station.” The right to the allowance is not affected by a more temporary occupancy of the visiting quarters resulting from the movement of the officer’s dependents incident to a permanent change of station. 45 Comp. Gen. 589 (1966).

(2) Longer period by regulation—A member of the uniformed services may not occupy temporary lodging facilities, built and maintained with appropriated funds, in excess of 30 days at his permanent duty station incident to a permanent change of station, without a loss of basic allowance for quarters and variable housing allowance since applicable regulations prohibit it. However, the services may amend the regulations to authorize payment for periods in excess of 30 days in certain deserving cases. B-208762, Apr. 14, 1983.

(3) Temporary occupancy of “rental” vs. “public” quarters—A member of a uniformed service may occupy temporary lodging facilities in excess of 30 days incident to a PCS transfer without loss of BAQ if a substantial “rent” for such quarters is charged to cover direct operating costs, loan repayment, repairs, etc., and which quarters are acquired and operated with nonappropriated funds. 56 Comp. Gen. 850 (1977).

g. Occupancy of temporary quarters—no PCS

(1) Seven-day rule, generally—Service members married to each other while awaiting adequate family-type housing for 17-day period, resided in transient housing at their duty station for which they paid nominal service charge. Although members who occupy transient quarters for a nominal service charge are considered to be in assigned rent-free and adequate government quarters, the members are entitled to receive BAQ for 7 days under the authority of Executive Order No. 11157, Part IV, § 403(a), June 22, 1964, as amended. B-198081, Feb. 26, 1981.

2. Adequacy of government quarters

a. Voluntary occupancy of inadequate quarters

Member who voluntarily elects to occupy inadequate government quarters should not thereafter be permitted to use inadequacy of the quarters as a basis for payment of BAQ. 40 Comp. Gen. 169 (1960).

b. Duty assignment in barracks

Military member, who is an OSI Special Agent, ordinarily would have been entitled to live off base and receive BAQ. He did not do so because he was assigned "suitable" government quarters incident to his duties as an OSI Special Agent performing an investigation. In this case, although he was assigned government quarters pursuant to his duties as an undercover investigator and not because of his basic military status, he is denied BAQ as he incurred no expense for privately financed housing during the time he occupied government quarters. B-199728, May 8, 1981.

c. Members under confinement

Where a member is ordered into pretrial confinement in a guardhouse or brig and is subsequently either acquitted at the trial or convicted but with any sentence to confinement set aside, such pretrial government "quarters" may be considered neither adequate nor voluntarily occupied, and the member is entitled to BAQ for the period of confinement. 40 Comp. Gen. 169 (1960). See also 40 Comp. Gen. 715 (1961). Distinguished by 60 Comp. Gen. 74 (1980), immediately below.

BAQ is not authorized when a member, without dependents, is convicted by court-martial, which does not direct forfeiture of allowances, and the member is sentenced to confinement in a guardhouse, brig, correctional

barracks, or federal penal institution, regardless of whether the member was receiving BAQ prior to confinement or his assigned quarters were terminated, provided the sentence is not overturned or set aside. 40 Comp. Gen. 169 (1960) and 40 Comp. Gen. 715 (1961), distinguished. 60 Comp. Gen. 74 (1980).

d. Crew of two-crew nuclear submarines

Navy members without dependents attached to two-crew nuclear-powered submarines who are temporarily serving ashore for more than 15 days during periods of training and rehabilitation at a station where quarters are inadequate for assignment to members on either permanent or temporary duty may be credited with BAQ. 47 Comp. Gen. 527 (1968).

3. Adequacy of allowance when quarters are not furnished

a. Generally

The statutory purpose of BAQ authorized by 37 U.S.C. § 403 is to reimburse a service member for personal expenses incurred in acquiring nongovernment housing when rent-free government quarters “adequate for himself, and his dependents” are not furnished. The family separation allowance, Type II-R, authorized by 37 U.S.C. § 427(b)(1) has a separate and distinct purpose, i.e., to provide reimbursement for miscellaneous expenses involved in running a split household when a member is separated from his dependents due to military orders, and it is payable irrespective of the member’s eligibility for a quarters allowance. 60 Comp. Gen. 154 (1981).

b. Extraordinary expenses

Where a member of a uniformed service stationed overseas incurs expenses for housing in excess of the amount authorized to be paid to him for BAQ and overseas station allowances, his claim for extraordinary expenses to cover the additional cost must be denied. No authority exists for payment of extraordinary expenses and a member may only be paid allowances for housing and living expenses authorized by law and regulations. B-195941, Oct. 18, 1979. See also, B-197982, Feb. 26, 1981.

c. Utility expense

Member in government housing for which he pays rent and utilities while assigned to Panama Canal government may not be reimbursed for electric costs under 10 U.S.C. § 4593 in addition to BAQ, since BAQ covers both rent and extra utility expenses. B-194847, June 19, 1981.

4. Members without dependents

a. While on sea or field duty

(1) Temporary and permanent assignments—The prohibition contained in 37 U.S.C. § 403(c) against payment of BAQ to members without dependents while on field or sea duty of 3 months or more applies to temporary as well as to permanent duty assignments. 59 Comp. Gen. 486 (1980). See also 59 Comp. Gen. 192 (1980); B-201746, June 26, 1981; 60 Comp. Gen. 596 (1981); B-195691, Nov. 16, 1982; B-211380, Oct. 12, 1983.

(2) Assigned to multinational force of observers—An Army officer who had no dependents is not entitled to a quarters allowance for the period (which exceeded 3 months) he was assigned to temporary duty in Sinai with the Multinational Force and Observers monitoring the implementation of the Egyptian-Israeli peace treaty. During such duty he apparently was furnished quarters by the government and his household goods were stored at government expense. Since duty with the Multinational Force is determined to be “field duty,” he may not receive a quarters allowance because 37 U.S.C. § 403(c) precludes payment of the allowance to a member on field duty in these circumstances. B-209342, June 1, 1983; affirmed B-209342, Oct. 10, 1984.

b. While on temporary duty with unit deployed ashore

A Navy member, detached from his permanent station, with orders to report directly to a patrol squadron deployed (temporary additional duty) ashore overseas, without first reporting to the unit’s permanent station in California, is assigned government quarters at the squadron’s deployed site. He is not entitled to basic allowance for quarters, since 37 U.S.C. § 403(f) precludes entitlement to basic allowance for quarters when a member performing temporary duty incident to a permanent change of station occupies government quarters. B-216027, Dec. 26, 1984.

c. While occupying transient quarters upon transfer

Members without dependents under permanent change-of-station orders authorizing leave en route who occupy transient type quarters before departing the old station or upon arrival at the new station may be paid BAQ not to exceed 30 days of such occupancy whether or not in a leave status. 45 Comp. Gen. 347 (1965).

d. While traveling between permanent stations

To the extent that members without dependents are not assigned government quarters while traveling, or during delays en route, they are entitled to BAQ from date of departure from the old station to the date of arrival at the new station overseas, including periods while in a per diem or group travel status for the overseas portion of the travel. The accommodations furnished during such travel is not regarded as the assignment or occupancy of public quarters within the meaning of 37 U.S.C. § 403(b). 48 Comp. Gen. 40 (1968).

e. Transfer between vessels having same home port

A transfer from one vessel to another where both vessels are home-ported in the same area does not constitute a permanent change of station within the purview of Executive Order No. 11157, implementing 37 U.S.C. § 403. Nor does the transfer come within the exception contemplated by the executive order, which permits the occupancy of government quarters without loss of BAQ while a member is in a leave or duty status incident to a change of permanent station. Therefore, members without dependents who occupy transient quarters incident to a transfer from one vessel to another in the same home port are not entitled to BAQ for the period of occupancy of transient quarters. 48 Comp. Gen. 40 (1968).

f. Navy members above E-6 assigned to a ship

A naval officer or enlisted member above grade E-6 who is "without dependents" is entitled to a basic allowance for quarters while assigned to a ship at its home port if he elects not to occupy available government quarters. The member continues to receive the allowance for the first 90 days the ship is deployed. He is also entitled to receive the allowance for 90 days after transfer to a deployed vessel if the home port of that ship is the same as the home port of his previous assignment and he was receiving the allowance at the home port at the time of the transfer. B-211380, Oct. 12, 1983.

g. After basic training before permanent assignment

An enlisted member without dependents in pay grade E-4 (less than 4 years' service) or below while performing temporary duty between the date he completes basic training and the date he receives orders naming a permanent duty station to which he will report on completion of temporary duty is not in a travel status. He is entitled to BAQ when government quarters are not available to him while serving at the place of performance of his basic duty assignment, which may be regarded as his permanent station for this purpose. 53 Comp. Gen. 740 (1974).

h. "Partial BAQ" for single members assigned to public quarters

(1) Generally—A member assigned government single type quarters (barracks), who is therefore ineligible for regular BAQ under 37 U.S.C. § 403(b) is entitled to "partial BAQ" under 37 U.S.C. § 1009(c). 58 Comp. Gen. 136 (1978). See also 57 Comp. Gen. 194 (1977).

(2) Assignment to family type quarters—A single member without dependents is not entitled to partial 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. 56 Comp. Gen. 894 (1977). See also B-206980, Nov. 4, 1982, to the same effect when a government-leased apartment is occupied.

5. Members with dependents

a. Dependency determinations

Under 37 U.S.C. § 403(h) the Secretary of the service concerned may make dependency and relationship determinations for enlisted members' quarters allowance entitlements and the determinations are final and may not be reviewed by the General Accounting Office unless requested by the service. However, that provision does not apply to officers and the Comptroller General renders decisions in officers' cases and also in enlisted members' cases when requested by the service. In the interest of uniformity, it seems appropriate to forward doubtful cases to the Comptroller General for decision particularly when an officer is married to an enlisted member. 62 Comp. Gen. 666 (1983).

b. Common-law marriage

Member who entered into a common-law marriage in Texas, where such marriages may lawfully be contracted, is legally married under Texas law and may claim his spouse as a dependent for increased BAQ purposes. B-186179, June 30, 1976. But a claim for BAQ at the with-dependents rate based on a Texas common-law marriage is too doubtful to permit payment where there is conflicting evidence concerning whether the parties lived together pursuant to an agreement to cohabit as man and wife and whether they held each other out to the public as husband and wife. B-191316, Sept. 27, 1978.

c. Divorce pending appeal

Naval officer's entitlement to BAQ at the with-dependents rate for spouse does not automatically terminate upon issuance of decree of divorce where, under governing state law, the finality of the divorce decree is suspended when the judgment is appealed and although on disposition of the appeal the original judgment becomes final, the member is considered as having a lawful spouse during the pendency of the appeal. Under applicable regulations, member's entitlement to BAQ for spouse continues until appeal is resolved provided, however, that member proves that he actually provided support for spouse during pendency of appeal. B-200198, Aug. 17, 1981.

d. Living apart

(1) Waiver—An Army officer lived apart from his wife for 1 year prior to their divorce, without a legal separation, during which time although he made no direct payments to her, he indicates he provided her with various types of indirect monetary support by paying joint obligations, etc. In these circumstances, the payments made to him of basic allowance for quarters and variable housing allowance at the with-dependents rate need not be recouped. B-208650, Mar. 21, 1983.

(2) Separated—wife remains in government quarters—Member of the Navy was assigned government quarters. His wife, from whom he was separating, remained in government quarters and remained his dependent. Member applied for and received basic allowance for quarters and variable housing allowance (BAQ/VHA) for this time period. Waiver may not be granted because the member should have known that he was not entitled to BAQ/VHA while his dependent resided in assigned government housing. Daniel E. Stryker, B-248537, Aug. 25, 1992.

e. Evacuation to safe haven

(1) Government quarters occupied free by dependents—Dependents of a member were evacuated under emergency conditions from assigned government quarters at his permanent station to rent-free government housing facilities at a safe haven area. This was a voluntary occupation of adequate quarters as the dependents were not required to occupy the quarters. The member, not having incurred any personal expense, is not entitled to payment of BAQ for dependents in order to reimburse a member for the expenditure of personal funds. Therefore, the member is not entitled to a family separation allowance. 46 Comp. Gen. 869 (1967).

(2) Member evacuated to government housing while continuing private rental—A member, who continued to maintain and pay rental for private housing in anticipation of the return of his dependents, evacuated to government housing facilities at a temporary safe haven for a relatively short period (pending further transportation to a designated place or return to the place from which evacuated), during which time he occupied single-type quarters at his permanent station. He may continue to be credited with BAQ on account of dependents and family separation allowance until his dependents are authorized to return to the member's permanent duty station or arrive at the designated place contemplated by applicable regulations. 47 Comp. Gen. 355 (1968).

f. Entitlement based on child support

(1) General rule—Divorced service member assigned barracks quarters, but also paying child support for private living quarters for dependent children, is entitled to BAQ at "with-dependent" rate since he has not been furnished government quarters "for himself, and his dependents" under 37 U.S.C. § 403. But if member remarries and is reassigned government family quarters, entitlement to BAQ ceases even though child support obligation remains unchanged; member has then been furnished quarters "for himself, and his dependents." The fact that some dependents for personal reasons cannot join him in family quarters is no basis for continued BAQ payments. 48 Comp. Gen. 28 (1968). See also 59 Comp. Gen. 681 (1980); and B-200946, Dec. 15, 1980.

(2) Legal custody in third party—entitlement rules where both members provide support—Where two military members are divorced, or legally separated, the children of the marriage are in the legal custody of a third party, and each member is required to pay child support to the third party,

only one of the members may receive the increased basic allowance for quarters ("with-dependent" rate) based upon these common dependents. If the members are unable to agree as to which should claim the children as dependents, the parent providing the greater or chief support should receive the increased allowance, unless both members provide the same amount of support, in which case the senior member should receive the increased allowance. B-216022, B-215284, Dec. 3, 1984.

(3) Supported children reside with third parties for personal reasons—Two service members, married to each other, reside together as a family unit in nongovernment quarters. Each has a dependent child who resides elsewhere. Only one of the members may be paid the quarters allowance at the "with-dependent" rate since dual payments at the "with-dependent" rate would result in unwarranted gratuity, when all of the dependent children could reside in the joint family household, but do not for reasons of a personal nature. B-217665, Aug. 23, 1985.

(4) Noncustodial parent paying less than amount required by regulations to qualify—Two Air Force members divorced from each other claim basic allowance for quarters at the "with-dependent" rate based on their one child as a dependent. A court awarded custody to the mother and ordered the father to make monthly payments of \$100. The regulations required monthly support payments of at least \$113.40 to qualify the noncustodial parent for the increased allowance. The noncustodial member voluntarily offered to supplement the court-ordered amount to qualify for the increased allowance. The custodial member attempted to reject the excess. Since the regulations do not give the noncustodial member power to alter, unilaterally, the obligations of the members established by the court, unless the custodial member voluntarily accepts the qualifying amount or a court decree orders the noncustodial member to pay the qualifying amount, he is not entitled to the increased quarters allowance. The increased allowance may be paid to the custodial member. 64 Comp. Gen. 609 (1985).

(5) Showing that support is being paid—Member who gave his wife at the time of their divorce a promissory note for \$1,500 that was being reduced in the amount of \$30 per month was not entitled, in the absence of a definitive court decree requiring child support payments for the son born of the marriage, to BAQ for the child who was in the custody of his mother since the payments were not support payments and there was no showing any part of the monthly payments was used to support the child. 52 Comp. Gen. 454 (1973).

Member whose former wife refused his child support payments is not entitled to BAQ on behalf of child, even though member put payments in irrevocable trust with child as beneficiary. B-195383, Nov. 6, 1979.

A member with dependents is entitled to a basic allowance for quarters at the "with-dependent" rate (BAQ-W) when adequate government quarters are not provided for him and his dependents. A divorced member may qualify for BAQ-W for a child living with the member's former spouse in private quarters if he pays child support in an amount at least equal to the difference between BAQ at the "with" and "without-dependent" rates. The cost of maintaining a separate residence for the times when the member has custody of the child may not be used instead of or in addition to support payments to qualify for BAQ-W. Technical Sergeant Fred D. Walker, USAF, 70 Comp. Gen. 703 (1991).

(6) Support being paid for one of two children in a class of common dependents—A military member who has custody of her two children claims basic allowance for quarters as a member with dependents on account of one of the children for whom she receives no support from her former spouse, who is also a military member. Her children are an undivided class of common dependents and reside in one house. Since her former spouse pays child support for one of the children in an amount sufficient to qualify for the quarters allowance at the with-dependent rate, he is entitled to the basic allowance for quarters at the with-dependents rate on account of the children. She is only entitled to basic allowance for quarters as a member without dependents. B-215235, Mar. 19, 1985.

(7) Member has legal custody but not control—Member who is given custody of his minor child at the time of divorce from his wife is not entitled to increased BAQ under 37 U.S.C. § 403 on account of the child until he gains control of the child or contributes to the child's support. The purpose of section 403 is to partially reimburse members for the expense of maintaining private quarters for their dependents and not to grant the higher allowance as a bonus merely for the technical status of being married or a parent. 42 Comp. Gen. 642 (1963).

(8) Supported children occupying government quarters—A Navy officer who, pursuant to a divorce agreement, contributes to the support of his children who live with the member's former wife and her second husband, an Air Force officer, in assigned public quarters is regarded as having his dependent children occupying public quarters to preclude payment of BAQ

on behalf of the children. 44 Comp. Gen. 713 (1965). See also 58 Comp. Gen. 100 (1978).

(9) While member is in transient status—A Navy officer contributing to the support of his children, who are occupying the public quarters assigned to their stepfather, an Air Force officer, is properly denied payment of BAQ on behalf of his children while on sea duty and after assignment of quarters at his new permanent station. He is entitled to payment of a quarters allowance for the period that he was in a leave and transient status between the sea duty and the furnishing of quarters at his new permanent station, an interim period during which he did not occupy public quarters. 45 Comp. Gen. 146 (1965).

(10) Member has custody of dependents for a period in excess of 3 months—A divorced member of the uniformed services, who is paying child support for a dependent residing with the member's former spouse in government quarters, is not entitled to a basic allowance for quarters at the "with-dependent" rate. However, if the dependent resides with the member in private quarters for more than 3 months, he or she is entitled to the increased allowance, since under 37 U.S.C. § 403 and applicable regulations, periods in excess of 3 months are considered nontemporary. 64 Comp. Gen. 224 (1985).

(11) Doubt as to father, in fact—garnishment of pay—Member whose with dependent basic allowance for quarters was terminated by the Air Force on a showing of clear evidence that member, contrary to previous determination by a court of law, was not in fact the father of a child born out of wedlock, continues to be subject to garnishment of pay for child support until court order requiring garnishment is vacated. Sergeant Gerald W. Emery, B-248213, Sept. 9, 1992.

g. Adopted children

(1) Generally—The child adopted by a member under an interlocutory decree, followed by the issuance of a final order of adoption—the governing state statute providing that from and after the entry of the interlocutory order of adoption the child for all intents and purposes shall be the child of the person adopting him—may be regarded as the legitimate child of the member from the date of issuance of the interlocutory decree to determine her entitlement to a basic allowance for quarters under 37 U.S.C. § 403. 44 Comp. Gen. 417 (1965).

An Army officer claims basic allowance for quarters and variable housing allowance at the with-dependent rates on account of her adopted son during the probationary pre-adoption period (prior to the court's entry of a final adoption order), as the child resided in her household during that time. She is not entitled to the allowances claimed because under the controlling state (Alabama) adoption statutes, a legal adoption had not been effected during that period. B-214017, Feb. 3, 1984.

(2) Bona fide parent and child relationship—A member of the uniformed services who adopted her 26-year-old disabled brother who is incapable of self support may claim him as her dependent to receive basic allowance for quarters at the dependent rate. In this case, the “child” is legally adopted, is in fact dependent upon the member for support, and resides with the member; thus a bona fide parent and child relationship exists. 64 Comp. Gen. 333 (1985).

(3) Receiving other benefits—A Navy member adopted children who receive \$2,147 per month in social security and Veterans Administration benefits which are deposited in trust funds for them. Since that amount is sufficient to support them, they are not “in fact dependent” on him under 37 U.S.C. § 401(2). We will not disturb the Navy Family Allowance Activity's determination to that effect. Lieutenant Commander Donald R. Mason, USN, B-240697.2, Dec. 16, 1991.

h. Illegitimate children

An unmarried member, although acknowledging the paternity of an illegitimate child and contributing to the support of the child, has not established a home in which his child lives with him as a member of his family. He may not be credited with increased BAQ on account of the child, the law of the state of California—the place of birth of the child and the residence of all the parties—requiring, in addition to acknowledging an illegitimate child, that a father receive the child into his family and treat the child as his legitimate offspring. 48 Comp. Gen. 311 (1968).

i. Mother

Former member seeks waiver of a debt which arose as a result of “with-dependent” basic allowance for quarters which he received on account of his mother, who did not qualify as his dependent. Since he was timely informed of her ineligibility as his dependent for the purpose of his entitlement to the allowance, he was on notice of the overpayment and,

therefore, is not without fault in the matter. Waiver of his debt is denied. B-212477, Sept. 19, 1983.

j. Dependent in confinement

Military member claims basic allowance for quarters at the with-dependent rate on account of her husband, a military member who is not entitled to pay and allowances due to his being in confinement under a 15-year prison sentence. The quarters allowance at the with-dependent rate is not authorized. The member may no longer be considered to have a dependent for quarters allowance purposes since the dependent will be absent for an extended period of time and the member is for all practical purposes absolved of the responsibility of providing quarters for her husband for the duration of the confinement. B-209744, Feb. 1, 1983.

k. Member required to pay for private quarters after moving to government quarters

A member who was ordered to make a local move from private leased quarters to government housing was required to pay his landlord for the remaining 27 days under the lease. He and his dependents occupied government quarters during that period. Basic allowance for quarters and overseas housing allowance are payable for the 27 days, since the member was ordered to move into government quarters but still incurred rental expenses thereafter. Chief Warrant Officer 2 Timothy J. Landgren, B-245318, Sept. 30, 1992.

6. Women members

a. Frontiero v. Richardson

Air Force member, whose husband was a civilian not dependent upon the member for over one half of his support, was entitled to claim her husband as her dependent for the purpose of obtaining increased BAQ. Frontiero v. Richardson, 411 U.S. 677 (1973).

C. Uniform Allowances

1. Officers

a. Inclusion in backpay award

Air Force officer released from active duty on July 31, 1961, but who through judgment of the Court of Claims became entitled to “back pay, less appropriate offsets,” and to be credited with active duty service through July 31, 1969, did not become entitled to uniform allowances for such 8-year period, since he was not required to wear any military uniforms during that time. 53 Comp. Gen. 813 (1974).

Officer retroactively restored to active duty by the Board for Correction of Military Records is not entitled to uniform allowance upon actual return to active service. B-195129, Apr. 28, 1980.

b. For ready reserve service

A Ready Reserve officer, including a former Regular officer transferred to the Reserves, is entitled to the \$50 quadrennial reimbursement uniform allowance provided in 37 U.S.C. § 416(a), if he has not become entitled to a uniform reimbursement or allowance as an officer during the preceding 4 years. 42 Comp. Gen. 550 (1963).

c. Extended active duty allowance

(1) Relationship to initial allowance—Non-Regular officers who have not been paid the initial uniform allowance provided by 37 U.S.C. § 415(a)-(c) are not precluded from entitlement to the extended active duty uniform allowance authorized by 37 U.S.C. § 416(b), such allowance being “in addition to” the initial uniform allowance authorized. Also, the fact that a non-Regular officer had not received the initial uniform allowance does not bar him from qualifying for the extended active duty allowance. 43 Comp. Gen. 729 (1964).

(2) Relationship to quadrennial allowance—Notwithstanding that 37 U.S.C. § 416(b) provides that the extended active duty uniform allowance is “in addition to” the quadrennial allowance provided by subsection 416(a), a non-Regular officer may be paid the extended active duty allowance. The phrase “in addition to” is not a sound basis to conclude that the extended active duty allowance may not be paid unless a quadrennial allowance had been received. 43 Comp. Gen. 729 (1964).

d. On change from Regular to Reserve

An enlisted member of the Regular Marine Corps temporary appointment as a Regular commissioned officer under 34 U.S.C. § 350a (now 10 U.S.C. §§ 5587 and 5597)—at which time he received an initial uniform allowance of \$250—was terminated and he simultaneously was discharged as an enlisted member and accepted a permanent commission in the Marine Corps Reserve. He is not entitled to the \$100 additional active duty allowance provided by 37 U.S.C. § 416(b), since he continued on an uninterrupted active duty career that makes him ineligible to receive an extended active duty uniform allowance upon initial entrance on duty as a Reserve officer. 44 Comp. Gen. 327 (1964).

e. On entering different service

A Marine Corps Reserve officer who, within 2 years prior to appointment and active duty in the Corps, had served on active duty for more than 90 days as an officer in the Air Force Reserve, may not be paid an additional uniform allowance under 37 U.S.C. § 416(b) on the basis of requiring a different uniform, absent an administrative regulation implementing the authority in 37 U.S.C. § 416(b) for payment of the allowance to a Reserve officer who requires a different uniform upon transfer to, or appointment in, another Reserve component. 45 Comp. Gen. 116 (1965).

f. Entrance on duty as non-Regular

The entrance on active duty as a non-Regular officer, less than 2 years after release from active duty as a Regular officer or enlisted man, or as an enlisted member of a Reserve component, does not deny the officer the extended active duty uniform allowance of \$100 that is in addition to the initial uniform allowance. The 2-year restriction in 37 U.S.C. § 416(b)(2), barring payment when a tour of duty commences with 2 years after completing a period of active duty of more than 90 days' duration, has reference to active duty ordered in a non-Regular officer status for more than 90 days. 43 Comp. Gen. 265 (1963).

2. Enlisted members

a. Change from Reserve to Regular

Air Force Reserve enlisted member who was issued clothing to complete his initial clothing issue requirements upon his recall to extended active duty in 1968 and who did not turn in clothing incident to his discharge

from that duty for purpose of enlistment in the Regular Air Force in 1969, was not entitled to an initial clothing monetary allowance at the time of Regular Air Force enlistment under the provisions of Chapter 5, Part Three, of the Department of Defense Pay and Allowance Entitlements Manual. B-184236, Feb. 12, 1976.

b. Lost clothing allowance to survivors

Where enlisted member is furnished clothing or a monetary allowance in lieu thereof, and his military clothing is lost, damaged, destroyed, abandoned, or otherwise rendered unserviceable and such loss was not caused by any fault or negligence on his part, he may maintain a claim for compensation for the loss. However, if the member is deceased, his survivors have no right to compensation for the loss, the right being personal and not extending beyond the member's life. 52 Comp. Gen. 487 (1973).

D. Dislocation Allowance
(DLA)

1. Permanent change of station

a. Ordered to change quarters, no PCS

Military members required to involuntarily relocate their households incident to base closing in Japan under Kanto Plain Consolidation Plan, without permanent changes of station, may not be paid DLA under 37 U.S.C. § 407(a), nor may they be paid such allowance pursuant to 37 U.S.C. § 405a since the relocations were not evacuations incident to unusual or emergency circumstances. 55 Comp. Gen. 932 (1976). See also B-203526, Mar. 4, 1982.

b. Payments based on alert notice not allowed

A member of the uniformed services who relocates his household incident to an official alert notification, but prior to the issuance of permanent change-of-station orders providing for his transfer to a restricted area overseas, is not entitled to payment of DLA prescribed by 37 U.S.C. § 407 incident to the authorized move of dependents predicated on a member's permanent change-of-station orders. Section 407 provides no authority for the payment of DLA in unusual or emergency circumstances. 46 Comp. Gen. 133 (1966).

c. Move off ship when quarters uninhabitable

The home port of vessel was changed and quarters aboard were declared to be uninhabitable due to reconstruction. Naval officer, without dependents, who had been quartered aboard vessel was required to obtain nongovernment housing since other government quarters were unavailable. The officer is not entitled to DLA allowance since for this purpose the permanent station of the officer is his ship, and not the home port, and the allowance is paid incident to a change of permanent station. B-184289, Sept. 16, 1975.

d. More than one PCS in a year

A member who incident to overseas transfer orders amended to reassign him within the United States moves his dependents during a fiscal year to a selected permanent residence and then to his new duty station, for which move he was paid DLA, may not be paid a second DLA, 37 U.S.C. § 407 limiting payment in connection with a permanent change of station to one dislocation allowance in a fiscal year, unless the exigencies of the service require more than one change. 49 Comp. Gen. 231 (1969).

2. Personal reason for changing residence

a. Delayed move

An Air Force officer, more than 2 years after issuance of permanent change-of-station orders transferring him from a hospital assignment to the area where he had served as a ROTC staff member and where his dependents continued to reside, moved his dependents to on-base housing as his presence was required on the base, is not precluded by the delayed move from entitlement to dependent travel and DLA. No time limitation is imposed on the exercise of the right to dependent travel incident to a permanent change of duty station. The fact the move was delayed for personal reasons pending the sale of the officer's house does not affect his right to move his dependents at government expense during the period his orders remain in effect and prior to receipt of notice of a further change of station. 45 Comp. Gen. 589 (1966).

b. Family move not related to PCS

Navy member had permanent change of station to a ship at Norfolk, Virginia, in July 1971 (subsequently at Philadelphia, Pennsylvania). Upon reassignment to another ship at Norfolk, Virginia, in February 1972, he

moved his dependents and relocated his household, in November 1973, to a location 36 miles from his former residence. There is no showing that the move was necessary as the direct result of the permanent change of station. Therefore, he is not entitled to dependents' travel and DLA, nor to transportation of household effects at government expense. B-183436, July 22, 1975. See also B-195941, Oct. 18, 1979, B-206541, Sept. 21, 1982.

c. Move before PCS orders issued

Army member who moved his dependents from Fort Benning, Georgia, to Florida in September 1977 in contemplation of his possible retirement in December 1977, but who withdrew his request for retirement and was eventually transferred to Germany in July 1978, may not be paid dislocation allowance in connection with his dependents' relocation in September 1977 since their move was not related to nor necessitated by his subsequent transfer to Germany. B-193339, June 28, 1979.

d. Travel of family for visit

The expense of travel of dependents merely for the purpose of visiting the member, for pleasure trips, or for other purposes not contemplating a change of the dependents' primary residence in connection with a change of the member's permanent station is not an obligation of the government. However, where Marine Corps member was assigned from California to Okinawa in August 1972 on a 12-month unaccompanied tour of duty; his dependent wife vacated their California residence in March 1973; his wife then traveled to Asia to visit him until June 1973; and his wife then established a residence with her foster parents in Georgia and remained there 12 weeks until his reassignment back to California; sufficient evidence existed that dependent wife had established a bona fide residence in Georgia in conjunction with member's PCS assignment. Member was therefore entitled to claim DLA and dependent travel allowance incident to dependent's move from California to Georgia in June 1973 and to further claim DLA and dependent travel allowance incident to dependent's move from Georgia back to California in September 1973. B-182440, Nov. 4, 1975.

3. Orders amended or revoked

a. Overseas PCS revoked after move

Section 406a of Title 37, U.S. Code, providing additional travel and transportation allowances when orders are amended or revoked, has no application to DLA authorized by 37 U.S.C. § 407. Therefore, member who relocated dependents to another residence within the United States pursuant to PCS orders assigning him overseas was not entitled to DLA incident to such dependent move, where such orders were revoked. 44 Comp. Gen. 522 (1965).

b. Revocation after vacating quarters

Where permanent change-of-station orders assigning member from Kansas to South Carolina were rescinded, member was not entitled to DLA, even though he had vacated private quarters and expended money for a variety of goods and services in preparation for the contemplated transfer. B-179110, June 18, 1974.

c. Change from overseas move to within United States

In contemplation of the deactivation of an Air Force Base an officer was selected for an overseas assignment at which he elected to serve unaccompanied by his dependents. Before the overseas orders were issued he was given a humanitarian assignment within the United States under orders issued about the same time the overseas transfer would have been made. The officer is entitled to reimbursement for the advance travel of his dependents and to DLA incident to his permanent duty station transfer within the United States. 42 Comp. Gen. 504 (1963).

4. Effect of marital status disruption

a. Divorce en route to new station

Where a member en route to a new permanent duty station leaves his dependents at a place where divorce proceedings are begun and, a month later, after the member has gone, upon being granted a divorce decree requiring the member to contribute to the support of his minor children, his former wife and children travel to another location. The dependents' travel may be considered as being performed incident to the change of station for payment of DLA, provided that evidence shows that the member

supplied or paid for transportation beyond the place the disruption occurred. 43 Comp. Gen. 47 (1963).

b. Divorce and early return of dependents from overseas

Where PCS orders are issued for return from overseas of Army member, wife, and child, payment of travel expenses for wife and child may be made notwithstanding that prior to effective date of orders wife obtained divorce and custody of child and they no longer qualified as member's dependents. Since regulations at the time did not cover this type of case, authority for advance return of dependents may be used for such travel even though travel orders under that authority were not issued. However, member is considered to be without dependents for purposes of dislocation allowance. B-191100, Apr. 13, 1978.

c. Custody of children with spouse

(1) Travel incident to authorized visit—A divorced naval officer whose former wife was given legal custody, care, and control of their children under a court order permitting them to visit with him during their summer vacation is considered to be a member without dependents within the meaning of the Joint Travel Regulations. Therefore, the fact that the children accompanied the officer when his permanent duty station was changed during their visit does not entitle him to reimbursement for their transportation or to DLA for the children since the travel of the children was not to establish a residence and neither their visiting status nor their residence was changed. However, since the officer was not assigned public quarters, he is entitled pursuant to 37 U.S.C. § 407 to DLA as a member without dependents equal to his quarters allowance for 1 month. 51 Comp. Gen. 716 (1972). See also B-197384, Aug. 12, 1980.

(2) Temporary court order pending divorce—Where at the time of member's permanent change of station, divorce action against member's wife was pending in the court, and the child was in the legal custody of the wife under temporary court order, member is entitled to DLA pursuant to 37 U.S.C. § 407, as a "member without dependents" as defined by 37 U.S.C. § 407(a) and the Joint Travel Regulations, since he would not be entitled to travel expenses of his dependents for the purpose of changing their place of residence and he was not assigned government quarters. 53 Comp. Gen. 787 (1974). See also B-197144, July 22, 1980; and B-203354, Feb. 8, 1982.

(3) Informal agreement of spouse to modify custody—Payment of travel expenses and DLA to member incident to his dependent child's travel from where he was residing with his mother to the member's duty station is denied because divorce decree granted custody of child to the wife and wife's special power of attorney granting temporary custody of the child to the father without consent of the court is of no effect since parents lacked authority to modify the custody provision of the final divorce decree. B-186308, July 22, 1976.

5. To first or from last permanent station

a. Permanent vs. temporary duty

Whether an assignment to a particular duty station is temporary or permanent is a question of fact and is for determination from a consideration of the assignment orders and the character of the assignment. Where member was ordered to active duty effective July 20, 1970; performed temporary duty at Fort Sam Houston, Texas, for approximately 5 weeks; then reported to his unit at Fort Bliss, Texas, on August 27, 1970; and proceeded to Europe on a unit move on September 2, 1970; the European assignment was his first permanent change of station, so that payment of DLA was precluded by 37 U.S.C. § 407(c). B-176614, Jan. 9, 1973.

b. Travel to separation station

DLA is not payable to a member ordered from his permanent station to a processing or separation station for discharge and who subsequently reenlists without a break in service and is assigned a new permanent station by orders issued at the point of reenlistment. 36 Comp. Gen. 71 (1956); 38 Comp. Gen. 405 (1958); B-135627, May 12, 1959.

c. Immediate reenlistment

An Army member subsequent to discharge and reenlistment overseas remained at his overseas station before returning to the United States for release. Before the release was effected he was reassigned to new station in the United States. He may have the orders directing a release—which was never accomplished—regarded as a permanent change of station rather than a transfer to a separation point for discharge and a reenlistment which would preclude entitlement to DLA. Therefore, upon

transfer to the new permanent duty station the member became entitled to DLA allowance. 43 Comp. Gen. 91 (1963).

d. Change from enlisted to officer status

An enlisted member after graduation from Officers Training School—which was the member's temporary duty station during the instruction period—was discharged and appointed as an officer at the old permanent duty station without a break in service. He was immediately reassigned to a new permanent duty station. The orders, which discharged him from the service to continue as an officer, may be regarded as a detachment from the old station and assignment to the new station. Therefore, DLA incident to a change of station is payable to the member along with the transportation allowance for the dependent's travel to the new station. 43 Comp. Gen. 133 (1963).

6. Hospital transfers

a. Prolonged hospitalization

A "permanent station" means a place where a member is assigned for duty. The definition of a permanent station in the Joint Travel Regulations may not be broadened to include a hospital in the United States to which a member is transferred for prolonged hospitalization from either a duty station or other hospital in the United States. However, chapter 9 of JTRs may be amended to authorize the DLA on the same basis dependents and baggage are transported to a hospital, that is, "as for a permanent change of station," upon the issuance of a certificate of prolonged treatment. 48 Comp. Gen. 603 (1969).

b. Transfer to temporary disability retired list (TDRL)

A Navy officer was detached from duty overseas and assigned to a hospital "for study and treatment if indicated and appearance before a Medical Board and pre-retirement physical examination." Before moving his dependents he maintained them for a short period in the vicinity of the hospital until he was placed on the temporary disability retired list. He is entitled to DLA since the Joint Travel Regulations, providing the allowance incident to a hospital transfer, applies to the officer and not the provision which prohibits payment of the allowance in connection with separation release from active duty, placement on the disability retired list, or retirement. At the time the officer's orders were issued there was only a

possibility of retirement or transfer to the temporary disability retired list. 50 Comp. Gen. 579 (1971).

7. Vessel and home port changes

a. Home port at former shore station

A naval member transferred to a ship that upon commissioning will have the same home port as his old permanent station is not entitled to DLA authorized by 37 U.S.C. § 407(a), the Joint Travel Regulations providing that DLA is not payable for any permanent change of station between stations located within the same corporate limits of the same city. 43 Comp. Gen. 474 (1963).

b. Vessels having same home port

A Navy member who upon reenlistment, and prior to a July 27, 1963, transfer to a new permanent station, returned on leave to his home of record, the Philippine Islands, where he married. On July 15, 1964, he was transferred to another vessel at the same port. He is entitled to the transportation of his wife and child, if the child was his dependent on July 27, 1963, and household goods from the Philippines to the home port of the vessels, pursuant to the Joint Travel Regulations incident to his first permanent duty station assignment upon reenlistment. However, DLA authorized by 37 U.S.C. § 407 is not payable to the member either incident to the travel of his dependents to his first duty station, or incident to his transfer from one vessel to another with the same home port, no permanent change of station having been involved in the transfer. 45 Comp. Gen. 477 (1966).

c. Transfer between home port and shore station in same city

A Navy member was ordered to transfer from a vessel, whose home port was Mayport, to the Naval Air Station, Jacksonville, Florida. Transportation of dependents was not authorized and government quarters were not provided at the new duty station. Both Mayport and the Naval Air Station are located within the corporate limits of Jacksonville, and under agency regulations where the transfer is between stations within the same city, no change of permanent station occurs. In the absence of a change of permanent station, regulations prohibit payment of a dislocation allowance, either on a with-dependent or without-dependent

theory, even though the dependents were required to vacate government quarters. B-215390, Nov. 20, 1984.

d. Change in assignment after move

A Navy enlisted member was relieved from duty on board the U.S.S. Black, home port Long Beach, California, and assigned to temporary duty at the Boston Naval Shipyard in connection with fitting out the U.S.S. Worden, home port San Diego, California, and to duty on board the vessel when commissioned. He is entitled to payment for the advance travel of his dependents to Fall River, Massachusetts, in an amount not to exceed the monetary allowance for the distance between the two home ports—Long Beach to San Diego—and to DLA, notwithstanding orders issued by the Worden directing the member to report to the U.S.S. Leahy at Boston (home port, Charleston, South Carolina), the transfer to be effected at no cost to the government. Further, since the member having reported on board the Worden prior to being transferred, compliance with his initial orders directing a permanent change of station entitles him to transportation for his dependents not to exceed travel from Long Beach to San Diego, and to DLA under 37 U.S.C. §§ 406 and 407. 43 Comp. Gen. 810 (1964).

e. Vessels with different home yards

Navy member was transferred from one vessel to another vessel, both home ported in New York City, but with respective home yards at Boston Naval Shipyard and Charleston, South Carolina. Incident to transfer dependents traveled from Detroit, Michigan, to East Meadow, New York. There is entitlement to DLA since permanent change of station, while between vessels home ported in the same city, was between vessels having different home yards not similarly located and since dependents performed authorized travel incident to that transfer. 54 Comp. Gen. 869 (1975).

8. Member without dependents

a. Nonavailability of quarters

(1) Furnishing quarters not economical—A member without dependents who is transferred to a permanent station and furnished a certificate of nonavailability of government quarters on the basis that it would be economically advantageous to the United States not to require him to

occupy available quarters is entitled to DLA pursuant to the Joint Travel Regulations, implementing 37 U.S.C. § 407(a). 52 Comp. Gen. 64 (1972).

(2) Quarters aboard ship not inhabitable—A member without dependents who is assigned quarters on board a submarine upon reporting to the submarine under permanent change-of-station orders is not entitled to DLA authorized in 37 U.S.C. § 407(a). He is entitled to the allowance if he reports to a nuclear-powered submarine that is undergoing overhaul or repair at its home port or home yard and the quarters aboard the submarine are uninhabitable, if the member is not assigned quarters ashore and lodging accommodations pursuant to 10 U.S.C. § 7572(a) are not furnished him. 48 Comp. Gen. 480 (1969). See also 57 Comp. Gen. 178 (1977); and 59 Comp. Gen. 708 (1980).

(3) Two-crew nuclear submarines—A dislocation allowance may be paid to members without dependents, of both the on-ship and off-ship crews of nuclear submarines, when they initially occupy permanent nongovernment quarters at the new home port although the submarine is the permanent station for both crews. This is based on the view that Congress did not intend to preclude payment of the allowance when a member is not able to occupy quarters assigned to him and does incur the expense of moving into nongovernment quarters. 59 Comp. Gen. 221 (1980).

b. Without dependent status

(1) Spouse and children do not move—An amendment of the Joint Travel Regulations permitting treatment of a member with dependents who are authorized to travel with him to his new permanent station but who, in fact, do not travel to the new station, as a member without dependents for purposes of receiving dislocation allowance, is not prohibited by 37 U.S.C. § 407. 48 Comp. Gen. 782 (1969) and similar decisions will no longer be followed. 59 Comp. Gen. 376 (1980). See also B-197545, Sept. 4, 1980.

(2) Parent does not move—The payment of DLA to an officer of the Army Nurse Corps as a “member without dependents” who is receiving a basic allowance for quarters as a member with dependents for her mother who will not join her at her new duty station where she was not assigned government quarters depends on whether or not the mother resided with the officer at the old station. If she did not, the officer is entitled to a dislocation allowance pursuant to the Joint Travel Regulations in an amount equal to the applicable monthly rate of the quarters allowance prescribed for a member of the officer’s pay grade without dependents. If

the mother did reside with her at the time of transfer, her entitlement to transportation for the mother precludes payment of the allowance even though the mother may not have changed her residence. 52 Comp. Gen. 405 (1973).

(3) Children of divorced member—A divorced naval officer whose former wife was given legal custody, care, and control of their children under a court order permitting them to visit him during their summer vacation is considered to be a member without dependents within the meaning of the Joint Travel Regulations. Therefore, the fact that the children accompanied the officer when his permanent duty station was changed during their visit does not entitle him to reimbursement for their transportation or to DLA for the children, since the travel of the children was not to establish a residence and neither their visiting status nor their residence was changed. 51 Comp. Gen. 716 (1972). See also B-197384, Aug. 12, 1980.

(4) Dependents do not move on return from unaccompanied assignment—A Marine Corps officer moved his dependents and relocated his household to nongovernment quarters in the vicinity of the Marine Corps Base, Camp Pendleton, California, in connection with his permanent change-of-station assignment to Okinawa, Japan, because he was not authorized to have his dependents accompany him. He received a dislocation allowance at the with-dependents rate incident to that relocation of his dependents. When he completed this assignment, he was assigned on a permanent change of station to Camp Pendleton, and he joined his dependents in the residence they occupied when he transferred to Okinawa. In connection with his transfer from Okinawa to Camp Pendleton, where he was not assigned to government quarters, he is entitled to a dislocation allowance as a member without dependents. B-215096, Nov. 21, 1984.

(5) Two members with no dependents—Two active duty service members who are married cannot claim one another as dependents for allowance purposes. Both are considered members without dependents and neither is entitled to a dislocation allowance since governing provisions of the statute authorize payment to transferred service members without dependents only if they are not assigned to government living quarters at a new duty station. Thus, an Air Force member with no dependents assigned to family-type housing rather than to bachelor quarters upon a permanent change of station is not entitled to a dislocation allowance, notwithstanding his belief that assignment to family housing caused him to

incur miscellaneous relocation expenses that should be reimbursed through the payment of a dislocation allowance. 66 Comp. Gen. 225 (1987).

9. Evacuation of dependents

A member whose dependents, following evacuation from his overseas duty station to a temporary safe haven in Europe pursuant to 37 U.S.C. § 405(a), again moved under orders authorizing further transportation to a place to be designated within the United States, etc., returned instead to his duty station, may not be paid DLA prescribed in 37 U.S.C. § 407, the Joint Travel Regulations properly operating to deny the member DLA where they do not locate their household or establish a residence and, therefore, do not incur the relocation costs contemplated by 37 U.S.C. § 407. 47 Comp. Gen. 575 (1968).

E. Family Separation
Allowance (FSA)

1. Terms

The following designations are used for allowances covered by this section:

a. FSA-Type I

Under 37 U.S.C. § 427(a) a member may qualify for an allowance equal to the monthly BAQ (basic allowance for quarters) if he is not authorized to move his dependents to his duty station outside the United States or in Alaska at government expense.

b. FSA-Type II

Under 37 U.S.C. § 427(b) a member may qualify for an allowance currently \$75 per month if:

- FSA-R—his dependents are not authorized to accompany him to his permanent duty station at government expense,
- FSA-S—he is on duty aboard a ship away from home port for more than 30 days, and
- FSA-T—he is on temporary duty away from his permanent station for more than 30 days.

2. Member with dependents requirement

a. Primary family residence requirement

The restriction on the payment of FSA-Type II of \$30 per month authorized by 37 U.S.C. § 427(b) to cases where the primary dependents of a member of the uniformed services are living in a residence subject to the member's management and control and which he will share with them as a common residence during such time as duty assignments permit was removed by Public Law 91-529, 84 Stat. 1389 (1970), by amending section 427(b). FSA-Type II is now payable regardless of the residence of the primary dependents if the separation is the result of the member's military orders. To the extent paragraph 3031a of the Department of Defense Military Pay and Allowances Entitlement Manual prescribing a member is not a member with dependents for FSA-Type II entitlement when "the sole dependent resides in a hospital, school, or institution" provides otherwise it is more restrictive than the law. 47 Comp. Gen. 431, overruled. 51 Comp. Gen. 97 (1971).

b. Joint custody of child after divorce

Where California judgment of dissolution of marriage awarded Navy member and former wife "joint custody" of their minor child, giving member undivided equal right to custody similar to custody right while married, child may be considered to be in legal custody of the member, who, therefore, is regarded as a "member with dependents" for entitlement to FSA-Types I and II. B-179976, Nov. 7, 1974.

c. Two children in common class of dependents

A member of the Air Force assigned to an overseas unaccompanied tour is married to another member also assigned to an unaccompanied tour at a separate duty station. The wife has a child from a previous marriage and they have a child from their marriage to each other. The two children had been living with the members as part of one household and continue to share the same household with the husband's mother in the United States while the members are assigned overseas. The wife receives family separation allowances on account of her child. Since the children are members of the same class of dependents, the husband may not receive the allowance on account of their child since the family would in effect be paid twice for the same expenses. B-221521, May 22, 1987.

d. Divorce decree silent on custody

Under the terms of a member's divorce, the custody of his 18-year-old (age of majority in his state of residence) daughter was not specifically awarded to either his wife or himself; however, she resided with him after the divorce and before he departed for his tour at an overseas station to which he was not permitted to bring dependents. He provided her complete support during the period she resided with him and during a subsequent period while she attended college. Thus, his daughter qualified as the member's dependent for purposes of family separation allowances, Types I and II. B-190008, Nov. 30, 1977.

e. Dependents acquired after PCS

A member who is without dependents on the effective date of his permanent change of station is not eligible for FSA payments. However, a member who acquires a dependent after reporting to his new station and then meets the requirements for FSA authorized under 37 U.S.C. § 427(a) is entitled to such FSA payment from the date the dependent is acquired. 43 Comp. Gen. 596 (1964).

f. When authorized transportation does not include all dependents

A member of the uniformed services who is only authorized transportation at government expense for one of his dependents, but is not authorized transportation for his remaining dependents is regarded as having the movement of his dependents restricted at the volition of the government and therefore, the member is entitled to payment of FSA under 37 U.S.C. § 427(b), clause (1), and 37 U.S.C. § 427(a), so long as the movement of the member's remaining dependents to his permanent duty station or place near that station is not authorized at the expense of the United States. 43 Comp. Gen. 332 (1963).

g. Women members

On the basis of the Supreme Court ruling in Frontiero v. Richardson, 411 U.S. 677, to the effect that the differential treatment accorded male and female members of the uniformed services with regard to dependents, violates the Constitution, and Pub. L. No. 93-64, enacted July 9, 1973, which deleted from 37 U.S.C. § 401 the sentence causing the differential treatment, the regulations relating to the two types of family separation allowances authorized in 37 U.S.C. § 427 should be changed to authorize FSA to female members for civilian husbands under the same conditions as

authorized for the civilian wives of male members, and for other dependents in the same manner as provided for male members with other dependents. 53 Comp. Gen. 148 (1973).

3. FSA—Type I and Type II (FSA-R)

a. Purpose of Type II-R

The statutory purpose of the basic allowance for quarters authorized by 37 U.S.C. § 403 is to reimburse a service member for personal expenses incurred in acquiring nongovernment housing when rent-free government quarters “adequate for himself and his dependents,” are not furnished. The family separation allowance, Type II-R, authorized by 37 U.S.C. § 427(b) has a separate and distinct purpose, i.e., to provide reimbursement for miscellaneous expenses involved in running a split household when a member is separated from his dependents due to military orders, and it is payable irrespective of the member’s eligibility for a quarters allowance. 60 Comp. Gen. 154 (1981).

b. Separation must be caused by military assignment

(1) Separation due to personal considerations—Family separation allowance, Type I, under 37 U.S.C. § 427(a) is not authorized to an otherwise eligible member who is legally separated from his spouse since his separation from her results from personal considerations, not military assignment. 56 Comp. Gen. 805 (1977). B-205097, Mar. 15, 1982.

(2) Separation due to personal considerations—divorce settlement—An agreement incorporated into a divorce decree provided that there would be joint custody of the children of the marriage but that the children would reside with the member’s former wife and visit the member frequently and for long periods. The member asserts that the children actually resided with him before and after the divorce until he was ordered overseas and that they would have continued to reside together but for the military orders. Under these circumstances, the separation between the member and his children resulted from the provisions of the divorce settlement and not from his military assignment. Thus he is not entitled to family separation allowances, Type I. B-213658, June 26, 1984.

(3) Court-ordered separation subsequent to separation by military orders—An Army sergeant serving an unaccompanied tour of duty in Portugal was authorized a family separation allowance, Types I and II,

since his separation from his wife and children was due to military orders. While the member was serving that tour of duty, a California court granted to him and his wife an interlocutory decree of divorce that apparently incorporated a separation agreement which gave each joint custody of the children but gave physical custody of the children to the wife. The Army then terminated the member's family separation allowances. This action was correct since, although the member's separation from his wife and children initially was due to military orders, the interlocutory decree of divorce changed the nature of the separation to one for personal reasons which makes him ineligible for the allowances. B-211693, July 15, 1983.

(4) Separation due to military orders—Where a base closure plan requires the transfer, using government-furnished transportation, of dependents to the sponsor's next permanent duty station while the sponsor remains behind to implement base closure, "enforced" separation exists within the contemplation of 37 U.S.C. § 427(b), and the granting of family separation allowance, Type II (FSA-R), is authorized. 58 Comp. Gen. 183 (1978).

c. Delay in travel otherwise authorized

(1) Member must request travel be approved—Command-sponsored dependents of members of the uniformed services, permitted at the member's overseas station when approved by the overseas commander, may be given authority to move overseas promptly upon request by the member and, in some circumstances without approval of the overseas commander, transportation to be automatically authorized when requested. Such command-sponsored dependents may not be regarded as dependents not authorized transportation to the overseas station within the meaning of the FSA provisions of 37 U.S.C. § 427(b) until the member has applied for and been refused authorization to bring his dependents to the overseas station. Therefore, FSA may not be automatically paid to members for command-sponsored dependents prior or subsequent to the approval of the overseas commander. 43 Comp. Gen. 547 (1964).

(2) Unreasonable delay in dependent travel—When the delay between the date of the departure of a member from his old station to an overseas station at which his dependents are permitted and the date the dependents join the member is an unreasonable delay caused by the government or its agents and is not due to personal causes, the dependents may be regarded as not being authorized transportation to the overseas station within the meaning of FSA provisions of 37 U.S.C. § 427(b). For such undue delay,

regulations to authorize payment of the family separation allowance would not be improper. 43 Comp. Gen. 547 (1964).

(3) Delay in authorization—A member, incident to an overseas change of permanent station, moved his dependents from the old station in Florida to Nevada pursuant to orders. About 2 months after his arrival at his new duty station in Taiwan, he was authorized to have his dependents join him. He is authorized FSA-Type I and Type II for the entire period since the basic permanent change-of-station orders only authorized dependents' move to another location and later when authorized, his dependents were forced to delay their arrival because of Air Force policy. In that regard, it appears that there were no available government quarters, and the member was required to maintain two households during the period. B-179655, Sept. 27, 1974.

(4) Temporary prohibition of dependent travel—A member whose dependents are temporarily prohibited from moving into a restricted area so that he is entitled to transportation for his dependents elsewhere may, nevertheless, have the movement of his dependents to his permanent station or a place near that station regarded as not authorized at government expense under 37 U.S.C. § 406 within the meaning of 37 U.S.C. § 427(a) and 37 U.S.C. § 427(b), to qualify for FSA. 43 Comp. Gen. 332 (1963).

(5) Travel not permitted due to pregnancy—A member whose wife is not authorized transportation because of pregnancy prior to the time he reports to his new permanent duty station, may be regarded as being precluded from having the movement of his dependents to his permanent station or place near that station authorized at government expense within the meaning of 37 U.S.C. § 427(a) and 37 U.S.C. § 427(b), and therefore the conditions for entitlement to FSA are satisfied. 43 Comp. Gen. 332 (1963).

(6) Transportation denied due to emergency—A member whose dependents are not eligible for entry into the United States because of immigration laws prior to the time he reports to his new permanent duty station, may only have the movement of his dependent regarded as unauthorized for FSA entitlement if a departmental regulation precludes authorized transportation of the dependent at government expense in such circumstance. In the absence of such a military restriction, the member would not be eligible for a family allowance payment. 43 Comp. Gen. 332 (1963).

(7) Prior travel of dependents—The “alert” notice that a military unit will commence movement to a restricted overseas area within 90 days is not a permanent change-of-station order entitling a member of the uniformed services to (FSA-R), Type II authorized under 37 U.S.C. § 427(b). Dependents are free to continue to reside with a member until he is required to move, or to remain at the old station indefinitely. A member relocating his dependents upon receipt of an alert notice does so at his own choice, and absent the enforced separation contemplated by section 427(b), FSA may not be authorized prior to the effective date of the permanent change of station when dependents are moved. 46 Comp. Gen. 151 (1966).

d. Early return of dependents

(1) Return for personal reasons—A member whose dependents are returned from overseas for personal reasons may not have such move regarded as due to military requirements, to convert the member’s overseas station into a restricted station to entitle him to FSA. 43 Comp. Gen. 332 (1963). See also B-193532, Oct. 15, 1980.

(2) Returned to United States due to misconduct—A member, whose dependents are returned from overseas relating to the involvement of dependent in an incident embarrassing to the United States, prejudicial to the command, or affecting the dependent’s safety, may not be regarded as having his overseas station converted to a restricted station by such circumstances for entitlement to FSA payments. Therefore, in order for payment of FSA to be made, the officer directing the return of the dependents must certify that the conditions were not caused by their own misconduct. 43 Comp. Gen. 332 (1963).

e. Residence at or near permanent duty station

(1) Mileage criterion—Where the dependents of a member reside more than a reasonable daily commuting distance from the member’s duty station—50 miles being considered the maximum one-way distance—the dependents are not regarded as residing at or near the station within the meaning of 37 U.S.C. § 427(a) or 37 U.S.C. § 427(b), so as to preclude the member’s entitlement to FSA. 43 Comp. Gen. 332 (1963).

(2) Child’s permanent residence—A member was separated from dependent child, not by reason of duty assignment, but because sole custody was in former wife. His duty station in England was 20 miles distant from the permanent residence of his dependent child. The

dependent is not regarded as living away from his duty station within the meaning of 37 U.S.C. § 427 and he was, therefore, not entitled to FSA. 44 Comp. Gen. 572 (1965).

f. Visit of family

(1) Short family visit at permanent station—A member who, while entitled to receive FSA under 37 U.S.C. § 427(a) or 37 U.S.C. § 427(b), has his dependents visit him at or near the permanent duty station, may continue to receive FSA provided that the facts show that the dependents are merely visiting and have not effected a change of residence, and further, that the 3 months' maximum limitation for temporary visits under the quarters allowance regulations is prescribed for family separation allowance purposes. 43 Comp. Gen. 332 (1963).

(2) Visits extended beyond 3 months—When visits by dependents to the permanent duty station of a member receiving FSA payments under 37 U.S.C. § 427(a) and 37 U.S.C. § 427(b) exceed 3 months (unless a shorter period is prescribed by department regulations) due to illness or other emergency arising after the dependents arrive at the duty station, the visit may be considered a visit of a "temporary nature" until the end of the 3-month period. Therefore, retroactive collection of FSA payment to the date the visit commenced is not required but payments should be terminated at the end of 3 months. 43 Comp. Gen. 596 (1964).

(3) Planned visit of over 3 months—If, at the time dependents of members depart from their residence to visit the member at his duty station, it is contemplated that the visit will be for a period longer than 3 months, the visit is not considered to be of temporary nature for continuation of FSA payments under 37 U.S.C. § 427(a) and clause (1) of 37 U.S.C. § 427(b). Therefore, the FSA payments should be stopped on the date the dependents arrive at the member's permanent duty station. 43 Comp. Gen. 596 (1964).

(4) Reinstatement of allowance after visit—When FSA payments to members are stopped because the visit of the member's dependents extends beyond 3 months, and later the dependents return home, the same conditions for payment of the FSA then exist as originally existed. Therefore, FSA payments may be resumed from and including the date of departure of the member's dependents from the permanent duty station. 43 Comp. Gen. 596 (1964).

(5) Some members of family visit—A member who, while being entitled to receive a family separation allowance under 37 U.S.C. § 427(a) or 37 U.S.C. § 427(b) has some of his dependents visit him at or near his permanent duty station, would not lose the right to entitlement to FSA on account of the member's dependents' visit from the permanent duty station. 43 Comp. Gen. 596 (1964).

(6) Children remain at family home—A member was assigned to a restricted overseas area. His wife and son traveled at personal expense to the restricted area and remained there for a period exceeding 3 months—the maximum period for temporary visits. His two daughters, who were attending school, remained in the family household maintained in the United States by the member. The separation of family did not deprive him of entitlement to payment of FSA under 37 U.S.C. § 427(b)(1) on account of the daughters who, not entitled to movement transportation to the overseas duty station, continued to reside in the family household for the period his wife and son resided at or near his permanent overseas duty station. 45 Comp. Gen. 205 (1965).

g. Government quarters available

(1) Lack of facilities at base—Member serving an accompanied overseas tour and assigned government family quarters, who due to lack of U.S. facilities at his duty station chooses to locate his dependents 61 miles from his permanent duty station, is not entitled to FSA-Type I and II, since under 37 U.S.C. § 427, those allowances may not be authorized when the separation from the dependents is for personal rather than military reasons. B-182098, Oct. 9, 1975.

(2) Members married to each other—single quarters—Female member, whose mother is a dependent, subsequently marries another service member while on permanent duty overseas, is entitled to FSA-Type I for her mother, while member is living off base in a common residence with husband, notwithstanding the availability of government single quarters, since government family quarters were not furnished to her and her husband. B-185813, July 13, 1976.

(3) Evacuation from government housing—The dependents of a member were evacuated under emergency conditions from assigned government quarters at his permanent station to government housing facilities at a safe haven area. This is considered voluntary occupation of adequate quarters as the dependents were not required to occupy the quarters. The member,

not having incurred any personal expense, is not entitled to payment of the basic allowance for quarters (BAQ) for dependents prescribed by 37 U.S.C. § 427(b). Also, since the member was not entitled to BAQ—a condition precedent to the payment of a family separation allowance—there is no entitlement to the FSA allowance. 46 Comp. Gen. 869 (1967).

(4) Evacuation from private housing—A member continued to maintain and pay rental for private housing in anticipation of the return of his dependents evacuated to government housing facilities at a temporary safe haven for a relatively short period pending further transportation to a designated place, or return to the place from which evacuated, during which time he occupies single-type quarters at his permanent station. He may continue to be credited in his pay account with a basic allowance for quarters on account of dependents and FSA-Type II until his dependents are authorized to return to the member's permanent duty station or arrive at the designated place contemplated by applicable regulations. 47 Comp. Gen. 355 (1968).

h. Temporary absence of member from permanent station

(1) Allowance commences on departure from old station—Since a member is regarded as in an enforced separation status from his dependents when he departs his permanent duty station for transfer to a restricted station overseas or in Alaska, and since the additional household expenses for which FSA authorized under 37 U.S.C. § 427(b) is payable exists from the date of departure, entitlement to FSA commences on the date of the member's departure (detachment) from the old station or the first day of authorized travel time, whichever is later. 43 Comp. Gen. 332 (1963).

(2) Leave in United States—Members who are receiving FSA under 37 U.S.C. § 427(a) when they are authorized leave within or outside the United States and are not in excess leave status, may continue to receive FSA payments during the leave period provided that, in cases of leave in excess of 60 days, there is a showing that the member continues to maintain quarters at the permanent duty station. 43 Comp. Gen. 332 (1963).

(3) Temporary duty—When a member who is receiving FSA under 37 U.S.C. § 427(a) is on temporary duty away from his permanent duty station, including periods of temporary duty in the United States, he may continue to receive FSA provided that in cases of temporary duty in excess of 60 days, payment may be made only upon a showing that the member

continues to maintain quarters at the permanent station. 43 Comp. Gen. 332 (1963).

(4) Hospitalization at another place—Members who are receiving FSA authorized under 37 U.S.C. § 427(a), when they are hospitalized at or away from their permanent station, including periods of hospitalization in the United States, may continue to receive FSA payments provided that in cases of hospitalization for periods in excess of 60 days there is a showing that the member continues to maintain the commercial quarters at the permanent duty station. 43 Comp. Gen. 332 (1963).

(5) Member in confinement—Members who are receiving FSA payment under 37 U.S.C. § 427(a) when they are placed in military confinement or otherwise restricted by competent military authority from performing duty may continue to receive FSA payment during the confinement in excess of 60 days, provided there is a showing that the member continues to maintain the quarters at the permanent duty station. 43 Comp. Gen. 332 (1963).

4. Type II—FSA-S, FSA-T

a. 30-day requirement

(1) Travel time included—The time for entitlement to FSA authorized under 37 U.S.C. § 427(b), for members on temporary duty for more than 30 days, is not limited to the period at the temporary duty station, but includes authorized travel time to and from the temporary duty station. 43 Comp. Gen. 332 (1963).

(2) 31st day of the month counted—Although the 31st day of a month is not counted in computing the amount of FSA authorized to members under 37 U.S.C. § 427(b), it is to be counted in determining the length of time the member is on duty for the continuous period of duty of more than 30 days for eligibility for FSA prescribed in clauses (2) and (3) of 37 U.S.C. § 427(b), likewise the 28th of February is to be counted as only 1 day for duty purposes. 43 Comp. Gen. 596 (1964).

(3) Combining TDY and ship duty—A change in the basis of eligibility for FSA under 37 U.S.C. § 427(b), without break in continuity, from clause (2), duty on board a ship away from home port for a continuous period of more than 30 days, to clause (3) duty—temporary duty away from a permanent station for a continuous period of more than 30 days where, a

member's dependents do not reside at or near the temporary duty station—has no effect upon the status of a member's enforced separation from his family. The FSA continues to be an item properly for inclusion in the computation of the saved pay of a Navy or Marine member temporarily appointed a commissioned officer. 46 Comp. Gen. 57 (1966).

b. Concurrent receipt of BAQ—inadequate family quarters

A member of the uniformed services who is otherwise entitled to FSA under 37 U.S.C. § 427(b) when he is assigned inadequate quarters for the occupancy of himself and dependents at his home port or permanent station without loss of basic allowance for quarters is regarded as meeting the quarters allowance condition for entitlement to FSA authorized even though the member receives the difference between the basic allowance for quarters and the fair rental value of the inadequate quarters. 43 Comp. Gen. 332 (1963).

c. Duty aboard ship (FSA-S)

(1) Ship in port near home port—Navy members assigned in excess of 30 days to ship overhaul at the Norfolk Naval Shipyard, located 3 miles from home port, Norfolk, Virginia, who had the option to move their families at government expense to the Norfolk area, but chose not to do so, are not entitled to payment of FSA provided by 37 U.S.C. § 427(b). They have no greater right than those members who had moved their families to the vicinity of Norfolk, since they continued to reside with their dependents. The fact that a member did not move his family to the vicinity of Norfolk in anticipation of extended sea duty gives him no vested right to the allowance since frequent changes, often at short notice, are an incident of military service. 52 Comp. Gen. 912 (1973).

(2) Visits home while aboard ship—Navy members who travel during 48 hours of liberty, 72 hours if a holiday is involved, from the place of ship overhaul to the home port of the ship to visit dependents and return at government expense pursuant to Pub. L. No. 91-210, do not forfeit entitlement to the \$30 per month FSA-Type II, authorized in 37 U.S.C. § 427(b). The legislative history of Pub. L. No. 91-210, enacted as beneficial legislation to permit members to travel at government expense from a place of vessel overhaul to home port to visit dependents, evidences no intent to deprive a member of other benefits by reason of a short visit with dependents on the usual type of Navy liberty. 50 Comp. Gen. 334 (1970).

(3) On leave or hospitalization—A member who, while on duty aboard a ship away from the home port for which FSA is authorized under 37 U.S.C. § 427(b), is assigned to temporary duty, or hospitalized ashore, or authorized leave is regarded as in an enforced separation status from his family even though he is not physically performing duties on board the ship. Therefore, entitlement to FSA under 37 U.S.C. § 427(b), would continue during such periods while the ship remains away from its home port and while on authorized leave not in excess of that for which he is entitled to pay and allowances. 43 Comp. Gen. 332 (1963).

d. Temporary duty (FSA-T)

(1) Visit of dependents—A member who has his dependents visit him at or near the temporary duty station to which he is assigned for more than 30 days may not have the residence with his dependents regarded as a mere visit to be entitled to payment of FSA authorized under 37 U.S.C. § 427(b), for temporary duty of more than 30 days since a 31-day minimum period of temporary duty is required for entitlement and the maximum period of temporary duty is generally not in excess of 6 months. 43 Comp. Gen. 332 (1963).

(2) Some dependents visit—A member of the uniformed services who, while being entitled to receive FSA for temporary duty of more than 30 days under 37 U.S.C. § 427(b), has one or more of his dependents visit him for an extended period would not be regarded as losing his right to FSA by reason of the dependents who do not visit him. 43 Comp. Gen. 332 (1963).

(3) Return from TDY on weekends—A member who, while on temporary additional duty away from his permanent station for more than 30 days, returned on weekends to his permanent station where his dependents lived and where he participated in flights as a crew member, may not be regarded as having been on temporary duty away from his permanent station for a continuous period of more than 30 days for FSA payments under 37 U.S.C. § 427(b)(3). 43 Comp. Gen. 755 (1964).

F. Overseas Allowances

The allowances covered by this section incident to permanent assignments overseas are payable as per diem under 37 U.S.C. § 405; however, travel per diem for the member is covered in Title 2 of this Manual.

1. Housing and cost-of-living allowances (COLA)

a. Basic authority and entitlement

(1) Authority for payment—In prescribing a supplemental housing allowance for members stationed outside the United States, 37 U.S.C. § 405 makes no provision for separate housing and cost-of-living allowances, but rather authorizes “a per diem, considering all elements of the cost of living.” Therefore, the proposed supplemental housing allowance regulation should prescribe different per diem rates at a given station on the basis of different costs incurred by different groups of military personnel, including groups who incur higher or lower than average excess costs. 47 Comp. Gen. 333 (1967).

(2) Adequacy of allowances—Where a member of a uniformed service stationed overseas incurs expenses for housing in excess of the amount authorized to be paid to him by BAQ and overseas allowances, his claim for extraordinary expense to cover the additional cost must be denied. No authority exists for payment of extraordinary expenses and a member may only be paid allowances for housing and living expenses authorized by law and regulations. B-195941, Oct. 18, 1979. See also B-197982, Feb. 26, 1981.

(3) Advance payment prohibited—Joint Travel Regulations may not be amended to allow advance payment for housing and similar allowances paid under 37 U.S.C. § 405, as the advance payment authorization in section 303(a) of the Career Compensation Act of 1949 as amended, 37 U.S.C. § 404(b)(1), is limited to payments for the member’s travel, which does not include housing allowance. Therefore, in the absence of specific statutory authority for advance payment of such allowances, 31 U.S.C. § 529 precludes such advance payments. 56 Comp. Gen. 180 (1976).

(4) Per diem basis—The payment of a higher housing per diem rate to members for the first 2 months of entitlement after entering on an overseas tour of duty and a lower rate for the remainder of the tour for the purpose of accelerating the reimbursement of moving-in expenses would constitute an advance payment of that portion of the per diem allocable to the accelerated reimbursement. Such a payment is not within the contemplation of 37 U.S.C. § 405 authorizing a per diem that considers all elements of the cost of living to members stationed outside the United States, regardless of when costs may have to be paid. Therefore, the proposal to establish two housing allowance indexes, one applying for the preponderance of a member’s tour which would reflect recurring costs and one applying during the first 2 months of the tour which would reflect

the inclusion of the nonrecurring expenses may not be legally adopted. 47 Comp. Gen. 362 (1968).

(5) Need for implementing regulations—A member who incident to orders directing attendance at a 2-week course of instructions away from her PDS in the Tokyo, Japan, area in 1965, may not be paid per diem since the November 8, 1954, determination by Headquarters Far East Air Forces—that per diem is not payable to its personnel for travel and temporary duty performed within the area involved—had never been rescinded. Even though conditions of travel and temporary duty in the Tokyo area may have changed, the 1954 regulatory restriction, authorized by 37 U.S.C. § 405, does not permit payment of the per diem claimed. 47 Comp. Gen. 131 (1967).

(6) Regulations clearly erroneous—When a regulation is issued based on obvious administrative error, it may be adjusted retroactively to correct the mistake. Therefore, when a housing allowance was inadvertently deleted from an active duty station, based on information that no personnel were assigned there when in fact that was not the case, the regulation may be retroactively corrected to reinstate the allowance. B-192040, Aug. 7, 1978, see also 56 Comp. Gen. 1015 (1977). Compare B-205237, Mar. 15, 1982.

(7) Entitlement to allowances—Where a housing allowance was authorized by regulation for St. Mawgan, England, member stationed there who was unable to secure government housing was entitled to the allowance, except for any period when he was entitled to a temporary lodging allowance. B-184460, Feb. 25, 1976.

(8) Dependent spouse—Member of the uniformed services, a resident of the Hawaiian Islands, who enters on active duty and is assigned to the island of Oahu, but whose dependent wife remains on the island of Maui, is entitled to allowances at the with dependent rate. B-196603, Feb. 18, 1981.

(9) Dependent status—stepchild—Member was entitled to transportation and cost-of-living allowances on account of his two stepchildren incident to his assignment to Alaska, despite the fact that the natural father was also a member and was vested with a primary entitlement to a quarters allowance credit for the children because of court-ordered support payments, since there was no duplicate credit of allowances involved in

the matter. 43 Comp. Gen. 690 (1964). See also B-197384, Aug. 12, 1980; B-196727, May 20, 1980.

(10) Dependent status—adopted child—An Army officer stationed in Alaska claims a cost-of-living allowance on account of his adopted son during the 8-month period immediately preceding entry of the final order of adoption. He is not entitled to the allowance because under the relevant state adoption statutes, a legal adoption was not effected during that period. B-209495, Apr. 22, 1983.

(11) Unaccompanied overseas assignment—A service member on an unaccompanied overseas tour of duty may not be paid military overseas housing and cost-of-living allowances on account of dependents who move to the overseas area, because in those circumstances the dependents' overseas residence is purely a matter of personal choice. 37 U.S.C. § 405; 53 Comp. Gen. 339 (1973). 60 Comp. Gen. 689 (1981).

(12) Permissive orders for overseas assignment—Since members arriving at new permanent duty stations overseas under permissive travel orders issued at their request for personal convenience are required to pay their own travel and transportation expenses under such permissive orders, the temporary lodging allowance, which is in substance a continuation of the travel per diem to reimburse the members for more than normal expenses directly attributable to the change of station, is not payable. However, housing and cost-of-living allowances, which are based on average costs normally incurred on permanent duty overseas, are to be distinguished from costs incident to the change of station and such allowances are payable to the members. 43 Comp. Gen. 584 (1964).

(13) Sharer of residence—A member who rents a residence shall not be considered a sharer for purposes of reducing his housing allowance entitlement even though the owner of the residence is his fiancée and both live in the residence. The member is not a sharer under the applicable regulations because his fiancée is not entitled to housing allowances and she does not contribute money for his rent or payments. Lieutenant Colonel Joseph R. Horton, Jr., B-228733, Nov. 22, 1988.

b. Entitlement of housing allowance—government quarters available

(1) Quarters leased by NATO—When officers stationed at Headquarters Allied Forces Southern Europe are furnished quarters leased by NATO for occupancy by United States and foreign personnel and secured with funds

contributed in part by the United States, they are not entitled to quarters and housing allowances. The leased quarters are considered "government quarters" within the contemplation of the Joint Travel Regulations notwithstanding a redefinition of the term "government quarters" which deleted reference to a foreign government. Further, the payment by the officers of a \$25 monthly service charge, amounting to 80 cents per day, covering current operating costs for laundering, cleaning, heating, etc., furnishes no basis to authorize a quarters and housing allowance to an officer occupying quarters leased by the NATO. 44 Comp. Gen. 12 (1964).

(2) Quarters administered by Panama Canal Commission—Military members occupying quarters formerly owned by Panama Canal Company (now administered by the Panama Canal Commission) are not entitled to housing allowances since such quarters are considered government quarters under Volume 1, Joint Travel Regulations, regardless of whether the member pays rent. Although the Panama Canal Treaty of 1977 transferred the housing owned by Panama Canal Company to Republic of Panama, the United States retained right to use the housing for its employees, and the quarters are still to be considered government quarters within the meaning of the regulations. However, since members in such housing often pay rent and utilities equal to or greater than a member in comparable private housing who receives the allowances, no objection would be posed to an amendment to the regulations authorizing payment of the housing allowance. B-199718, June 19, 1981.

(3) Unaccompanied tour—assignment to substandard quarters—A service member may, if necessary, be involuntarily assigned to government quarters classified as inadequate or substandard when reporting to an overseas duty station for a tour of duty he is to perform unaccompanied by his dependents. In such circumstances, he may not secure private housing near his duty station, decline the involuntary assignment to "inadequate" quarters, and thereby gain entitlement to overseas housing and cost-of-living allowances, which are payable under prescribed conditions to service members overseas when they are not furnished with government quarters. 60 Comp. Gen. 689 (1981).

(4) Assigned quarters not at duty station—Member serving an accompanied overseas tour and assigned government family quarters, who due to lack of U.S. facilities at his duty station chooses to locate his dependents 61 miles from his permanent duty station, is not entitled to a housing allowance at the without dependent rate, since he may not be considered a member without dependents and the Joint Travel

Regulations preclude payment of housing allowance to member assigned government quarters for himself and dependents. B-182098, Oct. 9, 1975.

(5) Evidence of nonavailability of public quarters—While record indicated member occupied off-post housing while attached to unit in Yongson, Seoul, Korea, he is not entitled to housing allowance under 1 Joint Travel Regulations, para. M4301-3(b)(3) (Change 221, June 1, 1971) (now JFTR para. U9100) for a member without dependents, during a period for which there is no showing that government quarters were not assigned to him or that off-post residence was approved by the commanding officer. B-187188, Oct. 18, 1976.

(6) Abandonment of assigned quarters—A Marine Corps officer serving an unaccompanied tour of duty in Okinawa chose to bring his family to Okinawa at personal expense, and he moved off base into private family housing. His government quarters were reassigned to another, but he was offered substitute, substandard quarters for potential emergency use. He is not entitled to a certificate of nonavailability of quarters nor to payment of overseas housing and cost-of-living allowances on his own account based on a theory that he was thereby personally forced to reside and take his meals off base since his move was a matter of personal choice. 60 Comp. Gen. 689 (1981).

(7) Waiver of housing allowances received by member assigned quarters—Service member serving overseas as member without dependents who is assigned government quarters which he occupies for approximately 8 months and then leases civilian quarters while still retaining quarters is not entitled to housing allowances during such period in accordance with para. M4301-3b(1) and (3), 1 JTR (Changes 224 and 229) (now JFTR para. U9100). Since at the time he requested such allowances, he certified that he was not occupying government quarters, which fact he should have known was erroneous, it cannot be held that he was without fault in matter so as to waive erroneous payment of housing allowances. B-187490, Nov. 9, 1976.

c. Entitlement to COLA when subsisted by government

(1) Entitlement while on leave—Enlisted men without dependents assigned to a permanent duty station outside the CONUS and subsisted at government expense are not entitled to the cost-of-living allowance authorized by 37 U.S.C. § 405 for the purpose of defraying the average excess costs experienced by members on permanent duty outside the

United States. They do not gain entitlement to the allowance while on leave in the United States on the basis a government mess is not available to them since the Joint Travel Regulations prescribed that a member at a permanent overseas duty station without dependents is not entitled to a cost-of-living allowance while absent on leave in the United States or while being subsisted at government expense at the permanent duty station. 52 Comp. Gen. 273 (1972).

(2) Ship personnel away from ship—Enlisted members without dependents were assigned to ships home-ported outside the United States, were not in a travel status, but were required to be away from their station. Where a determination has been made that subsistence in a government mess is impractical, they are entitled to a fractional cost-of-living allowance under the Joint Travel Regulations for those meals which they must buy away from their station. 54 Comp. Gen. 333 (1974).

d. Entitlement while on temporary duty

(1) Attending school under no expense orders—An officer who is permitted under “no expense” orders to be absent from his permanent duty assignment outside CONUS to attend a nearby university for 125 days to acquire a degree under 37 U.S.C. § 405 and implementing regulations, is entitled for the period of the permissive temporary duty to housing and cost-of-living allowances incident to his permanent duty as for a member with dependents residing in nongovernmental housing near his duty station. 45 Comp. Gen. 245 (1965).

An officer’s orders, transferring him from Hawaii to Virginia and providing for the concurrent travel of his dependents, were amended to place the officer on terminal temporary duty “Operation Bootstrap” at the University of Southern California at no expense to the government. He may be paid a station housing allowance and cost-of-living allowance for his dependents who continued to reside in Hawaii for the period of the permissive temporary duty, since the officer remained assigned to his overseas station and was expected to return to that station for change-of-station processing after completing his assignment. 51 Comp. Gen. 691 (1972).

(2) At home port of two-crew submarines—Members without dependents assigned to two-crew nuclear-powered submarines who are receiving basic allowance for quarters and subsistence while performing temporary additional duty for training and rehabilitation ashore at overseas home port of submarine in excess of 15 days are entitled to the housing and

cost-of-living allowances authorized under 37 U.S.C. § 405 and the Joint Travel Regulations notwithstanding the fact the submarine is the permanent station of the members and housing and cost-of-living allowances are payable only at permanent stations, since the members actually experienced higher cost for housing and cost of living. 53 Comp. Gen. 535 (1974). See also 57 Comp. Gen. 178 (1977).

(3) Same—while on shore due to injury—Member was on permanent duty on vessel home-ported at Pearl Harbor, Hawaii, when he was injured and ordered to temporary duty for medical treatment at Pearl Harbor. Since those orders for treatment did not effect a permanent change of station and since the member continued to reside in nongovernment quarters he is eligible for station housing and cost-of-living allowances. B-181893, Sept. 16, 1975.

e. Dependents at other duty station

(1) Member's transfer to CONUS—Coast Guard member's dependents remained in Hawaii when the member was transferred on permanent change-of-station orders to Cleveland, Ohio. The member was not entitled to continued payment of station allowances under 37 U.S.C. § 405 in the absence of an emergency preventing dependents from leaving the overseas station since the dependents' continued residence in the overseas area had no connection with the member's duty assignment. B-196694, Dec. 12, 1979.

(2) Designated place overseas—A member, incident to a permanent change of station to a restricted area overseas to which his dependents are not authorized to accompany him, elects to move his dependents from his old duty station in the United States to a designated place in Alaska, Hawaii, Puerto Rico, or any territory or possession of the United States—in fact to any place outside the United States. He may not be paid station allowances, temporary lodging, housing, and cost-of-living allowances, as the dependents' move overseas would be a personal choice, separate and apart from the member's overseas duty, and while residing overseas would not be in a military dependent status. 49 Comp. Gen. 548 (1970). See also B-195570, May 15, 1980. Modified by Overseas Station Allowances, 68 Comp. Gen. 167 (1989).

(3) Consecutive overseas assignments—A Marine Corps member with dependents was transferred from duty in continental United States to restricted duty (dependents prohibited) overseas. His orders stated the

intention of the Commandant to reassign him to Hawaii after completion of his restricted duty assignment. Member's dependents moved to Hawaii concurrent with the member's restricted duty assignment and the member now claims station allowances for dependents under 37 U.S.C. § 405. Since such move may be viewed as having a connection with the member's duty assignment, the Joint Travel Regulations may be amended to authorize station allowances in such cases. However, this member's claim may not be paid because current regulations clearly prohibit it. 56 Comp. Gen. 525 (1977). Modified by Overseas Station Allowances, 68 Comp. Gen. 167 (1989).

(4) Dependents travel when member is transferred to restricted area—The Joint Federal Travel Regulations may be changed to allow the payment of station allowances for service members' dependents who are moved to a designated place outside of the continental United States in Alaska, Hawaii, Puerto Rico, or in any territory or possession of the United States when the service members are transferred from their duty stations inside the continental United States to a restricted area in the same circumstances that would allow payment of the dependents' transportation to the place upon the authorization or approval of the Service Secretary concerned. 49 Comp. Gen. 548 (1970) and Lieutenant Colonel Charles D. Robinson, 56 Comp. Gen. 525 (1977), are modified. Overseas Station Allowances, 68 Comp. Gen. 167 (1989).

(5) Station reclassified as restricted area—Where a member lives with dependents in the vicinity of his duty station outside the United States, and the duty station is reclassified as a restricted area so as to require that dependents be relocated to another designated place outside the United States, or in Hawaii or Alaska, GAO has no objection to a proposed amendment to the Joint Travel Regulations to provide for station housing and cost-of-living allowances while dependents reside at the new designated place and the member remains at the restricted duty station. B-193787, Feb. 5, 1979.

(6) Member at remote Alaska post—A member was assigned from CONUS to a remote and isolated post in Alaska and his dependents were authorized to travel in a military status to another Alaskan location where dependent facilities existed, and to which location the member made periodic visits. This does not make the member eligible to receive station allowances, and the principle enunciated in 49 Comp. Gen. 548 applies because the choice of an Alaskan location for dependents in lieu of a residence in CONUS does not change the member's "all others" tour of duty to an "accompanied by dependents tour." 53 Comp. Gen. 339 (1973).

f. Pending effective date of home port change

The Joint Travel Regulations may be amended to authorize payment of overseas station allowances authorized by 37 U.S.C. § 405 to members with dependents after the date a change in home port of the vessel or staff or mobile unit to which they are assigned or are being transferred has been officially announced. Allowances may be paid even though travel of dependents occurs before the effective date of the vessel's or unit's change of home port. 65 Comp. Gen. 888 (1986). 45 Comp. Gen. 689 (1966) and 43 Comp. Gen. 505 (1964) overruled.

g. Dependents visiting in United States

When a member remains at his permanent duty station outside the United States while one or more of his dependents returns to the United States for a visit, the cost-of-living allowance adjustment required by the Joint Travel Regulations may be waived if the absence is for 30 days or less. 37 U.S.C. § 405, which authorizes the consideration of the cost-of-living element in prescribing the payment of a per diem, indicates no requirement to adjust cost-of-living allowances during absence of a member's dependents for short periods; and the waiver of the adjustment would be in harmony with the regulations implementing the cost-of-living allowances provided by section 221 of the Overseas Differential and Allowances Act, 5 U.S.C. § 5924, for civilian employees of the government. 50 Comp. Gen. 386 (1970).

2. Interim housing allowance (IHA)

The interim housing allowance which is authorized to members of the uniformed services under the Joint Travel Regulations and payable from the date the member procures nongovernment family-type housing until the arrival of the dependents is not regarded as a continuation of the travel per diem. The fact that the transfer of the member is made under permissible orders which do not entitle the member to travel and transportation expenses does not bar entitlement to the IHA, and otherwise proper payments of such allowance under permissive orders will not be questioned. 43 Comp. Gen. 584 (1964).

3. Temporary lodging allowance (TLA)

a. General restrictions

(1) While en route to permanent station—Under permanent change-of-station orders, an Army sergeant traveled from Germany to Fort Wainwright, Alaska, which was designated in the orders as his new permanent duty station. In fact, his assignment to Fort Wainwright was merely for the purpose of undergoing processing at the personnel center there and diversion to another Alaskan post for permanent duty. During the personnel processing, Fort Richardson, Alaska, was designated as his permanent duty station. He claims temporary lodging allowances for the 2-day period he resided in temporary quarters at Fort Wainwright. He is not entitled to temporary lodging allowances since that allowance is a permanent station allowance and Fort Wainwright was actually not his permanent duty station. However, he is entitled to per diem allowances for the 2-day period since he was in a travel status en route to his genuine permanent duty station at Fort Richardson. B-207624, Oct. 19, 1982.

(2) Temporary duty station not within limits of permanent station—The Joint Travel Regulations may be amended to authorize temporary lodging allowances to members of the uniformed services when incident to a permanent change of station they perform temporary duty en route within the limits of their new permanent duty station prior to reporting to that station. This allowance may be paid at the time the member reports to the temporary duty station. If the temporary duty station is not within the limits of the permanent station, temporary lodging allowances are not authorized and in the absence of a more specific proposal with respect to this situation the regulations should not be amended to provide this entitlement. B-208740, Jan. 31, 1983.

(3) On day of arrival at permanent station—Reimbursement to a member for hotel expenses incurred on day of arrival at an overseas permanent station may not be authorized by amendment to the Joint Travel Regulations to provide payment of a temporary lodging allowance or mileage, whichever is greater. 47 Comp. Gen. 724 (1968). However, while payment of mileage and TLA may not be made for the same day, this does not preclude payment of travel per diem reduced for quarters and TLA for the day of arrival at the permanent station. B-130608-O.M., June 5, 1975.

(4) Quarters must qualify as temporary lodging—An Air Force officer who was transferred from Arkansas to Texas claims a temporary lodging expense allowance based on his continued occupancy of his permanent

residence in Arkansas on a rental basis after the date he sold it. The residence cannot be considered to have been his "temporary" quarters within the meaning of that term under the applicable statutes and regulations and his claim may not be allowed. B-225262, May 4, 1987.

(5) FSA and TLA for same period—Upon the termination of the assignment of government quarters at a permanent station overseas due to the closing of a military installation, a member receiving family separation allowance, Type I under 37 U.S.C. § 427(a) may, in addition, for the period prior to departure to his new station, be paid a temporary lodging allowance in 10-day increments under 37 U.S.C. § 405. The allowances are not considered to duplicate each other. 47 Comp. Gen. 788 (1968).

(6) Effect of permissive orders—Unlike housing and cost-of-living allowances which are based on average excess costs normally experienced by members on permanent duty outside the United States, the temporary lodging allowance is based on the applicable per diem rate for the station involved and varies with the number of persons concerned. Thus, in substance, it is a continuation of the travel per diem. Consequently a member not entitled to reimbursement for travel and transportation expenses incident to a permanent change of station under permissive orders was not entitled to a temporary lodging allowance. However, such a member is not precluded from claiming an interim housing allowance, and housing and cost-of-living allowances, if otherwise authorized. 43 Comp. Gen. 584 (1964).

(7) Separate allowance for members and dependents—A statute enacted in 1981 provides that a member of the uniformed services who is ordered to make a permanent change-of-station move may be allowed up to "four days" of expenses "incurred by the member and the member's dependents" while occupying temporary quarters. A proposal may be approved for the issuance of new regulations under that statute which would authorize service members up to 4 calendar days of temporary lodging expense allowance for themselves and up to 4 separate days of allowances on behalf of their dependents, subject to a maximum limit on reimbursement of \$440. B-221732, Apr. 10, 1987.

b. Permanent change-of-station requirement

(1) Upon return from long TDY—Temporary lodging allowance may be paid under current regulations on return to permanent station of a member without dependents who must give up his permanent housing while on

temporary duty away from his permanent station for extended periods. However, it may be prudent to amend the regulations to specifically provide guidelines for payments of TLA in this situation. TLA may be authorized regardless of whether the member actually loses entitlement to BAQ for the period of temporary duty, by being assigned to field or sea duty provided it is clear that the member relinquished his quarters. 59 Comp. Gen. 486 (1980).

(2) Alert notice—An Air Force member whose dependents traveled from an overseas post to the United States under early return of dependents orders rather than under permanent change-of-station orders issued later is not entitled to receive dependents' temporary lodging allowance for 10 days prior to their departure. Temporary lodging allowance prior to departure is authorized beginning upon receipt of permanent change-of-station orders or an "official alert notice." General information that permanent change-of-station orders would be arriving imminently did not constitute an official alert notice within the meaning of the Joint Travel Regulations. B-204516, Apr. 5, 1982.

(3) Pending effective date of home port change—The dependents of members of the Navy assigned to vessel duty arrived in the vicinity of an overseas home port of the vessel and occupied temporary lodgings prior to the effective date of the change of the home port of the vessel from the United States to the overseas home port. The conditions for entitlement to the temporary lodging allowance, which is in the nature of a permanent change-of-station emolument, have not been met until the new home port of the vessel becomes the member's permanent duty station on the effective date of the orders. Therefore, the members are not entitled to the temporary lodging allowance prior to the effective date of the change in the home port. 43 Comp. Gen. 505 (1964).

(4) Two-crew submarine—prior to reporting aboard—A member who, incident to permanent change-of-station orders assigning him to duty on board a ship, occupies hotel or hotel-like accommodations with his family at the home port or is temporarily assigned to the off-ship crew of a two-crew nuclear-powered submarine, is not eligible to receive the temporary lodging allowances prescribed by 37 U.S.C. § 405 as a permanent station allowance to partially reimburse a member for the more than normal expenses incurred upon arrival at a permanent station outside the United States. Therefore, as a member is not considered to be at a permanent duty station for the purposes of the temporary lodging allowances until he reports aboard the vessel to which assigned, the Joint

Travel Regulations may not be amended to authorize payment of the allowance to a member prior to reporting aboard ship. 48 Comp. Gen. 716 (1969).

(5) Advance return of dependents—The temporary lodging allowance payable to a member of the uniformed services on the basis he incurs more than normal expenses for the use of hotel accommodations and public restaurants for a prescribed period immediately preceding departure from an overseas station on permanent change of station may not be authorized incident to the advance return of a member's dependents under 37 U.S.C. § 406(e) and (h). The temporary lodging allowance is a permanent station allowance that may not be used to supplement the transportation allowance prescribed by subsections 406(e) and (h) for the movement of dependents, baggage, and household effects in unusual or emergency circumstances, or when the Secretary concerned determines the movement is in the best interest of the member, his dependents, or the United States without regard to the issuance of change-of-station orders. 50 Comp. Gen. 83 (1970). See also B-204516, Apr. 5, 1982.

(6) Station reclassified to restricted—Where a member of the uniformed services lives with his dependents in the vicinity of his duty station and the duty station is reclassified from nonrestricted to restricted thereby requiring the dependents to be relocated to a designated place outside the United States or in Hawaii or Alaska, the Joint Travel Regulations may be amended to provide the member a temporary lodging allowance for his dependents at the new designated location. To the extent this conflicts with 50 Comp. Gen. 83, that decision will no longer be followed. 59 Comp. Gen. 353 (1980).

(7) Dependents accompany member on hospitalization—The entitlement of an injured member, when prolonged hospitalization or treatment is anticipated, to the transportation of dependents and household effects is no basis to authorize payment of a temporary lodging allowance incident to the evacuation of his dependents occasioned by his injured status, unless the movement of the dependents and household effects is in connection with an ordered permanent change of station for the member. 49 Comp. Gen. 299 (1969).

(8) After assignment of unaccompanied tour—A member authorized station allowance for dependents, continuing to reside in the vicinity of his old overseas duty station when he was reassigned to a restricted overseas

duty station, may be paid a temporary lodging allowance on account of his dependents who occupied hotel accommodations after vacating permanent living accommodations and shipment of their household effects incident to the member's transfer to the United States, even though he was not at his old overseas station when the transfer orders were received. 43 Comp. Gen. 525 (1964).

c. Government quarters available

(1) Temporary quarters available but not used—An officer transferred to an overseas duty station who, notwithstanding the availability of government quarters considered adequate for temporary occupancy, chooses to stay at a hotel until permanent quarters are assigned to him is not entitled to payment of a temporary lodging allowance for the period that he occupies hotel accommodations. 44 Comp. Gen. 515 (1965).

d. Commander's determination necessary

(1) Need for occupancy of hotel quarters—Where there was nothing to show that the overseas commander had made a determination that temporary lodgings were necessary incident to a member's permanent change of station in Italy, and there was uncertainty as to the effective date of the permanent change-of-station orders and the proximity of the old duty station to the new duty station, TLA was not payable. 45 Comp. Gen. 510 (1966). See also B-186784, Nov. 24, 1981; B-211573, June 7, 1983.

(2) Decision to discontinue allowance—A member, who was paid temporary lodging allowance for 36 days of the initial 60-day period after arrival of his dependents in Taiwan but was denied this allowance for the remaining 24 days of the initial 60-day period by the overseas commander on the basis that the member's actual expenses for the 60-day period did not exceed the amount of the allowance plus his basic allowance for subsistence and basic allowance for quarters for the 36-day period, is entitled to payment for the remaining 24 days since the regulations do not authorize those grounds as a basis for disallowing TLA during the initial 60-day period. B-179655, Sept. 27, 1974. See 1 JFTR para. U9201 for current regulations.

(3) Failure to keep commander advised—Under regulations directing the overseas commander to advise a member upon arrival of the member's responsibility to aggressively seek permanent quarters and to report his progress in obtaining permanent housing at least every 10 days, member

who failed to submit such periodic reports after being advised of his responsibilities was not entitled to TLA beyond the initial 10-day period following his arrival at the overseas station. B-184746, Aug. 16, 1976.

e. Extension of eligibility

(1) Failure to request extension—Member who continued to reside in a German hotel following the expiration of the period of his TLA entitlement, was not entitled to additional TLA in the absence of determination by overseas commander that additional TLA was necessary, notwithstanding the member's contentions that he could not request an extension due to a unit reorganization. B-185784, Feb. 14, 1977, and Nov. 24, 1981.

(2) Retroactive effect—The authority in the Joint Travel Regulations to extend by special determination the 60-day period of entitlement to a temporary lodging allowance provided for the more than normal expenses that occur incident to an overseas assignment requiring change of residence may not be amended to provide for a time extension after the expiration of 60 days. The rights of the government and members having vested, any special determination to extend the period of entitlement operating retroactively would be without effect, and neither would a retroactive determination operate to commence a further and separate period of entitlement. 46 Comp. Gen. 214 (1966).

(3) Commander's duty to determine—Member's claim for additional TLA incident to a permanent change of station to an overseas assignment at RAF St. Mawgan, England, where it is stated that his request for additional TLA was denied by his overseas commander, is not authorized, since under 37 U.S.C. § 405 and the Joint Travel Regulations, such overseas commander has sole authority to determine whether member has or will incur undue financial hardship for purposes of this allowance. B-184460, Feb. 25, 1976.

(4) Consideration of actual costs—A member requested extension of temporary lodging allowance beyond the initial 60-day period after arrival of his dependents in Taiwan and showed that undue financial hardship will result during only a portion of the requested period of extension. The overseas commander properly disallowed the member's request for the full period because it is the commander's responsibility to consider the member's income (combined TLA, BAQ, and BAS) and expenses (hotel and public restaurants), during the requested period. B-179655, Sept. 27, 1974. See 1 JFTR para. U9201 for current regulations.

(5) Delay in departure due to misconduct—The additional temporary lodging allowance provided by the Joint Travel Regulations, when the departure of a member with dependents from an overseas duty station is delayed beyond the 10-day period of entitlement through no fault of the member or his dependents, should not have been paid to a member whose departure was delayed awaiting court-martial proceedings, since the charges of misconduct against the member established prima facie that he was not without fault for the delay. Therefore, there was no entitlement to the allowance for the period during which charges were pending, and the member would be eligible to receive the allowance only if exonerated from blame. However, having been found guilty—and it is immaterial if charges were made in a civil action or under the Uniform Code of Military Justice—the erroneous allowance payments would be for recoupment but for the fact that the administrative regulations were not clear. 50 Comp. Gen. 537 (1971).

(6) Delay in departure for personal reasons—Payment of a 10-day temporary lodging allowance for dependents on departure from overseas permanent duty station incident to permanent change-of-station orders is not authorized where dependents did not leave within 60 days after the effective date of his PCS orders as required by volume 1, paragraph M4303-2e(1) (now 1 JFTR para. U9203) of the Joint Travel Regulations. B-186752, Feb. 28, 1977; B-193901, Apr. 24, 1979.

G. Other Allowances

1. Recruiting expense allowance

a. Added cost of automobile insurance

Although under 37 U.S.C. § 428 and the implementing regulations a member whose primary assignment is to perform recruiting duty may be reimbursed for actual and necessary expenses incurred in connection with the performance of those duties, a recruiter is not entitled to reimbursement by the government for the increased cost of extended insurance coverage incurred in connection with the use of privately owned automobile in the performance of duties. That cost, like the cost of fuel, oil, repairs, and depreciation, is one of the expenses of operating an automobile which expense is reimbursed to the member through the separate mileage allowance. 54 Comp. Gen. 620 (1975).

b. Luncheons for groups of school officials

Provisions of 37 U.S.C. § 428 and the Joint Travel Regulations authorize reimbursement of out-of-pocket expenses—including occasional meals—incurred in performance of official duties by recruiting officers from appropriations available to Marine Corps. These provisions do not appear to contemplate luncheon expenses incident to preplanned presentation to 11 public school officials who may assist recruiters. While we will not object to payment of subject voucher, similar expenses should not be incurred unless the regulations are revised to authorize them. B-162642, Aug. 9, 1976. See 1 JFTR paras. U7030-7033 for current regulations.

2. Lodging costs under 10 U.S.C. § 7572

A Navy officer without dependents, not entitled to basic allowance for quarters, obtained quarters in the private sector when quarters obtained aboard the ship to which he was assigned became uninhabitable because of repairs. Government quarters at a local Navy base were available although they had been declared “substandard—incapable of being made adequate.” The officer is not entitled to reimbursement for obtaining quarters under 10 U.S.C. § 7572(b), since there was no certification that government quarters were not available. B-196628, Dec. 19, 1979. See also 48 Comp. Gen. 480 (1969); 59 Comp. Gen. 708 (1980).

3. Heat and light allowance under 10 U.S.C. § 4593

Member in government housing for which he pays rent and utilities while assigned to Panama Canal government may not be reimbursed for electric costs in excess of his basic allowance for quarters under 10 U.S.C. § 4593. Basic allowance for quarters payment includes not only an amount for rent but also an amount for utilities. B-194847, June 19, 1981.

4. Rent plus housing allowance

a. Retroactive payment due to administrative error

A member of the uniformed services who was authorized to move to local economy housing in Heidelberg, Germany, may be authorized “rent plus” housing allowance retroactively when, due to an error by the service, a ceiling allowance for the member’s pay level had not been established in the regulation and the member was not authorized the allowance until the ceiling was established and he had occupied the local quarters for several

months. Since the failure to establish the ceiling was an administrative error, the regulation may be retroactively corrected to allow payment. B-219259, Feb. 11, 1986.

b. Members sharing a residence—sharer's rate

When two members who are entitled to and are receiving housing allowances share a residence, their "rent plus" housing allowance must be paid at the sharer's rate regardless of the financial arrangement between the members. Although the regulations were not entirely clear in defining a sharer's entitlement, the fact that the government is paying each member a housing allowance, although of different types, supports the conclusion that sharing arrangements should be taken into account even though costs may not, in fact, be shared so that sharers cannot manipulate the allowances to their advantage. 64 Comp. Gen. 501 (1985).

5. Variable housing allowance (VHA)

a. Confinement at correctional facility

A Marine Corps member received a general court-martial sentence which included confinement at hard labor for 5 years and forfeiture of pay, but he was entitled to continue receiving basic allowance for quarters at the with dependents rate. He was subsequently transferred from his duty station at Camp Lejeune, North Carolina, to the correctional facility at Camp Pendleton, California, for confinement. He is not entitled to receive a variable housing allowance based on his transfer to the correctional facility because he was assigned there for confinement not "for duty" as required by statute. B-214731, Sept. 4, 1984.

b. Complement to overseas station housing allowance

The variable housing allowance authorized for service members assigned to duty in high housing cost areas within the United States (other than Alaska or Hawaii) is a CONUS station allowance designed to complement the overseas housing allowance, and is payable to a member incident to his particular duty assignment rather than by virtue of his membership in the uniformed services. Hence it may not properly be included in the lump-sum leave settlement of a member entitled to payment for unused accrued leave computed on the basis of his "basic pay and allowances" upon his separation from active duty. 37 U.S.C. § 501(b), as amended by

Pub. L. No. 94-361, July 14, 1976, 90 Stat. 923; 37 U.S.C. § 403, as amended by Pub. L. No. 96-343, Sept. 8, 1980, 94 Stat. 1123. B-201117, Feb. 18, 1981.

c. Use of temporary lodging

A member of the uniformed services may not occupy temporary lodging facilities, built and maintained with appropriated funds, in excess of 30 days at his permanent duty station incident to a permanent change of station without a loss of basic allowance for quarters and variable housing allowance since applicable regulations prohibit it. However, the services may amend the regulations to authorize payment for periods in excess of 30 days in certain deserving cases. B-208762, Apr. 14, 1983.

d. On account of adopted child

An Army officer claims basic allowance for quarters and variable housing allowance at the with dependents rates on account of her adopted son during the probationary preadoption period (prior to the court's entry of a final adoption order), as the child resided in her household during that time. She is not entitled to the allowances claimed because under the controlling state (Alabama) adoption statutes, a legal adoption had not been effected during that period. B-214017, Feb. 23, 1984.

e. All dependents must return to the United States

A variable housing allowance is authorized for service members to defray expenses related to their securing living quarters in high-cost housing areas in the United States. Applicable regulations provide that all of the dependents of a service member who is stationed overseas must return to the United States before the member becomes eligible to receive this allowance. Thus an Air Force sergeant stationed in Italy, whose dependent daughter was returned to an area of high housing cost in the United States, but whose wife remained in the vicinity of his duty station in Italy, is ineligible to receive a variable housing allowance. (The wife remained the member's dependent in spite of an Italian court decree of separation.) B-218847, Aug. 1, 1985.

f. Offset for monthly housing expenses

Under a 1985 amendment to the variable housing allowance law, the VHA is reduced under certain circumstances where it, together with basic allowance for quarters, exceeds a member's housing costs. The amount of

reduction, if any, depends on the member's monthly housing costs, with higher monthly housing costs resulting in no reduction or a lesser reduction. The regulation defining monthly housing costs may not include the cost of a second mortgage taken for reasons other than repairing, renovating, or enlarging a residence, since VHA is an allowance to help a member pay for housing in a high cost area. However, the definition of monthly housing costs for the purpose of computing the VHA may include the cost of a loan not secured by realty provided that the loan is taken for the purpose of repairing, renovating, or enlarging the member's residence. Variable Housing Allowances, 67 Comp. Gen. 145 (1987).

Service member who paid cash for his home may not prorate the purchase amount monthly in order to include it in his "monthly housing cost" for purpose of obtaining a full variable housing allowance. The purpose of a VHA is to defray housing costs in those parts of the United States where housing costs are especially high, and since the allowance is intended to be attuned to member's actual housing costs, a member who has no actual out-of-pocket housing expense does not qualify for the full allowance. Lieutenant Colonel Carey L. Freeman, 68 Comp. Gen. 106 (1988).

g. Assigned to duty requirement

A Marine Corps member stationed at Camp Lejeune, North Carolina, where cost-free government quarters were available to him, was not eligible for variable housing allowance. He traveled to Chicago, Illinois, where he spent 7 days in a leave status awaiting his final discharge and filed a claim for a variable housing allowance for that period. Since the applicable statute authorizes payment of the variable housing allowance to service members "assigned to duty" in a high housing cost area in the United States, the allowance may not be paid on the basis of the member's election to go to a high housing cost area for the purpose of taking leave rather than fulfilling a duty assignment. B-223425, Nov. 3, 1986.

h. Reserve member called to active duty

Service members are generally authorized payment of a variable housing allowance (VHA) when assigned to duty in a "high housing cost area." The applicable statute restricts the eligibility of reservists for VHA to those called to active duty for a period of not less than 20 weeks. This restriction was imposed because reservists are eligible for per diem allowances to provide reimbursement of their lodging expenses when they are called away from their homes to perform duty for a period of up to 20 weeks at

another locality and an anomaly would result if their lodging costs were paid through per diem and they simultaneously received VHA for that locality. Hence, a regulation implementing the VHA statute properly restricts payment to reservists assigned to duty for 20 weeks or more "at one location." 66 Comp. Gen. 453 (1987).

i. Awaiting action by Physical Evaluation Board

A member of the military services ordered to a designated place in the continental United States, Alaska, or Hawaii to await final action by a Physical Evaluation Board is entitled to the variable housing allowance and cost of living allowance appropriate for the designated place. Private J. E. Gines, USMC, 70 Comp. Gen. 435 (1991).

j. Divorced member—dependents

A member who is entitled to basic allowance for quarters (BAQ) at the with dependent rate, based on his payment of child support, and who is also entitled to a variable housing allowance (VHA), may not receive VHA at the higher with dependent rate solely by reason of a separation agreement that also awards "primary custody" of dependent children to the former spouse, but with "temporary" and "physical" "secondary custody" to the member at other times. However, the member is entitled to VHA at the with dependents rate where he can demonstrate that he had actual physical custody of the children for periods in excess of 3 months. The computation of such VHA should take into consideration only the member's direct housing costs and not the costs incurred by the former spouse. Major Norris G. Cotton, 69 Comp. Gen. 407 (1990).

A divorced member who is entitled to a variable housing allowance (VHA) may receive the higher rate for a member with dependents (VHA-W) for continuous periods in excess of 3 months when his child is living with him. The costs of maintaining a home for the child's visits does not entitle him to VHA-W when the child is living with the member's former spouse or visiting the member for shorter periods. Technical Sergeant Fred D. Walker, USAF, 70 Comp. Gen. 703 (1991).

k. BAQ solely for payment of child support

A member occupied bachelor officer quarters and paid a service charge for maintenance of the quarters. He was entitled to basic allowance for quarters (BAQ) only due to payment of child support. A member receiving

BAQ solely for payment of child support is not entitled to a variable housing allowance. Lieutenant Steven M. Fitter, USCGR, B-244912, Aug. 21, 1992.

6. Allowances not included

In addition to the allowances discussed above, the statutes authorize payment of a variety of other allowances designed to reimburse personnel for expenses incurred in participating in certain activities or in fulfilling the responsibilities of specified positions. Included are special provisions for members participating in international sports (37 U.S.C. § 419), and band concert tours (37 U.S.C. § 425), allowances for band leaders (37 U.S.C. §§ 207, 424), contract surgeons (37 U.S.C. § 421), and certain high-ranking officers (37 U.S.C. § 414). Another statute (5 U.S.C. § 5943) authorizes a foreign currency depreciation allowance, the purpose of which is to meet losses sustained by members while serving in a foreign country due to the appreciation of foreign currency in its relation to the American dollar. Further, a temporary lodging expense allowance was established by Pub. L. No. 97-60, Oct. 14, 1981 (37 U.S.C. § 404a), for certain members making a PCS move to a duty station in the United States. See Title 2 of this Manual.

H. Status of Member as Affecting Entitlement to Allowances

1. National Guard and Reserve members

a. Basic allowances for subsistence and quarters (BAS and BAQ)

(1) Active duty for training—A member who is away from home to perform active duty training at an installation where government quarters and messing facilities are not available, in addition to entitlement to the travel and transportation allowances provided by 37 U.S.C. § 404(a)(2) and (3), may be credited under the authority of 37 U.S.C. § 404(a)(4) with BAQ and per diem without reduction. The restriction in 37 U.S.C. § 403 to the payment of a quarters allowance when a member is not entitled to basic pay has no application to a section 404(a)(4) entitlement, and the Joint Travel Regulations does not require a reduction in per diem while a reservist is entitled to quarters allowance. However, BAS prescribed by 37 U.S.C. § 402(b) is not payable to an enlisted man receiving per diem. 48 Comp. Gen. 301 (1968).

(2) Active duty of less than 20 weeks—The training station to which a Reserve member without dependents is ordered to active duty for less than 20 weeks is his permanent station. The member, performing his basic assignment at his permanent duty station, is entitled to BAQ prescribed by

37 U.S.C. § 403 while at the training station and the definition in the Joint Travel Regulations that a home or place from which a member of a Reserve component is ordered to active duty for training is his permanent duty station is not for application. 48 Comp. Gen. 490 (1969).

(3) BAQ dependency certificates—Recertification of dependency certificates for entitlement to BAQ by members of the Army Reserve may be accomplished by the use of computer-generated listing. Further, such recertification may be made for a period exceeding 1 year where annual training cannot be programmed within 12 months of the prior training period. 51 Comp. Gen. 231 (1971), modified. 59 Comp. Gen. 39 (1979).

(4) Reservist receiving disability compensation—When a Reserve member is receiving disability compensation by reason of prior military service is ordered, pursuant to 10 U.S.C. § 683(a), to perform training or other duty without pay, he is entitled to the transportation and quarters and subsistence benefits prescribed by 37 U.S.C. § 1002(b) in addition to his disability retirement. The requirement of 10 U.S.C. § 684(a) that members elect either the payments incident to early military duty, or the pay and allowances authorized by law—“compensation” that includes travel or other expenses, and subsistence and quarters—for current active duty, not being for application. The allowances for travel to and from a training station, and the subsistence and quarters benefits authorized under 37 U.S.C. § 1002(b) for reservists ordered to duty without pay at rates fixed by the Secretary concerned, which may or may not be the same rate that is provided by law, not constituting either pay or allowances, are not “compensation” within the meaning of 10 U.S.C. § 684(a). Therefore, the reservist is entitled to both disability retirement and 37 U.S.C. § 1002(b) allowances. 44 Comp. Gen. 613 (1965).

(5) Commutation rate for members serving without pay—The commutation rate provided in 37 U.S.C. § 1002(b) in lieu of quarters and subsistence to members of the National Guard or other reservists who consent to additional training or duty without pay refers to the cost to the government of furnishing subsistence and quarters in kind, not to the actual expense a member incurs in providing himself with subsistence and quarters. The established aggregate daily commutation rate exceeding the maximum commuted rates prescribed by 37 U.S.C. §§ 402 and 403 for members performing training duty in a full pay status, may neither be increased, nor may an increase on a nongovernment cost basis, tantamount to payment of an unauthorized per diem at a duty station, be prescribed. 46 Comp. Gen. 319 (1966).

b. Uniform allowances

(1) Entry as reservist after release from regular status—The entrance on active duty as a non-Regular officer less than 2 years after release from active duty as a Regular officer or enlisted man, or as an enlisted member of a Reserve component, does not deny the officer the extended active duty uniform allowance of \$100 that is in addition to the initial uniform allowance. The 2-year restriction in 37 U.S.C. § 416(b)(2) barring payment when a tour of duty commences within 2 years after completing a period of active duty of more than 90 days' duration refers to active duty ordered in a non-Regular officer status for more than 90 days. 43 Comp. Gen. 265 (1963).

c. Family separation allowance (FSA)

(1) Active duty of less than 30 days—Although members of Reserve components of the uniformed services who are called to active duty for training for less than 1 year, or to active duty for other than training duty for less than 6 months may have the training station regarded as coming within the term "permanent station" in the FSA-Type II, provisions in 37 U.S.C. § 427(b)(1) for entitlement to payments when their dependents are precluded from moving to the permanent station at government expense. However, Reserve members who are ordered to active duty for training, or to active duty for other than training, for periods which do not exceed 30 days, are not regarded as being separated from their dependents for an extended period of time and, therefore, are not entitled to allowances under 37 U.S.C. § 427(b)(1). 43 Comp. Gen. 650 (1964).

(2) Duty aboard ship for more than 30 days—Although the term "duty" in 37 U.S.C. § 427(b)(2), which authorizes FSA payments for members on duty on board a ship away from the home port of the ship for a continuous period of more than 30 days, is not defined, the definition of "active duty" in 37 U.S.C. § 101(18) as including full-time training duty and annual training duty may be used for FSA-Type II, purposes. Therefore, reservists called to active duty or active duty for training on board a ship away from its home port for more than 30 days are entitled to FSA-Type II. 43 Comp. Gen. 650 (1964).

(3) 30-day TDY during 45-day tour—A reservist who is ordered to active duty for training for a period of 45 days away from the Reserve unit to which he is attached for drill purposes may not be regarded as having an active duty station other than the station to which he is ordered for training duty to be considered as on temporary duty away from his

permanent station for FSA-Type II, authorized under clause (3) of 37 U.S.C. § 427(b). He may, because the assignment is in excess of 30 days, have the training station regarded as his permanent station for FSA-Type II, entitlement under clause (1) of section 427(b). 43 Comp. Gen. 650 (1964).

(4) FSA-Type I—duty outside United States—The restrictions or limitations on the length of permanent duty assignments for reservists need not be applied to the beneficial FSA-Type I, provisions in 37 U.S.C. § 427(a), for permanent duty outside the United States or Alaska. Therefore, reservists who are called to active duty for training or other active duty outside of the United States or in Alaska for periods in excess of 30 days and who do not have any other station that can be regarded as their permanent duty station may be regarded as serving on a permanent duty for entitlement to FSA-Type I, payments under 37 U.S.C. § 427(a). 43 Comp. Gen. 650 (1964).

(5) Transfers to Naval Reserve—A Marine Corps Reserve officer on active duty for 5 years or more who, upon involuntary separation, would be entitled to receive separation pay, is not entitled to such pay where he was transferred to the Naval Reserve under 10 U.S.C. § 716 without a break in service. In regard to entitlement to pay and allowances, his military status is not considered to have been interrupted, but rather he is considered at all times to have remained on active duty. 37 Comp. Gen. 357, distinguished. Captain Larry J. Haynes, USMCR, 68 Comp. Gen. 1 (1988).

d. Overseas station allowances

(1) TLA while on training in Europe—Officers of State Army National Guard who performed annual field training in Europe within the authority of 32 U.S.C. §§ 502(a)(2) and 503 during a period government quarters were not available and living accommodations had to be obtained at their own expense in nearby hotels, are not entitled to the temporary lodging allowances provided under 37 U.S.C. § 405. The Joint Travel Regulations contemplate entitlement to the allowance only when members are permanently assigned to duty at a station outside the United States for performance of duty of an indefinite or extended period rather than a period of short duration, such as the duty performed by the officers; however, the Joint Travel Regulations may be amended to authorize payment of a temporary lodging allowance for future short period of training outside the United States or in Hawaii or Alaska. 45 Comp. Gen. 794 (1966). See generally 1 JFTR para. U9200.

(2) COLA while on Reserve duty in Alaska—The cost-of-living allowance authorized by the Joint Travel Regulations for the purpose of defraying the average excess cost experienced by members on permanent duty outside CONUS is not payable to an Air Force Reserve officer ordered from his home in the United States to active duty training in Alaska for a 44-day period. The fact that a member ordered to active duty training of short duration is entitled to certain allowances which are paid incident to a permanent duty assignment does not make a short duration assignment for active duty training permanent in nature. 45 Comp. Gen. 798 (1966).

(3) Station allowances for Alaska reservists—In view of the broad authority contained in 37 U.S.C. § 405, Volume 1, Joint Travel Regulations, may be amended to authorize payment of station allowances at with or without dependent rates as appropriate to members of Reserve components who perform active duty for less than 20 weeks outside the United States or in Hawaii or Alaska and who reside permanently in those areas with their families (if any). 55 Comp. Gen. 135 (1975). See 1 JFTR paras. U9000-9200 for current regulations.

2. Husband and wife both members

a. Basic allowance for quarters (BAQ)—no children involved

(1) Sham marriages—Two service members married each other for the admitted purpose of being allowed to live off base and to be paid BAQ under a service policy which authorizes such a procedure to encourage the maintenance of the family unit when government family-type quarters are not available. In such a case the members should be assigned single-type government quarters, if available, which would discontinue BAQ payments since there is no family unit to maintain. B-195670, Dec. 14, 1979.

(2) Effect of *Frontiero v. Richardson*, 411 U.S. 677 (1973)—The *Frontiero* decision has no effect on the dependency status of service members married to each other as prescribed by 37 U.S.C. § 420, since a member may not be paid an increased allowance on account of a dependent for any period during which the dependent is entitled to basic pay. However, the differential treatment accorded male and female members in assigning quarters requires amendment of Department of Defense Directive to prescribe entitlement to both male and female members to BAQ at the without dependent rate when adequate public quarters for dependents are not available, notwithstanding the availability of adequate single quarters. This reflects that neither husband nor wife occupying government quarters

for any reason who has only the other spouse to consider as a dependent is entitled to BAQ in view of 37 U.S.C. § 402. Further, when husband and wife are precluded by distance from living together and are not assigned government quarters, each is entitled to BAQ as prescribed for members without dependents. 53 Comp. Gen. 148 (1973).

(3) One member on excess leave—An Army captain, whose wife is authorized excess leave without pay and allowances for the period between being commissioned and reporting to her new duty station, during which time she is neither furnished nor occupies quarters in kind, may be paid an increased quarters allowance under 37 U.S.C. § 403 on behalf of his wife for the period she was in excess leave status. The limitation in 37 U.S.C. § 420 that a member may not be paid increased allowances on account of a dependent for any period during which that dependent is entitled to basic pay does not bar BAQ at the with dependent rate, since the wife was not receiving basic pay and her active duty status in itself is not determinative of the husband's entitlement. 47 Comp. Gen. 467 (1968).

(4) One member in prison—Military member claims basic allowance for quarters at the with dependent rate on account of her husband, a military member who is not entitled to pay and allowances due to his being in confinement under a 15-year prison sentence. The quarters allowance at the with dependent rate is not authorized. The member may no longer be considered to have a dependent for quarters allowance purposes since the dependent will be absent for an extended period of time and the member is for all practical purposes absolved of the responsibility of providing quarters for her husband for the duration of his confinement. B-209744, Feb. 1, 1983.

(5) Members occupying inadequate government quarters—A husband and wife, members of the uniformed services in pay grades E-5 and E-4, respectively, each member in receipt of a basic allowance for quarters while occupying private quarters, when assigned inadequate government quarters on a rental basis may continue under 42 U.S.C. § 1594j(a) to receive the allowance as members without dependents. However, their combined allowances exceeding the allowance received by the usual military family—one member only in the service—occupying inadequate quarters, the reduction provided by section 1594j(a) when a rental rate exceeds 75 per centum of the quarters allowance may not be applied on the basis of the husband's allowance alone. The manner which or from whom the

rental charges are collected is immaterial under the landlord/tenant relationship. 48 Comp. Gen. 68 (1968).

(6) Members occupying transient quarters while awaiting adequate family-type housing—Service members married to each other, while awaiting adequate family-type housing, for 17-day period resided in transient housing at their duty station for which they paid nominal service charge. Although members who occupy transient quarters for a nominal service charge are considered to be in assigned rent-free and adequate government quarters, the members are both entitled to receive BAQ at the “without dependent” rate for 7 days under the authority of Executive Order No. 11157, Part IV, § 403(a), June 22, 1964, as amended. B-198081, Feb. 26, 1981.

(7) Effect of sea duty for one spouse—Husband and wife who are both members of the uniformed services, have no dependents other than each other, and do not live in government quarters, are both entitled to BAQ at the without dependent rate appropriate for their grades. However, when the husband goes on sea duty, his entitlement to BAQ ceases and the wife does not thereby become entitled to BAQ at the increased with dependent BAQ rate. B-178979, Oct. 23, 1974. See also 57 Comp. Gen. 194 (1977).

(8) BAQ—members’ children—no children of a prior marriage involved

(a) Child—whose dependent—When two service members marry, neither may claim the other as a “dependent” for military allowance purposes, but if they have a child, that child becomes their joint “dependent” for purposes of establishing entitlement to allowance payments. Although both parents may not claim their child as a dependent for the same allowance payment where dual payment would result, it is permissible for one parent to claim the child as a dependent for the purpose of BAQ and for the other parent to claim the child for other allowances. 60 Comp. Gen. 154 (1981).

(b) Effect of members’ separation—A member of the uniformed services who is separated from his or her spouse, who is also a member, and who has legal custody of one or more of their children on whose behalf the spouse contributes no support, is entitled to a basic allowance for quarters at the with dependent rate, regardless of the spouse’s entitlement, provided that the dependents on account of whom the increased allowance is paid do not reside in government quarters. 62 Comp. Gen. 315 (1983).

(c) Effect of separation agreement—A properly executed separation agreement generally is legally sufficient as a statement of the parties' marital separation and resulting legal obligations, for the purpose of determining entitlement to a basic allowance for quarters, even though the agreement was not issued or sanctioned by a court. However, a member's entitlement to basic allowance for quarters based on child support obligations created by a separation agreement should be reassessed following court action since the court is not bound by the agreement in awarding custody. 62 Comp. Gen. 315 (1983).

(d) After divorce—Where two Air Force members married to each other with one child are divorced, the male member paying child support and the female member having custody of the child, the child is the dependent of both members under 37 U.S.C. § 401. However, since only one member may receive BAQ at the with dependent rate based on the child as a dependent, only the member paying child support (in this case the male member) receives the BAQ at the with dependent rate. If the member receiving the increased BAQ does not claim the dependent child, the female member who has custody of the child may claim BAQ at the with dependent rate. 60 Comp. Gen. 399 (1981). See also 58 Comp. Gen. 100 (1978); 52 Comp. Gen. 602 (1973); and B-189973, Feb. 8, 1979.

Where two married Air Force members with common dependents subsequently divorce, only one member may receive basic allowance for quarters based on the children as dependents, unless the class of common dependents is divided by separation agreement or court order. The member paying child support, which is stated to be on behalf of one child but is sufficient to qualify for entitlement under the applicable regulation, is entitled to the basic allowance for quarters at the with dependents rate while the member having custody of the children receives the allowance at the without dependents rate. 62 Comp. Gen. 350 (1983).

(9) BAQ—children of a prior marriage involved

(a) Members reside in separate quarters—each has child prior to marriage—Both uniformed service members, who are married to each other, and had dependent children in their own right prior to their marriage, may be paid an increased basic allowance for quarters on account of their respective dependents when the spouses do not reside together as a family unit because of their duty assignments. Whether the dependents reside with one, both, or neither of them would not affect their entitlement, provided that each member individually supports his or her

dependent and is not assigned to government family quarters. 62 Comp. Gen. 666 (1983).

(b) Members reside together—each has child of prior marriage—When two uniformed service members who are married to each other and who had dependent children in their own right prior to their marriage, are assigned to the same or adjacent bases, are not assigned government quarters, and live together as a family unit, only one member may receive a quarters allowance at the increased “with dependent” rate. Only one set of family quarters is required and all the dependent children belong to the same class of dependents upon which the increased allowance is based whether the children live with the members or not. To the extent that 60 Comp. Gen. 399 (1981) may be understood to contradict this holding, it is hereby modified. 62 Comp. Gen. 666 (1983).

(c) Child of prior marriage determined to be a “dependent” after member’s remarriage—When a uniformed service member’s child meets the qualifications for becoming the member’s dependent following the member’s marriage to another member who is not the child’s natural parent and the members have other dependent children, the child joins the class of dependent children upon which the member-parent’s increased basic allowance for quarters entitlement is determined. 62 Comp. Gen. 666 (1983).

(d) Status of child of current marriage—members reside together—Female service member married to and residing with male member who receives BAQ at the with dependent rate on account of children of a previous marriage is not entitled to BAQ at the with dependent rate for a child of the present marriage since, although this child is not claimed as a dependent by the other member, the child must be considered a dependent of the spouse who is receiving BAQ at the with dependent rate by virtue of other dependents and may not provide a basis for allowing both spouses to receive BAQ at the with dependent rate. 54 Comp. Gen. 665 (1975).

(e) Status of child of current marriages—members reside separately—A military member married to a military member occupied government quarters with their dependent child. Upon a permanent change of station of the male member, the female member remained in government quarters with the dependent child. Male member is not provided government quarters at new station and claims BAQ at the with dependent rate since he is paying child support to a former non-military spouse not residing in government quarters with dependent children. The male member is

entitled to BAQ at the with dependent rate since his BAQ entitlement is determined independent of his military spouse where they do not reside in the same household. 59 Comp. Gen. 681 (1980).

b. “Partial BAQ” under 37 U.S.C. § 1009(d)

(1) Generally—A member of the uniformed services married to another member, who has no dependents other than his or her spouse, is entitled to “partial 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. 56 Comp. Gen. 894 (1977).

(2) Effect of sea duty for one spouse—A member assigned to sea duty, who occupies government family-type quarters assigned to his spouse when the vessel is in port, is assigned to quarters on the vessel and is considered a member without dependents by virtue of 37 U.S.C. § 420. Therefore, he is not entitled to partial BAQ authorized by 37 U.S.C. § 1009(d). 57 Comp. Gen. 194 (1977).

c. Family separation allowance (FSA)

(1) Member with no dependents other than member spouse—A member with no dependents—as his wife, his only dependent, is also a member of the service on active duty—is not entitled to the family separation allowance (FSA-Type II) provided by 37 U.S.C. § 427(b) because, notwithstanding the elimination from the section pursuant to Public Law 91-533 of the qualifying language for entitlement to FSA-Type II of the phrase “who is entitled to a basic allowance for quarters,” the prohibition in 37 U.S.C. § 420 against increasing a member’s allowance on account of a dependent entitled to basic pay under 37 U.S.C. § 204 precludes payment of the FSA-Type II. 51 Comp. Gen. 116 (1971).

Where spouses without dependents are both members of the uniformed services and are assigned to the same overseas permanent duty station immediately before one member chooses to return to the United States for separation from active duty, the continued separation between the member and the released spouse is not an enforced separation, but a matter of personal choice. Therefore, a family separation allowance, under 37 U.S.C. § 427, may not be paid. B-199233, Dec. 27, 1983.

(2) Member with child and member spouse

(a) Unaccompanied overseas tour—Marine Corps member separated from her child and husband while serving an unaccompanied tour of duty overseas may properly be regarded as a “member with dependents” under 37 U.S.C. § 427(b)(1) and is entitled to a family separation allowance, Type II-R, notwithstanding that her husband is also a Marine and is drawing a basic allowance for quarters at the “with dependent” rate on behalf of the child. Their child is their joint dependent and payment of the two allowances—each for a separate purpose—would not improperly result in dual payments of the same allowance for the same dependent. 60 Comp. Gen. 154 (1981).

(b) PCS with dependent travel authorized—Where spouses with a dependent child are both members of the uniformed services, and one member is given a permanent change of station with dependent travel authorized, the Military Pay and Allowances Entitlement Manual may not be interpreted or amended to authorize payment of the family separation allowance to either member. Whether the child travels to the reassigned member’s new station or remains at the old station is a matter of personal choice and not a forced separation as when a member is assigned to a restricted station. B-199233, Dec. 27, 1983.

(c) When dependent travel could have been authorized—An Army member claims entitlement to family separation allowances, Type I and Type II, on the basis that he was separated from his minor child due to orders assigning him to his new permanent duty station in Germany to which his dependent was not authorized concurrent transportation. The member seeks to establish dependency as of the date he arrived at his new duty station when apparently the child previously had been considered the dependent of his wife, also a member of the Army. The member’s orders show that a dependent’s concurrent travel may well have been authorized had the member clarified the dependency and pursued travel authorization and, as a matter of fact, a few months later the dependent traveled with the member’s wife to Germany upon her assignment there. In these circumstances, the separation between the member and his dependent may not be considered as enforced so as to authorize payment of the family separation allowances. B-201887, Apr. 21, 1981.

d. Dislocation allowance (DLA)

(1) Both spouses transferred—Where female and male service members are married and reside in the same household and incident to a change of permanent station for each member the household is moved and the members continued to reside in the same household, only one dislocation allowance may be paid for such movement, and since the male member already has received such allowance the female member's claim must be denied. However, upon repayment of DLA previously received by male (junior) member, DLA may be paid to the female (senior) member.

54 Comp. Gen. 665 (1975).

Husband and wife, both Navy members, are each entitled to a dislocation allowance (DLA) (without dependents rate) upon permanent changes of station where at the old station the husband was assigned to quarters aboard a ship home ported at Pearl Harbor and the wife occupied quarters on land near Pearl Harbor, her duty station, and both were transferred to Long Beach, California, where they occupied nongovernment quarters together. Although the husband stayed with his wife in her quarters when he was not required on board ship at the old duty station, the move involved transfer from a station where the members were assigned separate quarters and thus was not a move of a single household to preclude payment of two DLAs. B-191742, Aug. 1, 1978.

(2) One spouse separated—A member under permanent change-of-station orders traveled concurrently with his wife, who was traveling under separation orders. He is not entitled to dependent transportation allowance on account of his wife as his dependent since she was paid travel and transportation expenses to her home of record in connection with her separation from active service in the Air Force. However, he may be paid a dislocation allowance at the with dependent rate on account of his wife since she is considered his dependent on the effective date of his transfer. 63 Comp. Gen. 55 (1983).

(3) Child dependent—An Army member's claim for travel expenses and a dislocation allowance for his wife's and child's travel to his new permanent duty station may not be allowed. Although such travel was mistakenly provided for in the member's orders, on the effective date of his orders (the date he was required to begin travel to his new duty station) his wife was on active duty in the Army and she was claiming their child as a dependent. Since a member may not claim a spouse who is also a member entitled to basic pay as a dependent, the member had no

dependents for transportation or dislocation allowance purposes. B-202313, Oct. 9, 1981.

(4) After divorce—custody of child—Two members were husband and wife and had a child by that marriage but are divorced at the time of entitlement to a dislocation allowance incident to a transfer. The female member has custody of the child although the male member pays child support. Regardless of basic allowance for quarters entitlement, the female member is entitled to dislocation allowance at the “with dependent” rate since under regulations applicable to that allowance she does have a dependent. B-183176, Nov. 18, 1975.

3. Members in missing-in-action or prisoner-of-war status

a. Continuation of allowances

When a member enters a status covered by the Missing Persons Act, permanent items of pay and allowances, except temporary allowances, may continue to be credited to his account provided no change occurs in conditions of entitlement, section 2 of the Act authorizes the same basic, special, and incentive pay; basic allowances for subsistence and quarters; and station per diem allowances, not to exceed 90 days, for a period of absence that a member was entitled to at the beginning of his absence. Also the family separation allowance authorized by 37 U.S.C. § 427(a), falling within the purview of section 2 of the Missing Persons Act, may be allowed, but not the cash clothing allowance provided for enlisted personnel under 37 U.S.C. § 418, an item that is not enumerated in the Act. 44 Comp. Gen. 657 (1965).

b. Basic allowances for subsistence and quarters (BAS and BAQ)

Enlisted members, whether with or without dependents, who, prior to being carried in a missing status (37 U.S.C. §§ 551-558), were quartered and subsisted by the United States government under the concept of “changed conditions” may be credited with quarters and subsistence allowances from the beginning of a missing status, subject to 31 U.S.C. § 71a (now 31 U.S.C. § 3702). 52 Comp. Gen. 23 (1972).

c. Family separation allowance (FSA)

(1) Continuation of existing allowance—Family separation allowance, Type I, authorized by 37 U.S.C. § 427(a), may be continued during a missing

status provided circumstances arising after the missing status starts do not terminate the right to the allowance. 44 Comp. Gen. 657 (1965).

(2) Initiation of Type II allowance for TDY—A member on temporary duty assignment, who is missing prior to completing the 30-day qualifying period prescribed by 37 U.S.C. § 427(b)(3) for entitlement to payment of a monthly family separation allowance, Type II, may nevertheless have the allowance credited to his pay account for the period he is officially determined to be in a missing status on the basis that the family separation allowance is an additional quarters allowance—an allowance authorized for continuation in section 2 of the Missing Persons Act. However, the qualifying period for entitlement to a family separation allowance must have been completed after the member entered into a missing status, and while the temporary duty status of the member appears to have been terminated by his missing status, the separation from his family is nonetheless an enforced separation resulting from military requirement. 45 Comp. Gen. 633 (1966).

d. Dislocation allowance (DLA)

(1) Family move under Missing Persons Act—Entitlement to payment of the dislocation allowance authorized by 37 U.S.C. § 407, predicated on orders directing a permanent change of station for members, the determination that a member in active service is in a missing status is not a proper basis to authorize the payment of DLA under section 554, which only authorizes the travel and transportation of the dependents and household and personal effects of a member who is in a missing status. 47 Comp. Gen. 556 (1968).

Index

Chapter 1— Entitlement to and Adjustments in Pay

Title I—Active Duty Pay and Allowances	A. Entitlement to Military Pay—Statutory Right	1-1
	B. Active Duty Status	1-1
	1. Entrance on duty	1-1
	a. Pay during litigation over military status	1-1
	b. Illegal recall to active duty	1-1
	c. Call to active duty versus placement on the active list	1-2
	d. Reserve constructively entering on active duty	1-2
	2. Termination of active duty	1-2
	a. Discharge based on intentions of member and service	1-2
	b. Discharge upgrade without restoration to duty	1-3
	c. Separation—record correction—change in nature of discharge	1-3
	d. Record correction after court-martial	1-3
	e. Ineffective discharge	1-4
	f. Invalid discharge	1-4
	g. Ordered home to await retirement	1-4
	h. Active duty performed due to failure to receive retirement orders	1-4
	i. National Guard member; implied consent to remain on active duty	1-5
	j. After expiration of active duty period; hospitalization	1-5
	k. After expiration of enlistment	1-5
	(1) Hospitalization for disability	1-5
	(2) Court-martial review pending	1-6
	(3) While in parole status	1-6
	l. Parole status—civilian earnings	1-6
	m. Members retained after eligible for retirement	1-6
	n. Change in type but not date of discharge	1-7
	o. Extension of active duty—medical expenses incurred	1-7

C. Restored to Active Duty	1-7
1. Pay and allowances	1-7
2. Severance payments	1-8
3. Interim civilian earnings	1-8
4. Date for claim settlement purposes	1-8
5. Reserve pay	1-8
6. Interim military pay and medical care	1-9
7. Value of commissaries, recreational facilities, etc.	1-9
8. Job hunting expenses	1-9
9. Taxes on interim earnings	1-9
10. Deduction of interim civilian earnings	1-10
11. Uniform allowances	1-10
12. Collection of VA payments	1-10
13. Interest on backpay	1-11
14. Interim erroneous payment	1-11
15. District court recovery limitation \$10,000	1-11
D. Cadets, Midshipmen Disenrolled From Service Academies	1-12
1. Cadet or midshipman who resumes his enlisted status	1-12
2. Cadet or midshipman awaiting transfer to reserves	1-12
E. Members in a Missing, Interned, Etc., Status	1-12
1. General rule	1-12
2. Change of allotment designation	1-13
3. Members killed in action	1-13
F. Induction or Enlistment	1-13
1. Erroneous induction; voidable status	1-13
2. De jure enlisted status	1-14
a. Constructive enlistment	1-14
b. Waiver of defect in enlistment	1-14
3. Medically unfit person inducted	1-14
4. Persons judicially declared insane inducted or enlisted	1-15
5. Mentally incompetent persons (not judicially declared) inducted or enlisted	1-15
6. Underage enlistments	1-16
a. General	1-16
b. Discharged upon application of parent	1-16
7. Fraudulent enlistments	1-16
a. General	1-16
b. Fraudulently concealed prior dishonorable discharge	1-17
c. Fraudulently concealed criminal record	1-17

G. Termination of Officer's Commission for Holding Civil Office	1-17
1. Regular military and civil office are incompatible	1-17
2. Civil office defined	1-17
a. Special policeman at Library of Congress	1-18
b. State notary public	1-18
c. Commissioner of Roads for Alaska	1-18
d. Member of Alaskan engineering commission	1-19
e. Public Health Service officer appointed to interstate commission	1-19
f. Assistant to the President	1-19
g. Assistant Secretary and Deputy Assistant Secretary of Defense positions	1-19
h. Civil office while on terminal leave	1-20
H. Additional Pay—Limitations	1-20
1. Acceptance of payments from government	1-20
a. Medical officers receiving medicare fees	1-20
b. Medical and dental officers receiving Veterans Administration fees	1-20
c. Medical officers receiving fees from Social Security Administration	1-21
d. Personal expenses incident to training or military duties	1-21
(1) Meals and lodgings at headquarters	1-21
e. Expenses to secure commission as a notary	1-21
f. Costs of installing and maintaining telephone in residence	1-22
g. Awards for superior accomplishments	1-22
2. Acceptance of payments from sources other than the government	1-22
a. Reserve officers on active duty as interns in private hospitals	1-22
b. Honorarium or lecture given by active duty officer	1-22
c. Fees for jury duty	1-23
I. Active Duty for Part of a Month—Computation of Pay	1-23
1. Member obligated to serve 30 days or more but released early—payment basis	1-23
2. Member on active duty for part of a month—payment basis for 31st day of the month	1-23

Chapter 2— Nonpay or Reduced Pay Status

A. Civil Arrest or Confinement	2-1
1. Member restricted to the state by civilian authorities	2-1
2. Administrative determination as to whether absence is unavoidable is necessary	2-1
3. Indicted but released due to mental incompetency	2-1
4. Paroled to custody of military authorities	2-1
5. Confined or restricted for foreign civil offense	2-2
a. Pretrial custody as U.S. installation for foreign authorities	2-2
b. Civil arrest	2-2
6. Absence from duty due to foreign judicial proceedings	2-2
B. Confined for Military Offense	2-3
1. Member in “full duty” status	2-3
2. Member returned to military control assigned full-time duties	2-3
3. After expiration of enlistment	2-3
a. Court-martial review pending	2-3
b. While in parole status	2-4
c. Second sentence provides for forfeiture of pay	2-4
d. Not restored to duty	2-4
e. Restored to duty	2-5
4. Pay of absent member begins upon placement under military control	2-5
5. On duty while court-martial sentence under appeal	2-5
6. Time lost made good	2-6
a. Time lost due to court-martial conviction	2-6
b. Confinement period during “making-up” lost time period	2-6
C. Absence Without Leave	2-6
1. Administratively excusing absences	2-6
a. Absence excused—mental incompetency	2-6
b. Absence unexcused—civilian psychiatric treatment	2-7
2. Change in type of discharge—absence unexcused	2-7
3. Criminality versus misconduct	2-7

Chapter 3— Forfeitures and Collections of Pay

<p>Subchapter I—Forfeitures of Pay and Allowances by Court-Martial Sentence</p>	<p>A. Execution of Sentence</p> <p>1. Effective date of forfeiture</p> <p>2. Accrued pay prior to court-martial sentence</p> <p>3. Sentence set aside by appellate review</p> <p>4. Two or more forfeitures</p> <p>5. Restoration to duty awaiting appellate review</p> <p>6. Second court-martial sentence—inclusion of forfeiture of pay</p> <p>B. Computation and Collection of Forfeiture</p> <p>1. Amount which may be forfeited without punitive discharge</p> <p>2. Debts incurred after forfeiture is effective</p> <p>3. Types of debts for recovery</p> <p>4. Forfeiture—loss of entitlement to pay</p> <p>5. Government failure to collect forfeiture</p> <p>6. Ambiguous sentence—nullity</p> <p>C. Review of Sentences</p> <p>1. Sentence partially affirmed</p> <p>2. Sentence set aside prior to expiration of enlistment</p> <p>3. Sentence set aside after expiration of enlistment</p> <p>4. Sentence approved</p> <p>5. Member dies after expiration of enlistment pending appellate review</p> <p>6. Commanding officer's authority to restore grade and pay</p> <p>7. Effective date of restoration</p>	<p>3-1</p> <p>3-1</p> <p>3-1</p> <p>3-1</p> <p>3-2</p> <p>3-2</p> <p>3-2</p> <p>3-2</p> <p>3-3</p> <p>3-3</p> <p>3-3</p> <p>3-3</p> <p>3-4</p> <p>3-4</p> <p>3-4</p> <p>3-4</p> <p>3-5</p> <p>3-5</p> <p>3-5</p> <p>3-5</p> <p>3-5</p> <p>3-6</p> <p>3-6</p> <p>3-6</p>
<p>Subchapter II—Debt Collections From Pay</p>	<p>A. Debts Owed the United States</p> <p>1. Statutory authority required to withhold from enlisted member's current pay</p> <p>2. Service member receiving early discharge</p> <p>3. Court-martial fine</p> <p>4. Marine's debt to nonappropriated fund activity</p> <p>5. Civilian when debt incurred—military officer when collected</p>	<p>3-7</p> <p>3-7</p> <p>3-7</p> <p>3-7</p> <p>3-8</p> <p>3-8</p>

6. Accountable officer's debts	3-8
7. Debt for health profession scholarship	3-9
8. Member bankrupt	3-9
9. Setoff of United States debts to bankrupt members	3-9
B. Remission	3-10
1. Reserve members not on active duty	3-10
2. Member retired	3-10

Chapter 4— Grade or Rank Affecting Pay

Subchapter I—Pay Is Generally Based on Grade or Rank to Which Member Assigned	A. General	4-1
	B. Officers Serving in Certain Positions/Grades	4-1
	1. Army Chief of Staff	4-1
	2. Navy assistant judge advocates	4-2
	3. Navy Rear Admiral retained on active duty	4-2
	4. Coast Guard “extra numbers” Rear Admirals	4-2
	5. Navy officers whose special appointments expire	4-3
	6. Surgeon General, Public Health Service	4-3
	7. Army warrant officer accepting appointment as commissioned officer in Air Force	4-3
	C. Retired Members Recalled to Active Duty	4-3
	1. Naval Reserve temporary Rear Admiral	4-3
	2. Navy captain advanced on retired list to “Honorary” Rear Admiral	4-4
	3. Navy captain advanced to “Honorary” Admiral grade serving on active duty based on orders	4-4
4. Member holding higher reserve grade recalled in AUS grade	4-4	
Subchapter II—Promotions to Higher Grade or Rank	A. Effective Date of Promotion	4-5
	1. Appointment made with advice and consent of Senate	4-5
	2. Appointment delayed pending investigation	4-5
	3. Reservist promoted by letter while on active duty	4-5
	4. Reservist notified of temporary promotion but disabled before acceptance	4-6

	5. Removal of officer's name from promotion list after approval	4-6
	6. Retroactive promotion of Reserve officer	4-6
	7. Orders purporting to retroactively place officer on active duty in higher grade	4-7
	8. Navy Dental Corps officer appointment	4-7
	9. Temporary promotions of Navy ensigns and Marine second lieutenants	4-7
	10. Promotion resulting from correction board action	4-8
	B. Promotions While in Missing Status	4-9
	1. Requiring "acceptance" of promotion defeats purpose of Missing Persons Act	4-9
	2. Promotion to sergeant while missing—later reenlisted as private	4-9
	3. Promotions while in missing status—effective for all purposes	4-9
	C. Temporary Promotions and Saved Pay	4-10
	1. Navy enlisted man appointed warrant officer—later promoted in enlisted grade	4-10
	2. Coast Guard—temporary grade service	4-10
	3. Enlisted member temporarily appointed warrant officer	4-10
	4. Enlisted member appointed temporary officer	4-11
	5. Warrant officer temporarily appointed lieutenant—later assigned overseas	4-11
	6. Warrant officer in public quarters—temporarily appointed lieutenant	4-11
	7. Chief warrant officer appointed temporary lieutenant—saved pay	4-12
Subchapter III—Erroneous Appointments or Promotions	A. May Retain Pay Received in a De Facto Status	4-12
	1. Second lieutenant erroneously serving as first lieutenant	4-12
	2. Serving under erroneous promotion	4-13
	B. Erroneously Serving in Higher Grade—Not in De Facto Status	4-13
	C. Ineligible Officer—De Jure Status	4-13

Chapter 5—Service Credit—Basic Pay Purposes	A. Officers With Enlisted Service	5-1
	1. Enlisted training duty	5-1
	2. Enlisted members—temporary officers	5-1
	B. Enlisted Members With Officer Service	5-1
	1. Warrant officer service is not enlisted service	5-1
	2. Officer service not includable for enlisted grades E-8 and E-9	5-1
	C. Time on the Temporary Disability Retired List	5-2
	D. Cadet, Midshipman Service	5-2
	1. U.S. Naval, Military, or Coast Guard Academy	5-2
	a. Status of midshipmen	5-2
	b. Time between graduation from U.S. Military Academy and commissioning	5-2
	c. Time between graduation from Coast Guard Academy and commissioning	5-3
	2. Non-Naval Academy midshipman service	5-3
	3. NROTC midshipman service	5-3
	4. Aviation cadet service	5-3
	5. Midshipmen, Merchant Marine Reserve service	5-4
	a. Service not creditable for officers	5-4
	b. Service creditable for enlisted members	5-4
	E. Constructive Service	5-4
	1. Reserve commissioned nurses	5-5
	2. Coast Guard Reserve officer law specialist	5-5
	3. Medical and dental officers	5-5
	a. 1981 repeal of constructive credit for basic pay purposes	5-5
	b. Saving provision	5-5
	F. Civilian Service	5-6
	1. Women's Medical Specialist Corps	5-6
	2. Member of Armed Forces serving under the Foreign Assistance Act	5-6
G. Absences—Service Credit	5-6	
1. Reserve officer absent while serving as enlisted member	5-6	
2. Officers absent due to their own misconduct	5-6	

H. Illegal or Improper Service	5-7
1. Service prohibited by law	5-7
a. Reservist inadvertently retained on active duty	5-7
b. Discharged member inadvertently ordered to active duty	5-7
c. Dual enlistments—different services	5-7
d. Illegal service—alien	5-8
2. Retired Reserve member—serves on active duty in National Guard	5-8
I. Certain Coast Guard Service	5-8
1. Lighthouse service	5-8
2. Temporary member of Coast Guard Reserve	5-8
J. Computing Service Credit—Lost Time	5-9
1. Time lost which has been made up	5-9
2. Members required to make up lost time	5-9

Chapter 6—Active Duty Pay for Reserves

A. Duty Status	6-1
1. Status dependent on advance written or verbal orders	6-1
2. Written confirmation of verbal orders	6-1
B. Entitlement to Pay Based on Statute	6-1
1. Some action by member required	6-1
2. Combined active duty and inactive duty pay	6-1
3. Agreed duty without pay	6-2
a. Retroactive change	6-2
b. Lack of funds	6-2
4. Eligibility—acceptance of lower grade	6-2
5. Training expenses—disenrolled	6-2
C. Inactive Duty Pay (Drill Pay)	6-3
1. National Guard—federal recognition requirement	6-3
a. Federally recognized officer entitled to pay	6-3
b. Duty performed after recognition expired—entitled to pay as de facto officer	6-3
c. National Guard engineer transferred to Air National Guard	6-3
d. Voluntary relinquishment of federally recognized rank	6-3
2. Duty in lieu of drills (equivalent training)	6-4
a. Drill pay not authorized—attending service school	6-4
b. Drill pay authorized by regulations and orders—attending service school	6-4

c. Equivalent training not performed within prescribed time period	6-4
3. Computation of drill pay	6-4
a. Training period of over 8 hours—two drills	6-4
b. Drill pay in lieu of retired pay	6-5
4. Evidence of attendance at training assemblies	6-5
a. Erroneous records not promptly corrected	6-5
b. Verbal orders—confirmation delayed	6-5
5. Missing, interned, captured while on inactive duty for training	6-6
a. Not entitled to credit for pay while missing	6-6
b. Member subsequently determined to have died	6-6
6. Waiver of VA disability compensation	6-6
a. Retroactive waiver	6-6
b. Failure to execute waiver	6-6
D. Reserves—Active Duty or Active Duty for Training	6-7
1. National Guard called to active duty	6-7
a. Member on detached service until discharged by physical disqualification	6-7
b. Federal civilian employees—members of National Guard	6-7
2. Active duty for physical examination	6-7
a. Physical exam incident to active duty for more than 30 days	6-7
b. Pay during travel to first duty station after passing physical exam	6-7
c. Pay of reservist who fails physical exam	6-8
d. Physical exam not incident to active duty	6-8
3. ROTC cadets/midshipmen—pay while traveling to summer training	6-8
4. Release from active duty	6-8
a. Member late picking up orders	6-8
b. Member dies prior to expiration of travel time	6-9
c. Member delayed in returning home due to weather, etc.	6-9
d. Member departed duty station prior to termination date in orders	6-9
e. Late delivery of orders modifying orders releasing member from active duty	6-10
f. Release from active duty orders modified prior to expiration of terminal leave	6-10

5. Computation of reserves active duty pay	6-10
a. Actual days served—less than 30	6-10
b. Day on which pay begins for reservist called to active duty	6-11
c. Day on which pay terminates for reservist called to active duty	6-11
d. Leave credit for active duty without pay	6-11
6. Entitlement based on waiver of retired pay	6-11
a. Generally	6-11
b. Waiver of retired pay by retired Air Force officers serving in the Air National Guard	6-12
c. Statutory pay rate limitation—civilian technicians	6-12
7. Reservist on duty as chief warrant officer—pay retention	6-13
E. Reservists Injured or Ill on Duty	6-13
1. Status during hospitalization	6-13
2. Orders purporting to extend active duty	6-13
3. Pay entitlement while disabled	6-14
a. Pay continues while member incapacitated for military duty	6-14
b. Income restrictions from nonmilitary employment—civil service retirement program	6-14
c. Agency retirement contribution	6-14
d. Pay terminates when found fit for military duty	6-15
e. Member required to promptly report injuries and keep service advised of condition	6-16
f. Failure to report injuries	6-16
g. Member postpones treatment	6-16
h. Subsequent injury—intervening cause	6-17
i. Member resumes civilian occupation while disabled	6-17
j. Injuries not manifest until after release from duty	6-17
4. Disability must be incurred in line of duty	6-18
5. Disability must be incurred while member in duty status	6-18
a. Member injured going to or from active duty for training	6-18
b. Member injured while on excursion with his family	6-19
c. Members injured returning home during drill period for forgotten equipment	6-19

d. Member injured after dismissal—effect of standby status	6-19
e. Member injured after dismissal—return home under travel orders	6-20
f. Member ordered home during drill to get records	6-20
6. Members disabled while serving without pay	6-20
a. Disabled from disease during active duty period in excess of 30 days	6-20
b. Disabled from injury during active duty for any period	6-21

Chapter 7—Waivers

A. In General	7-1
B. Specifics	7-1
1. Member not without fault	7-1
a. Excess leave upon retirement or separation	7-1
b. Failure to deduct allotment	7-1
c. Erroneous allowances	7-2
d. Overpayment of basic pay	7-3
2. Upon records correction action	7-3
3. Failure to liquidate advance payments	7-4
4. Bonus payments	7-4
5. Direct bank deposits	7-5
6. Final pay and leave	7-5
7. Statutes of limitation	7-5

Chapter 8—Special Pay

A. Incentive Pay for Hazardous Duty	8-1
1. Aerial flights	8-1
a. Orders requirements	8-1
(1) Orders required	8-1
(2) Performance without competent orders	8-1
(3) Verbal orders	8-1
(4) Failure of physical exam	8-1
(5) Falsification of flight physical examination to qualify	8-1
b. Continuation while injured	8-2
(1) Aviation accident	8-2
(2) Incapacity periods	8-2
(3) Non-aviation accidents	8-2
c. Qualifying duties	8-2
(1) Enlisted members retained on flight status	8-2
(2) Jumpmasters	8-3

Index

(3) Voluntary flying during active duty for training	8-3
d. Flight requirements	8-3
(1) Minimum flight requirements	8-3
(2) Flight deficiencies	8-3
(3) Inactive duty flight credit	8-4
(4) Deficiencies make-up	8-4
2. Submarine duty	8-4
a. Purpose and qualification	8-4
(1) Primary duty	8-4
(2) Staff based ashore	8-4
b. Periods for which allowed	8-4
(1) Undergoing training	8-5
(2) Leave status	8-5
(3) Off-crew members	8-5
(4) Periods of absence	8-5
c. Computation: 31st day of the month	8-5
3. Parachute jumping	8-6
a. Assignment to duty	8-6
(1) Assignment status	8-6
(2) Rating and performance	8-6
(3) Active duty for training assignment	8-6
b. Performing of qualifying jumps	8-6
(1) Hostile fire area	8-6
(2) Requirements as to jumps performed	8-7
(3) Temporary duty	8-7
4. Dual hazardous duty	8-7
a. Demolition of explosive—parachute jump	8-7
b. Low pressure chamber—aerial flights	8-7
c. Aviation—parachute duty	8-8
d. Simultaneous performance not required	8-8
5. Demolition duty	8-8
a. Assignment	8-8
b. Training duty	8-9
c. Primary duty assignment	8-9
6. Diving duty	8-9
a. Qualification requirements	8-9
b. Qualification lapse	8-9

B. Professional Pay	8-10
1. Medical and dental	8-10
a. No medical duties	8-10
b. Service requirements	8-10
(1) Extensions	8-10
(2) Internship	8-10
(3) Continuous duty	8-10
c. Entitlement based on statute and regulations	8-11
d. Commissioned officers	8-11
2. Veterinarians and optometrists	8-11
a. Entitlement	8-11
b. Longevity credit	8-12
C. Special Duty Pay	8-12
1. Foreign duty pay	8-12
a. Effective date	8-12
b. Off-shore islands	8-12
c. Artificial islands (Texas Towers)	8-12
d. Duty status	8-13
2. Sea duty	8-13
a. On board vessel	8-13
b. Time limitation	8-13
(1) Vessel alteration and repair	8-13
(2) Submarine repair	8-14
3. Administrative function pay—Reserve	8-14
4. Hostile fire pay	8-14
a. Members missing in action	8-14
b. Member classified as a casualty	8-14
c. Cadets and midshipmen	8-15
d. Noncombat areas	8-15
e. Entitlement to convalescent leave	8-15
D. Bonuses	8-15
1. Proficiency pay (now special assignment pay)	8-15
a. Promotion	8-15
(1) Enlisted to commissioned grade	8-15
(2) Eligibility for promotion	8-16
b. Prohibition	8-16
c. Qualifying criteria	8-16
d. Training	8-16
e. Authority to pay	8-17
2. Enlistment bonus—high school students	8-17

3. Reenlistments bonus	8-17
a. Extension of enlistment in order to retain status as member of the Armed Forces	8-17
b. Early release	8-17
c. Matter of Timm	8-18
d. Creditable service	8-18
e. Special benefits programs	8-19
f. Critical military skill	8-19
g. Basis of reenlistment bonus	8-19
h. Date on which bonus payments are to be based	8-19
i. Training for a commission	8-20
j. Retraining	8-21
4. Medical—dental—variable incentive pay	8-21
E. Incentive Awards	8-21
<hr/>	
Chapter 9— Allowances	
A. Basic Allowance for Subsistence (BAS)	9-1
1. Officers	9-1
2. Enlisted members	9-1
a. Generally	9-1
b. Rations in kind not available or impracticable	9-1
(1) Determination of installation commander	9-1
(2) Distance between residence and mess	9-1
(3) Member's martial status	9-1
c. Permission to mess separately	9-2
d. Retroactive payment of commuted rations	9-2
B. Basic Allowance for Quarters (BAQ)	9-2
1. Availability of government quarters	9-2
a. Need to use existing quarters	9-2
b. Conclusiveness of certificate of nonavailability	9-3
c. Quarters assigned before household goods arrive	9-3
d. Family quarters available but dependents do not join member	9-3
e. Quarters aboard ship while traveling	9-4
f. Occupancy of temporary quarters after PCS	9-4
(1) Thirty-day rule, generally	9-4
(2) Longer period by regulation	9-4
(3) Temporary occupancy of "rental" vs. "public" quarters	9-4
g. Occupancy of temporary quarters—no PCS	9-5
(1) Seven-day rule, generally	9-5

2. Adequacy of government quarters	9-5
a. Voluntary occupancy of inadequate quarters	9-5
b. Duty assignment in barracks	9-5
c. Members under confinement	9-5
d. Crew of two-crew nuclear submarines	9-6
3. Adequacy of allowance when quarters are not furnished	9-6
a. Generally	9-6
b. Extraordinary expenses	9-6
c. Utility expense	9-7
4. Members without dependents	9-7
a. While on sea or field duty	9-7
(1) Temporary and permanent assignments	9-7
(2) Assigned to multinational force of observers	9-7
b. While on temporary duty with unit deployed ashore	9-7
c. While occupying transient quarters upon transfer	9-8
d. While traveling between permanent stations	9-8
e. Transfer between vessels having same home port	9-8
f. Navy members above E-6 assigned to a ship	9-8
g. After basic training before permanent assignment	9-9
h. "Partial BAQ" for single members assigned to public quarters	9-9
(1) Generally	9-9
(2) Assignment to family type quarters	9-9
5. Members with dependents	9-9
a. Dependency determinations	9-9
b. Common-law marriage	9-10
c. Divorce pending appeal	9-10
d. Living apart	9-10
(1) Waiver	9-10
(2) Separated—wife remains in government quarters	9-10
e. Evacuation to safe haven	9-11
(1) Government quarters occupied free by dependents	9-11
(2) Member evacuated to government housing while continuing private rental	9-11
f. Entitlement based on child support	9-11
(1) General rule	9-11
(2) Legal custody in third party—entitlement rules where both members provide support	9-11

(3) Supported children reside with third parties for personal reasons	9-12
(4) Noncustodial parent paying less than amount required by regulations to qualify	9-12
(5) Showing that support is being paid	9-12
(6) Support being paid for one of two children in a class of common dependents	9-13
(7) Member has legal custody but not control	9-13
(8) Supported children occupying government quarters	9-13
(9) While member is in transient status	9-14
(10) Member has custody of dependents for a period in excess of 3 months	9-14
(11) Doubt as to father, in fact—garnishment of pay	9-14
g. Adopted children	9-14
(1) Generally	9-14
(2) Bona fide parent and child relationship	9-15
(3) Receiving other benefits	9-15
h. Illegitimate children	9-15
i. Mother	9-15
j. Dependent in confinement	9-16
k. Member required to pay for private quarters after moving to government quarters	9-16
6. Women members	9-16
a. <u>Frontiero v. Richardson</u>	9-16
C. Uniform Allowances	9-17
1. Officers	9-17
a. Inclusion in backpay award	9-17
b. For ready reserve service	9-17
c. Extended active duty allowance	9-17
(1) Relationship to initial allowance	9-17
(2) Relationship to quadrennial allowance	9-17
d. On charge from Regular to Reserve	9-18
e. On entering different service	9-18
f. Entrance on duty as non-Regular	9-18
2. Enlisted members	9-18
a. Change from Reserve to Regular	9-18
b. Lost clothing allowance to survivors	9-19

D. Dislocation Allowance (DLA)	9-19
1. Permanent change of station	9-19
a. Ordered to change quarters, no PCS	9-19
b. Payments based on alert notice not allowed	9-19
c. Move off ship when quarters uninhabitable	9-20
d. More than one PCS in a year	9-20
2. Personal reason for changing residence	9-20
a. Delayed move	9-20
b. Family move not related to PCS	9-20
c. Move before PCS orders issued	9-21
d. Travel of family for visit	9-21
3. Orders amended or revoked	9-22
a. Overseas PCS revoked after move	9-22
b. Revocation after vacating quarters	9-22
c. Change from overseas move to within United States	9-22
4. Effect of martial status disruption	9-22
a. Divorce en route to new station	9-22
b. Divorce and early return of dependents from overseas	9-23
c. Custody of children with spouse	9-23
(1) Travel incident to authorized visit	9-23
(2) Temporary court order pending divorce	9-23
(3) Informal agreement of spouse to modify custody	9-24
5. To first or from last permanent station	9-24
a. Permanent vs. temporary duty	9-24
b. Travel to separation station	9-24
c. Immediate reenlistment	9-24
d. Change from enlisted to officer status	9-25
6. Hospital transfers	9-25
a. Prolonged hospitalization	9-25
b. Transfer to temporary disability retired list (TDRL)	9-25
7. Vessel and home port changes	9-26
a. Home port at former shore station	9-26
b. Vessels having same home port	9-26
c. Transfer between home port and shore station in same city	9-26
d. Change in assignment after move	9-27
e. Vessels with different home yards	9-27

8. Member without dependents	9-27
a. Nonavailability of quarters	9-27
(1) Furnishing quarters not economical	9-27
(2) Quarters aboard ship not inhabitable	9-28
(3) Two-crew nuclear submarines	9-28
b. Without dependent status	9-28
(1) Spouse and children do not move	9-28
(2) Parent does not move	9-28
(3) Children of divorced member	9-29
(4) Dependents do not move on return from unaccompanied assignment	9-29
(5) Two members with no dependents	9-29
9. Evacuation of dependents	9-30
E. Family Separation Allowance (FSA)	9-30
1. Terms	9-30
a. FSA-Type I	9-30
b. FSA-Type II	9-30
2. Member with dependents requirement	9-31
a. Primary family residence requirement	9-31
b. Joint custody of child after divorce	9-31
c. Two children in common class of dependents	9-31
d. Divorce decree silent on custody	9-32
e. Dependents acquired after PCS	9-32
f. When authorized transportation does not include all dependents	9-32
g. Women members	9-32
3. FSA—Type I and Type II (FSA-R)	9-33
a. Purpose of Type II-R	9-33
b. Separation must be caused by military assignment	9-33
(1) Separation due to personal considerations	9-33
(2) Separation due to personal considerations—divorce settlement	9-33
(3) Court-ordered separation subsequent to separation by military orders	9-33
(4) Separation due to military orders	9-34
c. Delay in travel otherwise authorized	9-34
(1) Member must request travel be approved	9-34
(2) Unreasonable delay in dependent travel	9-34
(3) Delay in authorization	9-35
(4) Temporary prohibition of dependent travel	9-35
(5) Travel not permitted due to pregnancy	9-35
(6) Transportation denied due to emergency	9-35
(7) Prior travel of dependents	9-36

d. Early return of dependents	9-36
(1) Return for personal reasons	9-36
(2) Returned to United States due to misconduct	9-36
e. Residence at or near permanent duty station	9-36
(1) Mileage criterion	9-36
(2) Child's permanent residence	9-36
f. Visit of family	9-37
(1) Short family visit at permanent station	9-37
(2) Visits extended beyond 3 months	9-37
(3) Planned visit of over 3 months	9-37
(4) Reinstatement of allowance after visit	9-37
(5) Some members of family visit	9-38
(6) Children remain at family home	9-38
g. Government quarters available	9-38
(1) Lack of facilities at base	9-38
(2) Members married to each other—single quarters	9-38
(3) Evacuation from government housing	9-38
(4) Evacuation from private housing	9-39
h. Temporary absence of member from permanent station	9-39
(1) Allowance commences on departure from old station	9-39
(2) Leave in United States	9-39
(3) Temporary duty	9-39
(4) Hospitalization at another place	9-40
(5) Member in confinement	9-40
4. Type II—FSA-S, FSA-T	9-40
a. 30-day requirement	9-40
(1) Travel time included	9-40
(2) 31st day of the month counted	9-40
(3) Combining TDY and ship duty	9-40
b. Concurrent receipt of BAQ—inadequate family quarters	9-41
c. Duty aboard ship (FSA-S)	9-41
(1) Ship in port near home port	9-41
(2) Visits home while aboard ship	9-41
(3) On leave or hospitalization	9-42
d. Temporary duty (FSA-T)	9-42
(1) Visit of dependents	9-42
(2) Some dependents visit	9-42
(3) Return from TDY on weekends	9-42

F. Overseas Allowances	9-42
1. Housing and cost-of-living allowances (COLA)	9-43
a. Basic authority and entitlement	9-43
(1) Authority for payment	9-43
(2) Adequacy of allowances	9-43
(3) Advance payment prohibited	9-43
(4) Per diem basis	9-43
(5) Need for implementing regulations	9-44
(6) Regulations clearly erroneous	9-44
(7) Entitlement to allowances	9-44
(8) Dependent spouse	9-44
(9) Dependent status—stepchild	9-44
(10) Dependent status—adopted child	9-45
(11) Unaccompanied overseas assignment	9-45
(12) Permissive orders for overseas assignment	9-45
(13) Sharer of residence	9-45
b. Entitlement to housing allowance—government quarters available	9-45
(1) Quarters leased by NATO	9-45
(2) Quarters administered by Panama Canal Commission	9-46
(3) Unaccompanied tour—assignment to substandard quarters	9-46
(4) Assigned quarters not at duty station	9-46
(5) Evidence of nonavailability of public quarters	9-47
(6) Abandonment of assigned quarters	9-47
(7) Waiver of housing allowance received by member assigned quarters	9-47
c. Entitlement to COLA when subsisted by government	9-47
(1) Entitlement while on leave	9-47
(2) Ship personnel away from ship	9-48
d. Entitlement while on temporary duty	9-48
(1) Attending school under no expense orders	9-48
(2) At home port of two-crew submarines	9-48
(3) Same—while on shore due to injury	9-49
e. Dependents at other duty station	9-49
(1) Member's transfer to CONUS	9-49
(2) Designated place overseas	9-49

(3) Consecutive overseas assignments	9-49
(4) Dependents travel when member is transferred to restricted area	9-50
(5) Station reclassified as restricted area	9-50
(6) Member at remote Alaska post	9-50
f. Pending effective date of home port change	9-51
g. Dependents visiting in United States	9-51
2. Interim housing allowance (IHA)	9-51
3. Temporary lodging allowance (TLA)	9-51
a. General restrictions	9-52
(1) While en route to permanent station	9-52
(2) Temporary duty station not within limits of permanent station	9-52
(3) On day of arrival at permanent station	9-52
(4) Quarters must qualify as temporary lodging	9-52
(5) FSA and TLA for same period	9-53
(6) Effect of permissive orders	9-53
(7) Separate allowance for members and dependents	9-53
b. Permanent change-of-station requirement	9-53
(1) Upon return from long TDY	9-53
(2) Alert notice	9-54
(3) Pending effective date of home port change	9-54
(4) Two-crew submarine—prior to reporting aboard	9-54
(5) Advance return of dependents	9-55
(6) Station reclassified to restricted	9-55
(7) Dependents accompany member on hospitalization	9-55
(8) After assignment on unaccompanied tour	9-55
c. Government quarters available	9-56
(1) Temporary quarters available but not used	9-56
d. Commander's determination necessary	9-56
(1) Need for occupancy of hotel quarters	9-56
(2) Decision to discontinue allowance	9-56
(3) Failure to keep commander advised	9-56
e. Extension of eligibility	9-57
(1) Failure to request extension	9-57
(2) Retroactive effect	9-57
(3) Commander's duty to determine	9-57
(4) Consideration of actual costs	9-57
(5) Delay in departure due to misconduct	9-58
(6) Delay in departure for personal reasons	9-58

G. Other Allowances	9-58
1. Recruiting expense allowance	9-58
a. Added cost of automobile insurance	9-58
b. Luncheons for groups of school officials	9-59
2. Lodging costs under 10 U.S.C. § 7572	9-59
3. Heat and light allowance under 10 U.S.C. § 4593	9-59
4. Rent plus housing allowance	9-59
a. Retroactive payment due to administrative error	9-59
b. Members sharing a residence—sharer's rate	9-60
5. Variable housing allowance (VHA)	9-60
a. Confinement at correctional facility	9-60
b. Complement to overseas station housing allowance	9-60
c. Use of temporary lodging	9-61
d. On account of adopted child	9-61
e. All dependents must return to the United States	9-61
f. Offset for monthly housing expenses	9-61
g. Assigned to duty requirement	9-62
h. Reserve member called to active duty	9-62
i. Awaiting action by Physical Evaluation Board	9-63
j. Divorced member—dependents	9-63
k. BAQ solely for payment of child support	9-63
6. Allowances not included	9-64
H. Status of Member as Affecting Entitlement to Allowances	9-64
1. National Guard and Reserve members	9-64
a. Basic allowances for subsistence and quarters (BAS and BAQ)	9-64
(1) Active duty for training	9-64
(2) Active duty of less than 20 weeks	9-64
(3) BAQ dependency certificates	9-65
(4) Reservist receiving disability compensation	9-65
(5) Commutation rate for members serving without pay	9-65
b. Uniform allowances	9-66
(1) Entry as reservist after release from regular status	9-66
c. Family separation allowance (FSA)	9-66
(1) Active duty of less than 30 days	9-66
(2) Duty aboard ship for more than 30 days	9-66
(3) 30-day TDY during 45-day tour	9-66
(4) FSA, Type I—duty outside United States	9-67
(5) Transfers to Naval Reserve	9-67

d. Overseas station allowances	9-67
(1) TLA while on training in Europe	9-67
(2) COLA while on Reserve duty in Alaska	9-68
(3) Station allowances for Alaska reservists	9-68
2. Husband and wife both members	9-68
a. Basic allowance for quarters (BAQ)—no children involved	9-68
(1) Sham marriages	9-68
(2) Effect of <u>Frontiero v. Richardson</u> , 411 U.S. 677 (1973)	9-68
(3) One member on excess leave	9-69
(4) One member in prison	9-69
(5) Members occupying inadequate government quarters	9-69
(6) Members occupying transient quarters while awaiting adequate family-type housing	9-70
(7) Effect of sea duty for one spouse	9-70
(8) BAQ—members' children—no children of a prior marriage involved	9-70
(a) Child—whose dependent	9-70
(b) Effect of members' separation	9-70
(c) Effect of separation agreement	9-71
(d) After divorce	9-71
(9) BAQ—children of a prior marriage involved	9-71
(a) Members reside in separate quarters—each has child prior to marriage	9-71
(b) Members reside together—each has child of prior marriage	9-72
(c) Child of prior marriage determined to be a "dependent" after member's remarriage	9-72
(d) Status of child of current marriage—members reside together	9-72
(e) Status of child of current marriages—members reside separately	9-72
b. "Partial BAQ" under 37 U.S.C. § 1009(d)	9-73
(1) Generally	9-73
(2) Effect of sea duty for one spouse	9-73
c. Family separation allowance (FSA)	9-73
(1) Member with no dependents other than member spouse	9-73

(2) Member with child and member spouse	9-74
(a) Unaccompanied overseas tour	9-74
(b) PCS with dependent travel authorized	9-74
(c) When dependent travel could have been authorized	9-74
d. Dislocation allowance (DLA)	9-75
(1) Both spouses transferred	9-75
(2) One spouse separated	9-75
(3) Child dependent	9-75
(4) After divorce—custody of child	9-76
3. Members in missing-in-action or prisoner-of-war status	9-76
a. Continuation of allowances	9-76
b. Basic allowances for subsistence and quarters (BAS and BAQ)	9-76
c. Family separation allowance (FSA)	9-76
(1) Continuation of existing allowance	9-76
(2) Initiation of Type II allowance for TDY	9-77
d. Dislocation allowance (DLA)	9-77
(1) Family move under Missing Persons Act	9-77

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